training of educational personnel, and research and demonstration projects; to the Committee on Education and Labor.

By Mr. SEBELIUS:

H.R. 15330. A bill to provide additional benefits for optometry officers of the uniformed services; to the Committee on Armed Services.

By Mr. SPRINGER:

H.R. 15331. A bill to promote the advancement of biological research in aging through a comprehensive and intensive 5-year program for the systematic study of the basic origins of the aging process in human beings; to the Committee on Education and Labor.

By Mr. STAFFORD (for himself, Messrs. CONTE, HARVEY, MORSE, MOSHER, ROBISON, and RIEGLE):

H.R. 15332. A bill to establish a Commission to study and investigate incidents of alleged mistreatment or other misconduct directed against citizens of South Vietnam by U.S. troops operating in Mylai, Quang Nai Province on or about March 1968; to the Committee on Armed Services.

By Mr. ULLMAN:

H.R. 15333. A bill to amend the Interstate Commerce Act in order to give the Interstate Commerce Commission additional authority to alleviate freight car shortages, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. ADDABBO:

H.R. 15334. A bill to amend title XVIII of the Social Security Act to provide payment for chiropractors' services under the program of supplementary medical insurance benefits for the aged; to the Committee on Ways and Means.

By Mr. BOGGS:

H.R. 15335. A bill to amend section 105 of the Clean Air Act to authorize increased grants to be made to certain air pollution control agencies not now eligible therefor; to the Committee on Interstate and Foreign Commerce.

By Mr. BENNETT (for himself, Mr. ADAIR, Mr. BARING, Mr. BEVILL, Mr. BROCK, Mr. BUCHANAN, Mr. BYRNE of Pennsylvania, Mr. CARTER, Mr. CORBETT, Mr. DANIEL of Virginia, Mr. DENT, Mr. DUNCAN, Mr. FISHER, Mr. FULTON of Pennsylvania, Mrs. GREEN of Oregon, Mr. KING, Mr. KUYKENDALL, Mr. LEGGETT, Mr. LUKENS, Mr. MADDEN, Mr. MATSUNAGA, Mr. RARICK, Mr. WHITEHURST, and Mr. YATRON):

H.R. 15336. A bill to provide Federal grants to assist elementary and secondary schools to carry on programs to teach moral and ethical principles; to the Committee on Education and Labor.

By Mr. CLARK:

H.R. 15337. A bill to declare and determine the policy of the Congress with respect to the primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands; to the Committee on Merchant Marine and Fisheries.

By Mr. GALIFIANAKIS:

H.R. 15338. A bill to encourage the growth of international trade on a fair and equitable basis; to the Committee on Ways and Means.

By Mr. HOGAN:

H.R. 15339. A bill to amend certain provisions of criminal law applicable in the District of Columbia with respect to added punishment for committing a crime when armed; to the Committee on the District of Columbia.

H.R. 15340. A bill to amend title 14 of the District of Columbia Code with respect to competency of witnesses; to the Committee on the District of Columbia.

H.R. 15341. A bill to amend certain provisions of criminal law applicable in the District of Columbia with respect to rape; to the Committee on the District of Columbia.

H.R. 15342. A bill to amend certain provisions of criminal law applicable in the District of Columbia with respect to resisting arrest; to the Committee on the District of Columbia.

H.R. 15343. A bill to amend certain provisions of criminal law applicable in the District of Columbia with respect to burglary in the second degree; to the Committee on the District of Columbia.

By Mr. LONG of Louisiana:

H.R. 15344. A bill to amend the Federal Food, Drug, and Cosmetic Act to include a definition of food supplements, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. MOORHEAD:

H.R. 15345. A bill to create a Federal Insurance Guarantee Corporation to protect the American public against certain insurance company insolvencies; to the Committee on Banking and Currency.

By Mr. MURPHY of Illinois:

H.R. 15346. A bill to repeal the Emergency Detention Act of 1950 (title II of the Internal Security Act of 1950); to the Committee on Internal Security.

By Mr. O'KONSKI:

H.R. 15347. A bill to authorize the payment of legal fees for accused persons in connection with the events alleged to have occurred at Mylai 4, Republic of Vietnam, during March 1968; to the Committee on Armed Services.

By Mr. SCHEUER (for himself, Mr. BINGHAM, Mr. BOLAND, Mr. BROWN of Michigan, Mr. BURTON of California, Mr. BUTTON, Mrs. CHISHOLM, Mr. CLAY, Mr. EDWARDS of California, Mr. ESCH, Mr. HOWARD, Mr. KOCH, Mr. MATSUNAGA, Mr. MIKVA, Mr. OTTINGER, Mr. POWELL, Mr. THOMPSON of New Jersey, and Mr. TUNNEY):

H.R. 15348. A bill to amend the Education Professions Development Act to permit training of school board members; to the Committee on Education and Labor.

By Mr. STAGGERS:

H.R. 15349. A bill to amend the Railway Labor Act in order to change the number of carrier representatives and labor organization representatives on the National Railroad Adjustment Board, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. HOGAN:

H.R. 15350. A bill to provide that certain sentences imposed for the conviction of crimes in the District of Columbia shall be deemed to be imposed to run consecutively; to the Committee on the District of Columbia.

By Mr. THOMPSON of New Jersey:

H.R. 15351. A bill to authorize additional funds for the operation of the Franklin Delano Roosevelt Memorial Commission; to the Committee on House Administration.

By Mr. WHITTEN:

H.J. Res. 1036. Joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women; to the Committee on the Judiciary.

By Mr. PRICE of Texas:

H. Res. 760. Resolution relating to the maintenance of United States sovereignty and jurisdiction over Panama Canal; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BYRNE of Pennsylvania:

H.R. 15352. A bill for the relief of Leopold Morse Tailoring Co.; to the Committee on the Judiciary.

By Mr. DELANEY:

H.R. 15353. A bill for the relief of Ottorino Ferrini; to the Committee on the Judiciary.

By Mr. DONOHUE:

H.R. 15354. A bill for the relief of Anthony P. Miller, Inc.; to the Committee on the Judiciary.

SENATE—*Thursday, December 18, 1969*

(Legislative day of Tuesday, December 16, 1969)

(Legislative day of Tuesday, December 16, 1969)

The Senate met at 9 o'clock a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore (Mr. METCALF).

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

O Thou creator and restorer of life, we thank Thee for Thy mercies which are new every morning. We thank Thee for work to do and that it may be done for others in this place. Enable Thy servants here, upon whose judgment rest solemn responsibilities of public welfare, to keep ever before them the vision of Thy higher kingdom. Renew them in weariness, reinvigorate them in fatigue, and give them inner compensation for long, strenuous, and confining hours. Help them to bear the fret of care, the sting of criticism, and unapplauded toil. May the highest truth of Christmas illuminate every duty, and may they be given strength to follow the One who came to set men free.

In His name we pray. Amen.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Arizona is recognized for not to exceed 20 minutes.

Mr. MANSFIELD. Mr. President, will the Senator yield to me for 1 minute, without losing any time or his right to the floor?

Mr. GOLDWATER. I yield.

Mr. MANSFIELD. I thank the distinguished Senator from Arizona, and I assure him that if he needs a few more minutes, the time will be available.

Mr. GOLDWATER. I thank the Senator.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of

the proceedings of Wednesday, December 17, 1969, be approved.

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

HORSE PROTECTION ACT OF 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 606, S. 2543.

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

The BILL CLERK. A bill (S. 2543) to protect interstate and foreign commerce by prohibiting the movement in such commerce of horses which are "sored," and for other purposes.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce with amendments, on page 1, after the enacting clause, strike out:

SEC. 2. (a) A horse shall be considered to be sored if, for the purpose of affecting its gait, a blistering agent has been applied internally or externally to any of the legs, ankles, feet, or other parts of the horse, or if burns, cuts, or lacerations have been inflicted on the horse, or if a chemical agent, or tacks, nails, or wedges have been used on the horse, or if any other method or device has been used on the horse, including, but not limited to chains or boots, which may reasonably be expected currently (1) to result in physical pain to the horse when walking, trotting, or otherwise moving, or (2) to cause extreme fear or distress to the horse.

And, in lieu thereof, insert:

SEC. 2. (a) A horse shall be considered to be sored if, for the purpose of affecting its gait—

(1) a blistering agent has been applied internally or externally to any of the legs, ankles, feet, or other parts of the horse;

(2) burns, cuts, or lacerations have been inflicted on the horse;

(3) a chemical agent, or tacks, nails, or wedges have been used on the horse; or

(4) any other method or device has been used on the horse, including, but not limited to chains or boots;

which may reasonably be expected (A) to result in physical pain to the horse when walking, trotting, or otherwise moving, (B) to cause extreme fear or distress to the horse, or (C) to cause inflammation.

On page 3, line 14, after the word "burdens", insert "such"; in the same line, after the word "commerce;", insert "and"; on page 4, line 4, after the word "in", strike out "commerce." and insert "commerce, unless such person can establish that he took all reasonable precautions to prevent the showing or exhibiting of such sored horse"; in line 18, after the word "States," insert "or such other person or persons as the Secretary of Agriculture (hereinafter referred to in this act as the 'Secretary') may by regulation designate"; in line 21, after the word "Secretary", strike out "of Agriculture may by regulation prescribe. in order to enable the representatives of said Secretary to determine whether any horses were moved to or from such show or exhibition in commerce, the identity of the owner or exhibitor of any horse at the show or exhibition, and other facts necessary for the effective enforcement of this Act, and the"; on page 5 line 2, after the amendment just stated, insert "The"; in line 3, after the word "exhibition", insert "or such other person or persons as the Secretary may by regulation designate"; in line 5, after the word "Secretary", strike out "of Agriculture"; after line 7, strike out:

SEC. 6. Any person who violates any provision of this Act shall be fined not more than $500 or imprisoned not more than six months, or both.

And, in lieu thereof, insert:

SEC. 6. (a) Any person who violates any provision of this Act or any regulation issued thereunder, other than a violation the penalty for which is prescribed by subsection (b) of this section, shall be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this subsection, the Secretary shall 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.

(b) Any person who willfully violates any provision of this Act or any regulation issued thereunder shall be fined not more than $2,000 or imprisoned not more than six months, or both.

On page 6, line 5, after the word "Secretary", strike out "of Agriculture"; in line 6, after the word "a", insert "willful"; in line 11, after the word "Secretary", strike out "of Agriculture shall"; in line 12, after the word "Act," insert "shall utilize"; in line 13, after the word "practicable", strike out "utilize"; in line 14, after the word "Secretary", strike out "of Agriculture"; in line 16, after the word "consent", insert "and with or without reimbursement"; in line 18, after the word "Secretary", strike out "of Agriculture"; after line 20, insert a new section, as follows:

SEC. 10. No provision of this Act shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together. Nor shall any provision of this Act be construed to exclude the Federal Government from enforcing the provisions of this Act within any State, whether or not such State has enacted legislation on the asme subject, it being the intent of the Congress to establish concurrent jurisdiction with the States over such subject matter. In no case shall any such State take any action pursuant to this section involving a violation of any such law of that State which would preclude the United States from enforcing the provisions of this Act against any person.

On page 7, after line 11, insert a new section, as follows:

SEC. 11. On or before the expiration of thirty calendar months following the date of enactment of this Act, and every twenty-four-calendar-month period thereafter, the Secretary shall submit to the Congress a report upon the matters covered by this Act, including enforcement and other actions taken thereunder, together with such recommendations for legislative and other action as he deems appropriate.

At the beginning of line 19, change the section number from "10," to "12"; and in line 20, after the word "sums" insert "not to exceed $100,000 annually,"; so as to make the bill read:

S. 2543

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Horse Protection Act of 1969".

SEC. 2. (a) A horse shall be considered to be sored, for the purpose of affecting its gait—

(1) a blistering agent has been applied internally or externally to any of the legs, ankles, feet, or other parts of the horse;

(2) burns, cuts, or lacerations have been inflicted on the horse;

(3) a chemical agent, or tacks, nails, or wedges have been used on the horse; or

(4) any other method or device has been used on the horse, including, but not limited to, chains or boots;

which may reasonably be expected (A) to result in physical pain to the horse when walking, trotting, or otherwise moving, (B) to cause extreme fear or distress to the horse, or (C) to cause inflammation.

(b) As used in this Act, the term "commerce" means commerce between a point in any State or possession of the United States (including the District of Columbia and the Commonwealth of Puerto Rico) and any point outside thereof, or between points within the same State or possession of the United States (including the District of Columbia and the Commonwealth of Puerto Rico) but through any place outside thereof, or within the District of Columbia, or from any foreign country to any point within the United States.

SEC. 3. The Congress hereby finds (1) that the practice of soring horses for the purposes of affecting their natural gait is cruel and inhumane treatment of such animals; (2) that the movement of sored horses in commerce adversely affects and burdens such commerce; and (3) that horses which are sored compete unfairly with horses moved in commerce which are not sored.

SEC. 4. (a) It shall be unlawful for any person to ship, transport, or otherwise move, or deliver or receive for movement, in commerce, for the purpose of showing or exhibition, any horse which such person has reason to believe is sored.

(b) It shall be unlawful for any person to show or exhibit, or enter for the purpose of showing or exhibiting, in any horse show or exhibition, any horse which is sored if that horse or any other horse was moved to such show or exhibition in commerce.

(c) It shall be unlawful for any person to conduct any horse show or exhibition in which there is shown or exhibited a horse which is sored, if any horse was moved to such show or exhibition in commerce, unless such person can establish that he took all reasonable precautions to prevent the showing or exhibiting of such sored horse.

SEC. 5. (a) Any representative of the Secretary of Agriculture is authorized to make such inspections of any horses which are being moved, or have been moved, in commerce and to make such inspections of any horses at any horse show or exhibition within the United States to which any horse was moved in commerce, as he deems necessary for the effective enforcement of this Act, and the owner or other person having custody of any

such horse shall afford such representative access to and opportunity to so inspect such horse.

(b) The person or persons in charge of any horse show or exhibition within the United States, or such other person or persons as the Secretary of Agriculture (hereinafter referred to in this Act as the "Secretary") may by regulation designate, shall keep such records as the Secretary may by regulation prescribe. *The* person or persons in charge of any horse show or exhibition, *or such other person or persons as the Secretary may by regulation designate,* shall afford the representatives of the Secretary access to and opportunity to inspect and copy such records at all reasonable times.

SEC. 6. (a) Any person who violates any provision of this Act or any regulation issued thereunder, other than a violation the penalty for which is prescribed by subsection (b) of the section, shall be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this subsection, the Secretary shall 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.

(b) Any person who willfully violates any provision of this Act or any regulation issued thereunder shall be fined not more than $2,000 or imprisoned not more than six months, or both.

SEC. 7. Whenever the Secretary believes that a willful violation of this Act has occurred and that prosecution is needed to obtain compliance with the Act, he shall inform the Attorney General and the Attorney General shall take such action with respect to such matter as he deems appropriate.

SEC. 8. The Secretary in carrying out the provisions of this Act, shall utilize, to the maximum extent practicable, the existing personnel and facilities of the Department of Agriculture. The Secretary is further authorized to utilize the officers and employees of any State, with its consent, and with or without reimbursement, to assist him in carrying out the provisions of this Act.

SEC. 9. The Secretary is authorized to issue such rules and regulations as he deems necessary to carry out the provisions of this Act.

SEC. 10. No provision of this Act shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together. Nor shall any provision of this Act be construed to exclude the Federal Government from enforcing the provision of this Act within any State, whether or not such State has enacted legislation on the same subject, it being the intent of the Congress to establish concurrent jurisdiction with the States over such subject matter. In no case shall any such State take any action pursuant to this section involving a violation of any such law of that State which would preclude the United States from enforcing the provisions of this Act against any person.

SEC. 11. On or before the expiration of thirty calendar months following the date of enactment of this Act, and every twenty-four-calendar-month period thereafter, the Secretary shall submit to the Congress a report upon the matters covered by this Act, including enforcement and other actions taken thereunder, together with such recommendations for legislative and other action as he deems appropriate.

SEC. 12. There are hereby authorized to be appropriated such sums, not to exceed $100,000 annually, as may be necessary to carry out the provisions of this Act.

Amend the title so as to read: "A bill to prohibit the movement in interstate or foreign commerce of horses which are 'sored', and for other purposes."

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–609), explaining the purposes of the measure.

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

PURPOSE

S. 2543, the Horse Protection Act of 1969, is designed to end the inhumane practice of deliberately making sore the feet of Tennessee walking horses in order to alter their natural gait. It would do so by prohibiting the shipment of any horse in commerce, for showing or exhibition, which a person has reason to believe is sored; by making unlawful the exhibiting of a sored horse in any horse show or exhibition in which that horse or any other horse was moved in commerce; and by prohibiting the holding of any horse show in which a sored horse is exhibited if any of the horses in that show were moved in commerce.

NEED

The Tennessee walking horse is a magnificent animal, distinguished by its proud, high skipping gait or "walk." As a class Tennessee walkers have become exceedingly popular and now number approximately 25,000.

The horse's distinctive "walk" may be achieved through patient, careful training and is the result of both the trainers' skill and the horse's natural breeding. Unfortunately, however, it was discovered about 20 years ago that the "walk" could also be created artificially. If the front feet of the horse were deliberately made sore, the intense pain which the animal suffered when placing his forefeet on the ground would cause him to lift them up quickly and thrust them forward, reproducing exactly the desired gait.

This soring is usually done by applying a blistering agent, such as oil of mustard, to the pastern area of the horse's leg and by wrapping this area with chains or metal rollers. Then, during a show, the sore is covered by a boot, used ostensibly to protect the horse's foreleg, but now valued because it rubs against the sore and heightens the pain even further.

The soring may also be accomplished in several other ways—nails, wedges, or even injections are sometimes used—but the effect is still the same. The "walk," with its handsome stride—or "big lick" as it is known among walking horse enthusiasts—is achieved cheaply, without the long and difficult training period. It can make a mediocre horse perform like a champion.

That this method of producing the "big lick" is a particularly cruel and inhumane practice does not appear to matter to walking horse owners and trainers. With increasing frequency they have "sored" horses in order to achieve the desired gait and win the blue ribbon. The result has been that many of these animals have been cruelly mistreated, and persons who refuse to sore their horses have been faced with a difficult dilemma: either they must forgo most opportunities to compete successfully in horse shows, or they must devote their attentions to a different breed of horse. Moreover, the practice of soring, besides inflicting great pain on the individual horse, may seriously harm the breed itself. Because Tennessee walking horse champions are particularly valuable as studs, if a champion was created by means of soring, that practice may actually weaken, over a period of time, the breed's natural ability to "walk" in its distinctive fashion.

This bill should help end the unnecessary and inhumane practice of soring horses—something the Tennessee walking horse exhibitors have not done by themselves. By making unlawful the showing or exhibition of sored horses and imposing significant penalties for violations, the bill, in its practical effect, will make it impossible for persons to show sored horses in nearly all horse shows. This denial of the opportunity to win ribbons should destroy the incentive which presently exists for owners and trainers to painfully mistreat these magnificent animals.

PROVISIONS

There follows a section-by-section summary of the provisions of S. 2543, and a discussion of the committee's interpretation of these various provisions where appropriate.

Section 1.—Section 1 of the bill contains its short title: the Horse Protection Act of 1969.

Section 2.—Section 2 of the bill defines the term "commerce" and describes what is meant by the term "soring." It states that a horse shall be considered to be sored if, for the purpose of affecting its gait, a blistering agent is applied internally or externally to any of the legs, ankles, feet or other parts the horse; burns, cuts, or lacerations have been inflicted on the horse; a chemical agent or tacks, nails, or wedges have been used on the horse; or any other method or device has been used on the horse, including, but not limited to, chains or boots; which may reasonably be expected either to result in physical pain to the horse when walking, trotting, or otherwise moving; to cause extreme fear or distress to the horse; or to cause inflammation. The committee would point out that not only must one of these soring techniques produce physical pain to the horse, cause extreme fear or distress to the animal, or cause inflammation, but it must also be used for the purpose of affecting its gait. In addition, the committee would emphasize that the secretary is to exercise his discretion in interpreting this definition so as not to apply it to beneficial therapeutic treatment by a veterinarian which is designed to relieve pain or lameness or to restore a lame or disabled horse's normal gait.

Section 3.—Section 3 of the bill contains the congressional finding that the soring of horses for the purpose of affecting their natural gait is a cruel and inhumane practice, that the movement of sored horses in commerce adversely affects and burdens such commerce, and that horses which are sored compete unfairly with horses that are moved in commerce which are not sored.

Section 4.—Section 4 set forth some of the violations of the bill. It makes it unlawful for any person to ship, transport or otherwise move, or to deliver or receive for movement, in commerce, for the purpose of showing or exhibition, any horse which such person has reason to believe is sored. It also makes unlawful the showing or exhibiting of a sored horse in any horse show or exhibition in which that horse or any other horse was moved to such show or exhibition in commerce. Finally it makes it unlawful for any person to conduct a horse show or exhibition in which there is shown or exhibited a horse which is sored, if any horse was moved to such show or exhibition in commerce, unless such person can establish that he took all reasonable precautions to prevent the showing or exhibiting of the sored horse.

It will be noted that violations are centered upon the horse show rather than on the individual horse which is shipped interstate. The reason for this policy is twofold. It will allow the Department of Agriculture to ad-

minister the law without unreasonable burden, and it focuses upon the principal institution—the show or exhibition—which serves to perpetuate the practice of soring. Thus the bill places responsibility on the persons conducting a horse show, as well as on those who participate in it, to make sure that there is compliance with the law.

However since it would be unfair to impose liability upon an individual who is conducting a horse show in which a sored horse happens to be exhibited after he has made a conscientious and concerted effort to see that this does not occur the bill provides that such a person may escape liability once he establishes that he took all reasonable precautions to prevent the showing or exhibiting of the sored horse. The Committee intends that the term "reasonable precautions" will be construed to include at the minimum the examination of each horse to be exhibited by one or more qualified an independent veterinarians as the horses enter the exhibition area or shortly before they are actually exhibited.

Section 5.—In order to facilitate the effective enforcement of the bill subsection 5(a) would authorize any representative of the Secretary of Agriculture to inspect horses which are being moved or have moved in commerce as well as horses which are at any horse show or exhibition within the United States if any horse in such show or exhibition was moved in commerce. The subsection further provides that the owner or other person having custody of any such horse shall afford such representative access to the horse and an opportunity to inspect it. A refusal to permit such inspection would constitute a violation of the bill and would expose an individual to the penalties established in section 6.

Subsection 5(b) provides that the person or persons in charge of any horse show or exhibition within the United States, or such other persons as the Secretary of Agriculture may by regulation designate, shall keep such records as the Secretary may by regulation prescribe. It also provides that the person or persons in charge of the horse show or exhibition, or such other person or persons the Secretary may by regulation designate, shall afford the representatives of the Secretary access to the records and an opportunity to inspect and copy them at all reasonable times. Again a failure to keep the required records or to provide access to them would represent a violation of the bill and would expose an individual to the penalties established in section 6.

Since the committee believed that it could not anticipate all of the problems which might arise in the administration of the bill, it amended the original language of subsection 5(b) in order to provide the Secretary with a more general rulemaking authority. Nevertheless, the committee would anticipate that the Secretary's initial regulations will include a requirement that records be kept which will enable representatives of the Department of Agriculture to determine whether any horses were moved to or from a show or exhibition in commerce. In addition, the initial regulations should require that records be kept which will assist enforcement officials in ascertaining the name and address of the owner or exhibitor of any horse present at the show or exhibition, and which will help the Department's representatives to determine the identity and qualifications of any veterinarians who examined the horses at the show or exhibition and the approximate time at which such horses were examined.

Section 6.—Subsection 6(a) of the bill provides that any person who violates any provision of the act or any regulation issued thereunder, other than a violation subject to a criminal penalty under subsection 6(b), shall be assessed a civil penalty by the Secretary of not more than $1,000 for each violation. This subsection further provides that no penalty shall be assessed unless the person is given notice and opportunity for a hearing with respect to the violation. The subsection also gives the Secretary the authority to compromise any civil penalty. Should any person fail to pay the civil penalty which the Secretary has assessed, the bill provides that the Secretary shall request the Attorney General to institute a civil action in the U.S. district court to collect the penalty.

Subsection 6(b) of the bill provides that if any person willfully violates any provision of the act, or any regulation issued thereunder, he shall be fined not more than $2,000 or imprisoned for not more than 6 months or both.

The present section 6 of the bill represents a marked revision of the enforcement section of the original bill which provided only criminal penalties. The committee decided to establish civil penalites for nonwillful violations because it believed that this would produce more frequent enforcement efforts than would imposition of a criminal penalty for a first violation. At the same time, however, it retained the criminal penalties for willful violations, anticipating that second or third time violators would customarily be subject to criminal prosecution. And since persons acquitted in a criminal proceeding could still be subject to a civil penalty for a nonwillful violation under subsection 6(a), the committee felt that it had adopted a more flexible and effective enforcement system.

In addition, the committee increased the maximum penalties which could be recovered under the bill from $500 to $1,000 for nonwillful violations and $2,000 for willful violations. It did so in order to provide a more realistic deterrent to persons who might consider violating the bill, for the committee learned through the hearings that the rewards from soring—measured in terms of stud fees for a champion—could easily exceed $100,000. Thus, both the size of the penalties and the method of enforcement provided in the amended section 6 should bear a more reasonable relationship to the nature of the violation and the need for effective enforcement than did the provisions of the original bill.

Section 7.—Section 7 provides that whenever the Secretary believes that a willful violation of the act has occurred, he shall inform the Attorney General and the Attorney General shall take such action as he deems appropriate. Customarily, of course, this would involve the institution of criminal proceedings in an appropriate U.S. district court.

Section 8.—Section 8 directs the Secretary of Agriculture, in administering the bill, to utilize, to the maximum extent practicable, the existing personnel and facilities of the Department of Agriculture. The committee hopes that the enforcement program established by this legislation will not require the hiring of a significant number of new employees by the Department or the acquisition of any new facilities. This section would also authorize the Secretary to utilize the officers of any State, with its consent and with or without reimbursement, to assist him in carrying out the provisions of the bill.

Section 9.—This section contains a general authorization for the Secretary of Agriculture to issue such rules and regulations as he deems necessary in order to carry out the provisions of the act.

Section 10.—A new section 10 was added to the bill by the committee in order to clarify the relationship of this legislation to State law. This section first emphasizes that the bill is not intended to preempt the laws of any State with respect to soring, unless the provisions of State law conflict with this bill and cannot be reconciled with it. In other words, after this legislation has been enacted a State will remain free to enact its own antisoring law and to enforce it. However, the language also makes clear the committee's intention that any State law which permits or condones soring is to be preempted by the bill.

Second, this new section should also adequately express the committee's intention that even if a State has an antisoring law and an enforcement program under that law, Federal officials would still be entirely free to enter the State and enforce the Federal law concurrently. Moreover, the committee is aware that a person who has shown or exhibited a sored horse or conducted a horse show in which a sored horse is shown or exhibited could be subject to penalties under both a State and the Federal statute. The committee intends that these dual violations should exist and it values this arrangement because it will enable the Federal Government to take action when the penalties actually assessed by a State are inadequate to punish an offender or to effectively deter others from committing similar offenses. Nevertheless, if State enforcement does adequately serve these functions, the committee would not expect that an individual would normally be subject to additional Federal penalties.

Third, since judicial decisions with respect to the constitutionality of a dual prosecution under both State and Federal laws for similar offenses arising out of the same set of facts appear to be in a state of flux, the committee, without expressing any opinion on this area of the law, has attempted to anticipate the possible resolution of this question by including language which says that no State may undertake any enforcement action which would preclude the United States from enforcing the provisions of the bill against any person. In other words, if the judicial decisions continue to uphold the view that an individual may be penalized for a violation of both the Federal and a State antiscoring law concurrently in both jurisdictions, this provision will have no effect on State action. But if in the future the courts should decide that once an individual has been prosecuted in one jurisdiction, the second jurisdiction will be precluded from bringing any enforcement action against that individual for a similar offense arising out of the same set of facts, this provision indicates the committee's intention that the Federal action should take priority. In those circumstances, a State would be prohibited from commencing an enforcement action unless the Federal Government had waived any interest in the case. And the committee would anticipate that such a waiver would be granted on a case-by-case basis in which the appropriate Federal official considered, among other factors the vigor with which State officials have pursued earlier violations where a waiver had been granted.

The committee believes, however, that since nonwillful violations under this bill are subject to civil penalties, a future judicial decision which prohibits dual Federal-State criminal prosecutions for similar offenses arising out of the same fact situation might still permit the Federal Government to collect a civil penalty from an individual who has already been criminally prosecuted by a State. If this is the case, section 10 should have no effect on State enforcement actions dealing with nonwillful violations. But should the courts decide that the combination of both a Federal civil penalty action and a State criminal prosecution would be unconstitutional, then the committee's earlier comments on Federal priority would still prevail.

However, even if the courts should prohibit dual Federal-State criminal prosecutions but permit collection of a civil penalty in one jurisdiction after a criminal prosecu-

tion had taken place in another, the jurisdictional conflict would still exist with respect to willful violations. As mentioned earlier, in this situation the Federal criminal prosecution would take precedence over any State action. Absent a Federal waiver in a specific case, the State woud be prohibited from acting. The committee realizes, however, that it may be difficult to determine initially whether a particular violation was committed willfully. Therefore, it would anticipate that if this confused jurisdictional situation should arise in the future, the Secretary of Agriculture, under the authority delegated to him under section 9, would issue regulations to help guide both State and Federal officials in determining when a possible offense should be regarded as being willful for the purpose of deciding which jurisdiction should initiate enforcement proceedings.

Section 11.—Section 11 provides that after the expiration of 30 calendar months following the date of enactment of this act, and every 24 calendar months thereafter, the Secretary of Agriculture is to submit to the Congress a report on the administration of the act, including a summary of enforcement and other actions taken thereunder together with such recommendations for legislative and other action as he deems appropriate. The committee would also anticipate that the Secretary would append to this report a compilation of States antisoring statutes, and that he would include in the report an analysis of the effectiveness with which the various State laws are being enforced and a specific discussion of Federal enforcement efforts in States with antisoring laws. In the event any of the jurisdictional problems discussed in this report in connection with the provisions of section 10 materialize, the committee also expects that the report would include a summary of the instances, if any, in which the Federal Government has waived its right to enforce this bill and a description of the penalties subsequently obtained by a State under its own statute.

Section 12.—Section 12 would authorize the appropriation of such sums, not to exceed $100,000 annually, as may be necessary to carry out the provisions of the bill.

COSTS

S. 2543 would authorize the appropriations of not more than $100,000 annually to carry out the provisions of the bill.

The amendents were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended, so as to read: "A bill to prohibit the movement in interstate or foreign commerce of horses which are 'sored', and for other purposes."

Mr. TYDINGS. Mr. President, Senate passage of S. 2543 marks a significant step in my long effort to outlaw the cruel practice of soring Tennessee walking horses.

These horses are magnificent show animals. Known for its high stepping gait or "walk," the Tennessee walking horse has achieved great popularity. Anyone who has seen these horses cannot but be impressed by the grace and beauty of their stride.

The walk is achieved through patient and careful training. It is the result of both the trainer's skill and the horse's natural breeding. Unfortunately, it was discovered some 15 years ago that if the front feet of the horse were deliberately made sore, the pain of setting his feet upon the ground would cause the horse to lift them up quickly, thrusting them forward, in exactly the desired gait.

The walk with its handsome stride, or "big lick" as it is known among walking horse enthusiasts, could thus be achieved without the long and difficult training period. It could make a mediocre horse perform like a champion.

That it was particularly cruel and inhumane did not seem to matter. Soring, as the practice is called, is the deliberate infliction of pain to the horse's foot in order to affect his gait.

It is a vicious practice, harmful to the horse and debasing to the individual who does it. The St. Louis Post Dispatch rightly terms soring a "monstrous practice which is a disgrace to civilized men."

Hearings by the Commerce Subcommittee on Energy, Natural Resources, and the Environment revealed that soring is widespread throughout the industry. The reason is clear. Sored horses can win and winning is the name of the game. A trainer who does not sore his horse is at a competitive disadvantage. Everyone therefore does it. The responsible individual who does not want to resort to soring must if he is to compete effectively. As the Washington Evening Star notes, such cruelty is "particularly despicable when dumb animals are victimized for the sake of a blue ribbon." But, as we all know, the desire to win leads men to do things they might not otherwise.

Soring, of course, is condemned by everyone. Yet it is condoned as well. Neither the industry involved, and it is a billion-dollar industry, nor the States in which it occurs, the practice is by no means limited to Tennessee, appear either willing or able to put an end to soring.

It is perhaps regrettable that Federal legislation is required to stop soring, but it is a fact.

The measure we have just passed, if enacted by the House, and I urge them to do so quickly, would put an end to soring.

The bill makes unlawful the shipment in interstate commerce of a sored horse, the showing of a sored horse in a horse show, or the conducting of a horse show in which a sored horse participates.

Violation of the act may result in a civil penalty of up to $1,000 assessed by the Secretary of Agriculture. Provision is made in the legislation for proper notification and an opportunity for a hearing, as well as for judicial review. A willful violation may result in a criminal penalty of up to $2,000 and imprisonment for not more than 6 months, or both.

It is a strong bill, but a fair bill. It places no undue administrative or financial burden on anyone. It is directed toward no particular State nor seeks to punish a particular industry. Rather, it is aimed at a particularly cruel practice and seeks to eliminate what everyone agrees is a monstrous way to treat a horse.

The bill provides that a person who conducts a horse show is not in violation of the act if he can establish that "all reasonable precautions" were taken to prevent participation of a sored horse. This covers the situation where a sored horse slips through by accident, a situation that might occur in a large show where hundreds of horses participate. This change was suggested at the hearings by the American Horse Shows Association. It adds an acceptable flexibility to the bill.

Another change is the inclusion of section 10 which provides for concurrent jurisdiction of State and Federal laws regarding soring. This change was suggested at the committee's executive session. It means neither law preempts the other. The Federal law is still applicable if there is a parallel State regulation, and vice versa. This amendment enables us to avoid the emotional subject of State versus Federal law. It states either or both are valid and thereby suggests that soring be stopped promptly.

I should add here that the definition of soring has been carefully drafted. There should be no confusion as to its meaning. The phrase "for the purpose of affecting its gait", modifies the clause explaining how soring is accomplished. This would and does exclude pain inflicted for medicinal purposes. Let me make the record explicit. Soring as defined in this bill does not include therapeutic treatment by a veterinarian. I recognize that pain or fear may result from doctor's care, and that possibly this would affect the horse's gait. The bill does not forbid this kind of care. Such a prohibition is contrary to the general thrust of the measure, as commonsense would indicate. The bill aims at, and the definition covers, the infliction of pain and/or fear in order to alter the stride of the horse, not to prevent an act of kindness.

The bill has the full support of the American Horse Shows Association and the American Horse Protection Association. At the hearings on S. 2543, the Department of Agriculture, which will administer the act and report back to Congress on its effect, testified that it had no objections to the bill's enactment. The Humane Society of the United States and the Committee on Humane Legislation also endorsed the bill. Moreover, it received most favorable editorial comment in the Washington Evening Star, Nashville Tennessean, Memphis Press-Scimitar, St. Louis Post-Dispatch, and Christian Science Monitor.

The passage of the bill represents the culmination of a 3-year effort to secure legislation protecting the Tennessee walking horse from this cruel practice. The bill was first introduced in May 1966 and then again, with a new Congress, in May 1967. It now focuses on the horse show rather than on a single prohibition on interstate shipment. This permits the Department of Agriculture to administer the law without unreasonable burden and places a responsibility—and properly so—on those conducting a horse show as well as those who enter horses in them.

Recently soring has received considerable public attention. Its cruelty has been exposed and is now undeniable, as is the need for an effective law prohibiting soring. S. 2543 is such a law. Soring has no place in any civilized society. The practice should be outlawed. It is now pain-

fully obvious that only a Federal law will do this effectively.

I commend the Senate for its sensitivity to the cruel wrong that is perpetrated on the walking horse. I applaud its willingness to act, and know that I am joined in this by my colleagues who cosponsor this measure, Senators CASE, GOODELL, GRAVEL, MOSS, NELSON, PELL, PROXMIRE, RANDOLPH, SCOTT, SPONG, THURMOND, and YOUNG of Ohio.

VIETNAM—WAR OF THE PASSES

Mr. GOLDWATER. Mr. President, today I would like to share with the Members of the Senate some of the impressions and observations of the situation in Southeast Asia which I gained during a trip to the Vietnam theater and from which I returned on Monday of this week. At the outset, I should like to explain that my tour of Vietnam was in connection with the Air Force's Military Affiliate Radio System (MARS) in which I have been greatly interested for some time. Twenty-five volunteers operate a MARS station at my home in Arizona. This station has long been used in transmitting messages to and from military personnel in Vietnam and elsewhere in the world. In fact, over 41,000 calls have been completed.

However, Mr. President, my remarks here today are not directed at the MARS program. This is a subject which I intend to deal with specifically and in some detail at a later date. Rather, my purpose today is to give the Senate the benefit of the information and observations I picked up from officers and men directly involved in the air combat operation. Although my purpose in visiting Vietnam was the MARS program, it was inevitable that I should meet and visit in many parts of the war zone with men I had known throughout my life as an Air Force officer and young men whom I had met while they were going through the Air Force bases such as Luke and Williams. Many of these young men today are flying missions and commanding squadrons in Vietnam.

Mr. President, let me be very candid in these remarks. I wish to state that I believe some major and costly mistakes have been made in Vietnam and I believe we are continuing to make some mistakes in the conduct of this unhappy and frustrating war.

It reminds me of other mistakes which I believe have been made by my country in three wars over the past three decades. These mistakes have one thing in common. They were all political mistakes involving military operations. It has been 28 years since the United States became involved in World War II. In those 28 years we have made some great strides forward in the field of foreign policy, but we have also taken some backward steps. For example, our entry into World War II was inevitable and inescapable as well as correct and just. But students of that war must recognize that President Roosevelt made a fundamental mistake in demanding unconditional surrender of the Axis powers. Some historians believe that this political mistake made by civilian politicians in the field of military procedure may have prolonged World War II by 12 to 18 months.

This may have been one of the first times that we as a nation came face to face with the problems involved in political considerations having a direct effect on military objectives in time of war.

Next, in consideration of Korea, I believe history will find President Harry Truman was entirely correct in deciding that this country should enter that conflict in defense of human freedom. But I also think that history will hold him severely to account for his decision which overrode the military judgment of men like Gen. Douglas MacArthur and limited American action to the territory south of the Yalu River.

This decision, which prevented American forces from attacking enemy supply depots and air fields which were feeding the assault against American fighting men, was also a political decision reached by nonmilitary men who were fearful of further straining American relations with Red China.

Now, within the memory of most of my colleagues in this body, we have seen entered into the history books two political mistakes made in the field of strategic judgment affecting the issue of war and peace.

With this understanding, it perhaps is easier to recognize the mistakes, again political in nature, which have prolonged the fighting in Vietnam and presented our Government with an almost insoluble international problem. Vietnam started out as a promise. It was a promise made by President Eisenhower to assist the people of South Vietnam if their Government should be challenged by Communist aggressors. This promise, made in good faith by a man who understood well the problems of war and military operations attendant to war, was honored. President Eisenhower honored that commitment by supplying to the Government of South Vietnam a handful of expert military advisers, a small amount of equipment, and the moral and diplomatic support of the strongest nation in the world.

When President John Kennedy assumed office and began taking military advice from Defense Secretary Robert McNamara, the decision was made to send some 16,000 troops to Vietnam. This, I believe, marked the official beginning of our active and substantive involvement in the Vietnam war as a virtual combatant. Unfortunately, President Kennedy did not live long enough to put into effect a policy to which I believe he would have committeed our Nation; namely, a policy aimed at winning a military victory in Vietnam.

In the months following President Kennedy's assassination, there was considerable confusion over whether our objective in Vietnam was to bring about a military victory for the anti-Communist forces. During the 1964 campaign, I, as the Republican nominee for President, tried repeatedly to get President Johnson to enter into a public discussion with me on the problem of Vietnam so that it could be ascertained for the benefit of the enemy that, regardless of which one of us was elected, a decision would be made to win that war and to escalate our effort to bring about that conclusion.

Of course, I was not successful. President Johnson did not appear interested in the strategic value of confronting our enemies with the psychological fact of a united resolve to win a victory regardless of which political party controlled our Government.

At the time President Johnson was heavily influenced, I am convinced, by Secretary McNamara and others in the Government who distrusted our military experts and who argued strongly for civilian direction of even the most routine military operations and decisions. At one time it was reliably reported that American forces could not even fly a bombing mission until the Secretary of Defense and the President personally approved of the target.

And, of course, this was the prelude to another political mistake. This time our official policy became one which was described as a "limited war." Many prominent people, myself included, sought time and again, to explain that a policy of limited war—on the basis of all our historical experience and all the sum total of military strategy—was self-defeating.

I, myself, considered this policy as tragic a mistake as the unconditional surrender which became the American objective in World War II. Time and again the experience of Korea was cited together with the historical concept of war as the last and final instrument of national policy. It seemed to make no difference to those in charge of our national destiny that we had become perhaps the first Nation in the world to go to war without a firm resolve to win.

The trouble with a limited war is the obvious fact that no one can be sure the enemy will play our kind of game. It stands to reason that plain logic dictates the fact that if we announce a policy of limited warfare, our enemy's obvious move is to go all out. He has nothing to lose. He becomes immediately the judge of everything we do. He becomes dictator of such vital factors as where and when and under what conditions the war will be waged.

Another political blunder was made, in my opinion, when the bombing of the North was stopped on November 1, 1968. This has enabled the North Vietnamese to establish an immense inventory of weapons North of the DMZ. Again in my opinion, and it is one I share with many military experts, the war in Vietnam was at a point where the end could be seen when this halt was called.

I could not help but think of these facts of history the other night while listening to President Nixon give his latest progress report to the American people on the war in Vietnam. I must emphasize here how impressed and proud I was of our President for stating the case starkly and honestly. I believe that under the former administration we had become so used to optimistic predictions that never came true that the entire credibility of a government was called into question. Mindful of what I saw and heard in Vietnam, I was especially impressed with Mr. Nixon's understanding of the adamant and unreasonable

stand of the North Vietnamese. He made no bones about the fact that the enemy is still insisting on conditions which would humiliate the United States and impose communism on the people of South Vietnam. And I especially liked his flat declaration that these are conditions that we cannot and will not accept.

In all honesty I must say that I am concerned at the rate with which we are withdrawing our troops from South Vietnam. While I believe sincerely in the Nixon policy of "Vietnamization of the war," I personally think that it may take longer than the administration seems to expect. But I would remind you that the President mentioned the fact that withdrawing troops at a time when infiltration from the North seems to be increasing involves an element of risk.

From my own observations, I believe the risk is quite considerable. Since we stopped the bombing of North Vietnam in November 1968, the avenues of infiltration have been widened and the opportunity for running untold tons of equipment and thousands of troops down from the North have been greatly facilitated. Also, the enemy has stockpiled mile after mile and tons of equipment North of the DMZ all of which are destined for the South.

This brings me to the major point which I want to stress here today. I believe we must understand thoroughly just what kind of a war we are conducting at the present time in Vietnam and under the restrictions which our efforts to bring about a reasonable and peaceful response from Hanoi have placed on our fighting men.

Mr. President, we are fighting a "war of the passes." This is a war made necessary by the bombing halt and by our preoccupation with the concept of limited war. These passes for which we battle are the high roads over which the supplies, the gunpowder, the weapons used to kill American fighting men move into the war zone from sanctuaries in the North. Our mission quite simply is to block those passes. We are not interested in the real estate. We merely want to deny these avenues to the trucks and other vehicles which are bringing the sinews of war to our enemies. We are fighting a war to stop supplies moving through these passes rather than a war directed at the reservoirs which hold these supplies in the North. And so long as the sources of these supplies go untouched, our task in the passes is a little like trying to hold back the tides. No matter how much of the supplies and equipment we destroy in the passes, more of the same will be coming through later so long as the railroads continue to run down from China into North Vietnam and the Communist ports controlled by Hanoi remain open to supply ships from Russia and other European countries.

I noticed in the morning press and I heard on the morning television we have finally admitted there is a buildup in the infiltration of supplies to the South. In fact, there has been a letdown in the number of troops but never in the number of trucks. I can make this statement now without fear of violating classification. The night I was near a particular point, 600 enemy trucks were counted. Our problem is in knocking them out.

In the following statement I want to make it perfectly clear that I do not criticize the powerful efforts being made by our Air Force pilots to stop this traffic. They are superb but face the problems of weather and night attacks, plus the never-ending warehouse north of the DMZ in Vietnam.

I suggest that the "war of the passes" in Vietnam will go on for many months, perhaps for additional years, unless one of two things happens. The first would be a negotiated settlement of the war at the Paris peace talks—an unlikely prospect according to our President—and second would be a resumption of the bombing to the North, a determination to destroy the rail lines from China and the port of Haiphong, plus all other avenues of supply.

In all honesty I have reached this conclusion about the war in Vietnam: Unless we resume the bombing in the North, I can see no way that we can win this war. I even question whether we could, without such action, extricate ourselves from the involvement with any degree of honor and any assurance that South Vietnam will not be treated to the kind of bloodbath which overtook the unfortunate city of Hue when the Communists gained control.

The President has reached a fork in the Vietnam road. One offshoot would lead to complete pullout, which he will not do, and the other would lead to a never-ending war which neither the President nor the American people would allow. His problem then is to find another road. Bringing the combat men home as Vietnamization takes place is a right and wise move if not done too rapidly. But as much as the situation is taken over by the Vietnamese, there still remains the flood of supplies from the north and the Vietnam air force is far short of the ability to handle this problem. Only we, with our B–52's, our tactical aim of the Air Force and the Navy can do the job. And I sincerely hope the President will take this action so that the war will end—end shortly and the calm of peace will settle where men die today because of the mistakes of the past.

I want to take this opportunity to thank the distinguished majority leader for his kindness in permitting me to make these remarks this morning.

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

Mr. GOLDWATER. I yield.

Mr. DOLE. Mr. President, I listened with great interest to the Senator from Arizona because he knows what he is talking about. He has been there and discussed the situation with those on the field.

I am wondering whether we can continue the Vietnamization policy and still resume the bombing. Is it inconsistent with bringing back our ground troops and resuming the bombing? I understand the Senator to say we can do both.

Mr. GOLDWATER. Yes, because I believe we should never have engaged our ground forces in Southeast Asia. I think that was a mistake. I think it was a theater the air could handle and can today. I think the President's formula of replacing American fighting men with Vietnamese as they become ready is a wise one and it can continue at the time we bomb the North.

Mr. DOLE. Your suggestion, then, is compatible with the efforts of President Nixon to Vietnamize the war?

Mr. GOLDWATER. Yes, and I was happy to hear in his talk the other night that he left himself an option, as he has before. He has told Hanoi and Paris that we better see some peaceful action or we can exercise these options.

Mr. DOLE. Because we did stop the bombing, does the Senator see a greater risk for American pilots if it is resumed?

Mr. GOLDWATER. Yes. At the outset we would have to resort to high strategic bombing by B–52's to avoid hits from the numerous SAM sites. They have covered North Vietnam with SAM sites. It would be very difficult and costly for tactical air to take up missions before strategic air had softened the place up.

Mr. DOLE. Again I wish to commend the Senator from Arizona for taking the time to inform us about his recent visit to Vietnam.

Mr. GOLDWATER. I thank my good friend the Senator from Kansas.

Mr. President, I yield the floor.

FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATIONS, 1970

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the pending business which the clerk will state.

The BILL CLERK. A bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes.

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

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the bill (S. 2577) to provide additional mortgage credit, and for other purposes, 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. PATMAN, Mr. BARRETT, Mrs. SULLIVAN, Mr. REUSS, Mr. WIDNALL, Mr. BROCK, and Mr. STANTON were appointed managers on the part of the House at the conference.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the

amendments of the House to the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination under new report.

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

U.S. MARSHAL

The bill clerk read the nomination of William M. Johnson, of Georgia, to be a U.S. marshal for the southern district of Georgia for the term of 4 years.

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

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

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

LEGISLATIVE SESSION

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

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

Mr. AIKEN. Mr. President, I notice one other nomination on the Executive Calendar, that of Henry J. Tasca, of Pennsylvania, to be Ambassador to Greece, and I ask the majority leader when it is expected that that nomination will be taken up.

Mr. MANSFIELD. Yes, indeed. It will be taken up either late this afternoon or tomorrow. It will be taken up before we adjourn this session of Congress.

It is being delayed a little bit further only because two or three additional Senators have asked that that be done. There is a limit, of course, to the amount of time we can delay the nomination, but it will be taken up either today or tomorrow, without fail.

Mr. AIKEN. That is a good idea, and I thank the Senator from Montana.

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

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Labor and Public Welfare and the Committee on Banking and Currency both be authorized to meet during the session of the Senate today.

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

ORDER OF BUSINESS

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

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

FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATIONS, 1970

The Senate resumed the consideration of the bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes.

Mr. McGEE. Mr. President, may I ask the Chair, What is the pending business?

The PRESIDING OFFICER. The pending business is H.R. 15149, the foreign aid appropriations bill.

Mr. McGEE. I thank the Chair.

Mr. President, the pending measure contains recommendations for new obligational authority amounting to $2,821,313,000. That sum is $250,140,000 over the amount allowed by the House, $858,251,000 under the budget estimate, and $114,224,000 under the appropriations for fiscal 1969.

For title I of the bill——

Mr. FULBRIGHT. Will the Senator kindly repeat that last figure for me?

Mr. McGEE. $114,224,000 under the appropriations for last year.

Mr. FULBRIGHT. 1969?

Mr. McGEE. 1969.

For title I of the bill, the committee recommends $2,131,280,000 for fiscal year 1970. This sum includes $1,681,280,000 for economic assistance, $375 million for military grant aid and $75 million to be added to the reserves of the Overseas Private Investment Corporation, more commonly known as OPIC.

In addition to the funds provided in title I, the bill also contains appropriations for the Peace Corps, for administration of the Ryukyu Islands, for the Cuban refugee program, for the migrants and refugee program, and for three international banks; namely, the Asian Development Bank, the Inter-American Development Bank, and the International Development Association.

Mr. President, the committee has also approved the increases in the limitations on program activity and administrative expenses, requested by the executive branch in Senate document 91–43, for the Export-Import Bank of the United States.

Mr. President, the complete details of the committee action on the pending measure are set out in the committee's report which each Senator has in his possession.

Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, and that the bill as thus amended be regarded as original text for the purpose of amendment, provided that no point of order shall have been considered to have been waived by reason of agreement to this request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendments agreed to en bloc are as follows:

On page 2, line 10, after "202", strike out "$313,800,000" and insert "$398,620,000".

On page 2, line 11, after "world-wide", strike out "$150,000,000" and insert "$186,000,000".

On page 2, line 12, after the word "Progress", strike out "$75,000,000" and insert "$90,000,000".

On page 2, line 14, after the word "organization", strike out "$88,800,000" and insert $122,620,000"; in line 15, after "(section 401 (a) (1))", insert a comma and "of which not less than $14,000,000 shall be available only for the United Nations Children's Fund"; in line 19, after the word "Congress", insert a comma and "except projects or activities relating to the reduction of population growth"; and, on page 3, line 1, after the word "regime", strike out the colon and *"Provided further,* That none of the funds contained in this paragraph shall be available for transfers authorized by section 202 of the Foreign Assistance Act of 1969".

On page 3, line 6, after "section 304(b)", strike out "$24,050,000" and insert "$24,550,000".

On page 3, in the matter after line 7, in the line "Weizmann Institute, Israel", strike out "3,000,000" and insert "2,500,000"; in the line "Merkaz Lechinuch Ichud, Israel", strike out "1,900,000" and insert "1,400,000"; in the line "Hadassah (expension of medical facilities in Israel)", strike out "5,000,000" and insert "4,000,000"; after the line "Hospital and Home for the Aged, Zichron-Yaakov, Israel", insert "Beth Yaacov Avat Girl's School ------1,200,000"; after the amendment just above stated, insert "Educational Center of Galilee------800,000"; and, after the amendment just above stated insert "Hospital in Chemke, Nigeria------500,000".

On page 3, at the beginning of line 8, insert:

"American schools and hospitals abroad (special foreign currency program): For assistance authorized by the Foreign Assistance Act of 1961, as amended, $3,000,000 for the University of North Africa, Tangier, Morocco; $1,000,000 for the Vocational School for the Underprivileged in Israel; $500,000 for the Weizmann Institute, Israel; $500,000 for the Merkaz Lechinuch Ichud, Israel; and $1,000,000 for Hadassah (expansion of medical facilities in Israel) in foreign currencies which the Treasury Department determines to be excess to the normal requirements of the United States."

On page 4, after line 4, strike out:

"Prototype desalting plant: For expenses authorized by section 209(f), $20,000,000."

On page 4, line 11, after "section 452 (b)", strike out "$300,000,000" and insert "$439,600,000".

On page 4, line 16, after "section 453 (a)", strike out "$10,000,000" and insert "$17,500,000".

On page 4, line 18, after "section 204 (b)", strike out "$200,000,000" and insert "$337,500,000".

On page 4, line 23, after "section 203 (e)", strike out "$265,000,000" and insert "$400,000,000".

At the top of page 5, insert:

"Overseas Private Investment Corporation, reserves: For expenses authorized by section 325(f), $75,000,000 to remain available until expended."

On page 5, after line 3, insert:

"Overseas Private Investment Corporation, capital: For expenses authorized by section 322, such amounts as are authorized to be

made available under said section, such amounts to remain available until expended.

On page 5, line 17, after "section 637(a)", strike out "$50,000,000" and insert "$51,250,000".

On page 5, line 22, strike out $3,500,000" and insert "$3,730,000".

On page 6, line 18, after "sections 504(a)", insert "and"; in the same line, after "504(d)", strike out "and 504(e)"; in line 21, after "United States", strike out "$454,500,000" and insert "$375,000,000"; in line 22, after the word "which", strike out "not less than $54,500,000 shall be available solely for the Republic of China and"; and, in line 23, after "$50,000,000", insert "shall be available".

On page 13, line 7, after the word "than", strike out "$8,000,000" and insert "$10,000,000".

On page 15, after line 7, strike out:

"SEC. 119. The President is directed to withhold economic assistance in an amount equivalent to the amount spent by any underdeveloped country for the purchase of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes from any country other than Greece, Turkey, the Republic of China, the Philippines, and Korea, unless the President determines that such purchase or acquisition of weapons systems is important to the national security of the United States and reports within thirty days each such determination to the Congress."

On page 15, at the beginning of line 18, change the section number from "120" to "119".

On page 16, after line 13, strike out:

"SEC. 121. None of the funds contained in Title I of this Act may be used to carry out the provisions of section 401 (a)(2) of the Foreign Assistance Act of 1969."

On page 16, after line 16, strike out:

"TITLE II FOREIGN MILITARY CREDIT SALES

"FOREIGN MILITARY CREDIT SALES

"For expenses, not otherwise provided for, necessary to enable the President to carry out the provisions of the Foreign Military Sales Act (82 Stat. 1320), $275,000,000."

On page 17, at the beginning of line 1, change the Title number from "III" to "II".

On page 17, at the beginning of line 8, strike out "$95,000,000" and insert "$98,450,000".

On page 18, line 2, after the word "appurtenances", strike out "$14,000,000" and insert "$18,790,000"; and, in line 4, after the word "exceed", strike out "$3,100,000" and insert $3,151,000".

On page 21, at the beginning of line 7, change the title number from "IV" to "III".

On page 21, line 19, after the word "exceed", strike out "$2,537,343,000" and insert "$3,427,413,000"; and, in line 20, after the word "exceed", strike out "$1,972,200,000" and insert "$2,420,000,000".

On page 21, line 25, after the word "exceed", strike out "$5,280,000" and insert "$5,548,000".

On page 22, at the beginning of line 19, change the title number from "V" to "IV".

Mr. McGEE. Mr. President, I ask unanimous consent that printing errors in the committee amendments on pages 6 and 10 of the reported bill be corrected.

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

Mr. McGEE. Mr. President, I believe the pending item in relation to the bill is an amendment submitted last night by the chairman of the Foreign Relations Committee (Mr. FULBRIGHT).

Mr. FONG. Mr. President, I commend the distinguished chairman of the Subcommittee on Foreign Operations of the Committee on Appropriations for doing an outstanding job in guiding the Foreign Assistance Act of 1969 through the committee hearings and markup sessions. His broad experience in and keen understanding of foreign affairs were very instrumental in forgoing the appropriations bill that we have before us. It has been a distinct pleasure and privilege for me to work with the senior Senator from Wyoming on this important matter, and I want to associate myself with the remarks he has made in support of the appropriations for the Foreign Assistance Act of 1969.

Mr. President, it is a fact that in the past few years interest among many Americans in the problems of the less developed countries of the non-Communist world and the U.S. effort to assist these countries have declined.

The reasons for this decline in interest and participation are both numerous and varied. They include: A growing preoccupation with pressing domestic problems and needs; a continuing Vietnam war demanding tremendous outlay in dollars and lives; an easing of "cold war" pressures; numerous reports of waste in and mismanagement of assistance programs; conflicting reports on the effectiveness of development assistance in achieving goals; dissipation of agricultural and industrial progress by rapid population increase and a lack of demonstrated appreciation by recipient nations.

More and more Americans have been learning at home and overseas that there are few tasks more difficult than that of trying to help others progress and advance. At the same time, we are also learning that efforts to do so can be preconceptions, a desire for quick results, and a tendency to oversimplify the problems and the possible remedies for them.

And the problems that we are faced with at home are making many Americans question even harder our assumptions on assisting development in the needy countries, including our will to continue to support this development. It should be brought out that no single rationale or assumption, but many, underlie our interest in our program of foreign aid.

It is generally agreed, however, that one of the main reasons for our participation is that, as the most powerful free country in the world, the United States has a fundamental interest in a peaceful and improving world environment. Today, many speak of the community of nations, suggesting a new world order in which narrow conceptions of sovereignty and self-interest are replaced by a consciousness of the interdependence of nations. This in turn suggests the need to contribute to the building of an orderly and prosperous world community in which a reasonable level of material welfare comes within reach of all the peoples of all nations.

Just as we have learned that we can be neither safe nor comfortable in a nation sharply divided between the well-off and the deprived, so must we also recognize that no wealthy nation can be safe or comfortable in a world where a majority of mankind is still impoverished and in need of hope and assistance.

Though great is our desire to help the developing nations of the world to achieve self-sufficiency in the shortest possible time, increasing and continuing deficits in our national budget, greater demands of our people to ameliorate pressing needs at home, and self-imposed cuts in our own budget, have accounted in a large measure for this, the smallest request for the AID program submitted by any administration in the past 10 years.

Mr. President, while contributing to the progress of the developing countries, our AID program in the main does not send money abroad—it sends U.S. goods and services. In recent years almost all the money we appropriate to the Agency for International Development remains in this country to purchase American goods or to pay U.S. companies, universities, and other private groups for American technical and professional services to carry out projects overseas.

As an example, in the field of commodity procurement, AID's predecessor agencies in 1960 bought $423 million worth of U.S. goods—only 41 percent of their total financing of commodities. In fiscal year 1968 AID funds bought $1,141 million worth of commodities—over 98 percent of AID-financed commodity procurement—from all 50 States.

Besides providing direct benefits to U.S. firms and the communities in which they are located, the AID program now has a positive direct impact on the U.S. balance-of-payments problem. This happy turnabout began in fiscal year 1966. In fiscal year 1961 the AID program was responsible for a net outflow of $851 million. In fiscal year 1970, it is estimated that the program will result in a net inflow of $197 million. And the amount of this net inflow will continue to rise, principally because of the growing receipts of interest and principal repayments on past development loans.

Mr. President, in weighing the pros and cons of our foreign aid program in general and the Foreign Assistance Act of 1969 in particular, I have come to the conclusion that the merits of this program far outweigh the demerits of it. I am convinced the United States cannot and will not abrogate its responsibility as a member of the "community of nations." For it is impossible to think about where the United States will be a decade from now without thinking about where the rest of the world will be. Where the world will be a decade from now will have a lot to do with whether the peaceful revolution in economic and social development now taking place in most areas of the world maintains a satisfactory momentum or not. I sincerely believe that it is in our national interest to help to see that it does.

I, therefore, respectfully urge my colleagues to support the foreign aid appropriations bill before us.

AMENDMENT NO. 435

Mr. FULBRIGHT. Mr. President, I call up the amendment which I submitted for printing last night.

The PRESIDING OFFICER. The clerk will read the amendment.

The BILL CLERK. Mr. FULBRIGHT for himself and other Senators proposes on page 24, line 2, to strike out the period and insert: "and no funds appropriated by this Act may be expended to the extent that such funds exceed those authorized to be expended for the fiscal year ending June 30, 1970.".

Mr. FULBRIGHT. Mr. President, to provide the necessary background I shall make a brief statement about the amendment.

Yesterday the Senate and House conferees reached agreement on a foreign aid authorization bill. The conference report will be acted on first by the House and it will come before the Senate in due course.

I expect it to arrive some time later today.

The amounts in the foreign aid appropriation bill for a number of programs are greater than the authorizations agreed to in conference, which will shortly become law. The amounts above the program authorizations total an additional $105,125,000 in dollars and $3,000,000 in foreign currencies. The programs and the amounts above the authorization figure are as follows:

Worldwide technical assistance, $2,500,000.

Supporting assistance, $25,000,000.

Contingency fund, $2,500,000.

Development loans, $50,000,000.

Administrative expenses, $125,000.

Military aid, $25,000,000.

And the bill authorizes a dollar appropriation for a hospital and home for the aged and $1,000,000 in foreign currencies for a vocational school when neither project was approved by the House Committee on Foreign Affairs or the Senate Committee on Foreign Relations. In addition, three hospitals or school projects for which an authorization of dollars was provided, in the authorizing bill, are listed in the appropriation bill to receive both dollars and foreign currencies.

My amendment seeks to insure that appropriations for foreign aid are made within the ceiling, on amounts and projects, set by the authorizing legislation. This is not a simple matter of paring down amounts to authorized program ceilings. It involves a principle which should be of concern to every authorizing Committee of the Congress. For the Appropriations Committee to recommend bills containing amounts higher than those authorized, or funds for projects not authorized, makes a mockery of the legislative process and the work of the legislative committees. I realize that we are under heavy pressure to finish our business, but the Senate should never sacrifice orderly procedure for expediency. If the approach taken in the foreign aid appropriations bill were followed to a conclusion, it would be possible, theoretically, for the Appropriations Committees to initiate new weapons systems which had not been authorized by the Armed Services Committee, and to appropriate more for authorized projects than the law allowed. If this practice were carried to its extreme, the authorizing committees might as well close up shop and turn the entire legislative function over to the Appropriations Committee.

In addition, I have a second amendment which would strike out the specific authorization of $50,000,000 in military aid for South Korea. The Committee on Foreign Relations has consistently rejected attempts to authorize aid money by country for two basic reasons: one, on the theory that the executive branch should have flexibility in administering the aid program within the broad policy limits set by Congress; two, because of a firm belief that Congress has neither a duty nor is it temperamentally suited to divide up, in a sensible way, $2 billion of the taxpayers' money among the 92 countries slated to get some kind of foreign aid this year. The foreign aid authorization bill passed by the House included specific authorizations of $50 million in military aid for Korea and $54.5 million for Taiwan—in addition to the large amounts already slated for these countries in the administration's program.

Mr. President, I wish to add also that neither of these items had been approved by the Budget nor, I believe, even had been submitted to the Bureau of the Budget for the President's consideration.

The Committee on Foreign Relations rejected this attempt to specify recipients of additional military aid and, in accordance with past practice, voted a lump sum authorization to be distributed as the administration believes to be proper.

I wish to say further, of course, that in submitting other programs the administration does submit, and where the programs have a justification for the amounts, they are asked and are expected to adhere reasonably close to those programs. This has been the uniform practice over the years, but it has never been the practice to set it out in law, which, in effect, means the administration has flexibility, the point being that Congress is not called upon to earmark money for a specific country.

The administration was left with the freedom to establish its own priorities—which means that any, or all, of the amount Congress provided could be given to Korea or the Republic of China. No questions were raised on the Senate floor about the committee's decision. And the committee's position prevailed in the conference yesterday. The conference agreement was to authorize $350 million in military aid for use in accordance with the administration's priority list, for which they submitted justifications for their recommendation.

The specification of $50 million for Korea in the appropriation bill is in direct conflict with the spirit and intent of the agreement on the authorization bill. If this attempt succeeds, a Pandora's box of pressures will have been opened. I hope that the Senate will reject this approach, and I hope the Senate will accept the amendment which I have sent to the desk with regard to this matter.

Yesterday, the chairman of the subcommittee, the distinguished Senator from Wyoming (Mr. MCGEE), and the chairman of the full committee, with whom I discussed this matter, and who said he had no objection to my offering this amendment, both agreed that they intended to reduce, as I recall it—if I state this incorrectly, I hope to be corrected—the amounts which are above those provided in the conference agreement, either on the floor or in conference.

I said to the chairman—I believe to both chairmen; I know certainly to the chairman of the full committee—I did not think it was proper that it be left to the conference to insure it would be under the authorized amount, and I thought that ought to be done in the Senate itself.

In addition to that matter, which deals with the specific number and specific items I have already mentioned, which are above the conference figures, there is this very troublesome parliamentary situation in regard to Korea:

I do not believe the amendment now before us comes to grips with the Korean issue. Therefore, I shall submit a technical amendment to deal with the specific case of Korea, because, due to a legislative situation which, I am frank to say to my colleagues, I did not understand very thoroughly, if the House of Representatives, in an appropriation bill, makes a special rule to put in an authorization for a spending program, and it is adopted by the House of Representatives and comes over here, it is not subject to a point of order and it does not matter that it is not in the authorization, as distinguished from an appropriation bill. I had always been under the impression that an authorization bill was the final limit upon an appropriation bill, and I only recently learned of this rule, which, principle shall I say, is an exception to the general principle that authorization bills set down not only the policy guidelines, but also the spending limits.

In other words, I had thought the Comptroller General would not approve an expenditure on any of these projects if it went beyond the authorization bill, even though the appropriation bill provided otherwise; but I found out that was not the case.

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

Mr. FULBRIGHT. I yield to the chairman.

Mr. MCGEE. I wonder if we could have it understood that we will consider the Senator's pending amendment first and separately, and then proceed to the amendment on Korea.

Mr. FULBRIGHT. Yes.

Mr. MCGEE. So that we can keep the two matters separate.

Mr. FULBRIGHT. Absolutely.

Mr. MCGEE. Then I wonder if it would be possible for me to respond briefly, first, to the Senator's first amendment.

Mr. FULBRIGHT. Yes. I did not mean to confuse the two. The second does bear upon the general question.

Mr. SCOTT. Mr. President, will the Senator permit me to interrupt for a brief unanimous consent request?

Mr. FULBRIGHT. I yield.

COMMITTEE MEETING DURING SENATE SESSION

Mr. SCOTT. Mr. President, I ask unanimous consent that the Committee on Public Works be permitted to meet during the session of the Senate today.

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

FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes.

Mr. McGEE. Mr. President, the chairman of the Committee on Foreign Relations (Mr. FULBRIGHT) and I have discussed this matter at great length in advance of bringing it to the floor. We had some brief colloquy on it last night, as a closing matter of business on the Senate floor, and that updated it somewhat in regard to our action that is pending here this morning.

Let me say first that the whole question surfaces suddenly here because of the lateness of the hour in the session, and because after the Senate Appropriations Committee received the appropriation bill from the House of Representatives, we were advised that we were then entitled to proceed with our function as an appropriating committee. It was, furthermore, explained to us that under those circumstances the lack of an action from conference by the authorizing committees entitled us to make the best guesses that we could, consistent with the bill sent over from the House of Representatives; and this our appropriating group tried to do. We have recommended a higher sum than the authorizing committees only because we did not have their figure until a day after we had finished our markup of the bill.

The rules of the Senate permit appropriations to be made in excess of amounts authorized. However, members of the Appropriations Committee respect ceilings established by authorizing legislation, but as I indicated, we were not able to do so because authorizing legislation had not been agreed to at the time it was necessary for the Appropriations Committee to act on the bill.

Because of the uncertainties that hang over this issue and the confusions that have flowed from it, we have agreed with the distinguished chairman of the Committee on Foreign Relations to tailor or adjust our recommended figures in accord with the authorizing legislation which, thought I guess it is not yet officially transmitted to the Senate floor, we have an understanding on.

I have in my hand, Mr. President, a list of those adjusted figures to conform to the figures passed on by the two authorizing committees. The major areas where adjustments are required are the very obvious large segments of the bill of development loans and supporting assistance.

The adjustment on the development loans was a downward slash of $50 million. We appropriated $400 million in development loans. The authorization is $350 million, and we will cut ours back to $350 million. For supporting assistance, our figure was $439,600,000, and theirs was $414,600,000, so we will cut ours back the necessary $25 million to conform to that figure.

In the remainder of the bill, the other adjustments are very minor ones in their totals, and rather than take the time of the Senate to repeat them, I have recorded them on a summary statement which I send to the desk at this time.

It is my understanding with the Senator from Arkansas that for the purposes of discussion, and for purposes of debate on this floor and amendment from this floor, these new figures will be considered the thrust of the Appropriations Committee proposal. I ask unanimous consent, Mr. President, that these figures replace the ones now pending in the bill.

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

Mr. McGEE. The Senator from Arkansas has the floor.

Mr. FULBRIGHT. Does the Senator wish to reserve the right to object?

Mr. FONG. I want to speak to this point.

Mr. FULBRIGHT. Why not reserve the right to object?

Mr. FONG. Reserving the right to object, Mr. President, and I shall not object, to supplement what the distinguished Senator from Wyoming has said, it was never the intent of the committee to go over the amount as set by the authorization bill. Since we had no figures to go by, we had the understanding that if the authorization figures were lower than the figures we had set, we would accept those figures.

So I subscribe to the statement of the distinguished chairman of the Appropriation's Subcommittee on Foreign Operations.

The PRESIDING OFFICER. Is it the intention of the Senator from Wyoming that the amendments he has sent to the desk be considered en bloc, and that the Fulbright amendment be set aside temporarily for that purpose?

Mr. McGEE. If we might have unanimouse consent to do that, just to keep the record clear, to set it aside long enough to insert the new figures.

Mr. FULBRIGHT. Yes. I had hoped that, by unanimous consent, he could make his figures conform to the figures of the conference report, which I believe have been checked.

However, the amendment I offered does not change any amounts. It is a limitation that in any case the Comptroller General, in effect, as I understand it, would not be authorized to exceed, or to honor vouchers above the figures in the conference report. That is the intent of the amendment which I offer and which I assume will be adopted as soon as this change is made.

The PRESIDING OFFICER. Is there objection?

Mr. MANSFIELD. Mr. President, I would appreciate the Senate having the benefit of a listing of the specific sections in the proposal.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk read the amendments, as follows:

On page 2, line 10, strike "$398,620,000" and insert "396,870,000." On page 4 line 11, strike "$439,600,000" and insert "414,600,000." On page 4, line 16, strike "17,500,000" and insert "15,000,000."

On page 4, line 23, strike "400,000,000" and insert "350,000,000".

On page 5, line 17, strike "51,250,000" and insert "51,125,000".

The PRESIDING OFFICER. Is there objection to considering the amendments en bloc at this time while the Fulbright amendment is pending? Without objection, the amendments will be considered and agreed to en bloc.

Mr. FULBRIGHT. Mr. President, reserving the right to object, this is a rather unusual procedure. Will this preclude further amendment regarding these items?

Mr. McGEE. Mr. President, may I inquire of the Parliamentarian whether we did not ask in the beginning for a unanimous-consent agreement that this not preclude any subsequent amendments?

The PRESIDING OFFICER. That was for the purpose of considering the bill as amended by the original committee amendment.

Mr. McGEE. Mr. President, I renew my unanimous-consent request and ask unanimous consent that this not preclude further amendments to these figures.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. FULBRIGHT. Mr. President, we are back where we started. An amendment is still in order, even though this has been done to adjust the balance.

The PRESIDING OFFICER. Amendmay be made to any part of the bill.

Mr. McGEE. Mr. President, on the present amendment, we had a rather extended discussion with the Parliamentarian on the amendment and on the principle involved here. It was suggested to us that perhaps the expeditious way to meet the problem at stake, so that we can sort out the appropriate authorizing processes from the appropriating processes in respect of the authorizing ceilings, would be that it would be very much in order to amend the directives to the Comptroller General in the future, rather than having to pinpoint in each appropriation bill a need for an amendment of this sort to establish the principle as the will of the Senate.

Is that the understanding of the Senator from Arkansas?

Mr. FULBRIGHT. Mr. President, we discussed with the Parliamentarian the fact that this would be the most efficient way to meet the permanent need.

It was not my understanding that in doing that, we would preclude the adoption of this amendment in order to accomplish only what I believe is the general understanding.

Mr. McGEE. The Senator is correct. It would not preclude it.

Mr. FULBRIGHT. We did also discuss the problem of changing rule XVI of the Senate. But we tentatively thought that

this might open up a wide and very controversial area. It has proved to be rather controversial in the past when we got into the rules. That is why we concluded that the basic law covering the Comptroller General would probably be the most feasible way in which to do it.

Mr. McGEE. Mr. President, I would hope that the Senate could refer this particular question concerning its procedures to the proper committee of the Senate so that we might have a recommendation from the correct legislative group for the Senate to consider and act upon, I would hope, early in the forthcoming session of Congress.

Mr. FULBRIGHT. Mr. President, I will try to prepare proposals with regard to that basic legislation. I am not prepared to do it today. We have only discussed it today. However, I will prepare the proposals and will deliver them to the proper committee after the first of the year.

Mr. McGEE. Mr. President, in light of our colloquy here, I ask the Senator one additional question.

Is it the intention of the Senator to insist now on the adoption of the pending amendment, or in the light of the colloquy describing our intent and good faith in cutting back those items, would it be the intention of the Senator to let the record speak for itself and we would proceed to the constructive legislation early in the next session?

Mr. FULBRIGHT. My understanding was there would be no objection to the adoption of the amendment.

I believe the chairman of the full committee is agreeable and it would be agreed to and would be a precedent for the further consideration of other bills which I said I would introduce with respect to the Comptroller General.

Mr. MANSFIELD. Mr. President, in my opinion a vital principle is at stake as far as the committee system of the Senate is concerned. I think that the sooner we strike at this weakness the better off we will be. If we do not face up to this, then I would suggest that we abolish all legislative committees and all appropriations committees and consider a reduction in the number of the Members of the Senate. Certainly we will not be needed here if what we do in performing our legislative tasks can be overturned by an action of the Appropriations Committee which in turn ties the hands of the GAO, the only arm of Congress which is supposed to act as a check against what is being done and what is not being done in the field of appropriations.

This is a vital matter, and the sooner we face up to it, beginning now, the better off we will be.

I think we ought to have it on every appropriation bill from here on out until we get it in the law as an instruction to the GAO.

Mr. AIKEN. Mr. President, I suggest that if we get to that, we change the name of the Appropriations Committee to the Presidium because it would be more appropriate.

Mr. MANSFIELD. And we could change the name of "foreign aid bill" to the "foreign aid bill for the benefit of American businessmen."

Mr. AIKEN. Mr. President, if the legislative branch is to consider how the executive branch spends each dollar, we might as well eliminate the executive branch. Perhaps a good many of us would think that would be a good idea. However, the Founding Fathers did not think so, and I think we should stick by them for awhile yet.

When it comes to the authorizing committees, I think we are working very close to the system which some of the advocates of the proposed method seem to deplore and take umbrage at.

Mr. WILLIAMS of Delaware. Mr. President, I concur in what the majority leader has said. I think this is very important.

It is my understanding that this rule only applied to measures which had passed Congress or to funds which had been authorized by the standing legislative committee.

The Appropriations Committee heretofore has recognized that principle. In the last few days we had an HEW appropriation bill brought before the Senate where the Appropriations Committee pointed out that they were delayed because the authorization bill had not cleared Congress.

If they did not have to wait for such authorization or pay any attention to them after they were enacted, then we would not need any authorization committee.

Could the Appropriations Committee act in March on what they wanted to appropriate, and the legislative committee then act some time later or perhaps not act at all?

I think that the Senate should have faced up to this proposed new ruling, and act now to sustain the Senate Rules as they have heretofore been interpreted.

I do not think under the rules of the Senate that the Appropriations Committee has any right to exceed the actual authorization that has been approved by either the House or the Senate.

Mr. FULBRIGHT. Mr. President, if the amendment is attached to the bill it would leave the appropriations conferees this freedom to act within the framework of this authorizing legislation.

Mr. WILLIAMS of Delaware. That is correct.

Mr. FULBRIGHT. Whereas under the existing practice the appropriations committees are not restricted to the terms of the authorizing acts.

I am frank to say that I did not realize that. I had assumed that no matter when they were passed, authorization bills would be controlling as to the upper limits. I did not know that was so until the matter came up and the staff began to inquire with the Comptroller General and others. But it was my understanding with the chairman of the full committee—and perhaps the chairman of the subcommittee did not understand it—that this amendment, which has been prepared very carefully, would be attached to this bill simply as a precedent and the beginning of a process that would be followed until we got a change in the basic law with regard to the Comptroller General. If that is made and if we supply this through the basic legislation affecting the Comptroller General, I am informed—I have consulted with the Parliamentarian and others—that it would be settled in the law.

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

Mr. FULBRIGHT. I yield.

Mr. MANSFIELD. I think that the distinguished Senator from Wyoming, the chairman of the subcommittee, is acting entirely within the limitations as they are laid down at the present time.

Mr. FULBRIGHT. He is. He is quite right.

Mr. MANSFIELD. And this would be a way to strengthen his position, I would think, and clarify the status of situations such as this so far as the Senate is concerned.

I repeat: It is the principle which is the most important matter here, and if it can be applied with respect to the Committee on Foreign Relations, it can be applied to every other legislative committee in this body. I think it would mark the demise of the Senate as a functioning institution.

Mr. FULBRIGHT. The Senator from Wyoming is acting within the rules, or whatever it may be called—the tradition.

What has happened—I did not realize it—is that the House, in an appropriations bill, can do almost anything they please with the rules. They can have special rules. They put legislation in an appropriation bill, and this has the effect of making it just as authoritative as a legislative committee. It is both a legislative and appropriation bill, and when it comes to the Senate, a point of order cannot be made. If it goes through and is finally adopted, it is considered to be of equal significance as an authorization bill as approved by a legislative committee. This is quite unusual—at least, it is to me. I did not realize this could be done.

Mr. WILLIAMS of Delaware. It is unusual, in my understanding of the rules, and that is why I support this amendment.

Mr. FULBRIGHT. I thank the Senator.

Mr. President, that is all I have about the matter.

I have called up the amendment. Is it the pending business?

The PRESIDING OFFICER (Mr. McGOVERN in the chair). The question is on the adoption of the pending amendment.

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

Mr. FULBRIGHT. I yield.

Mr. McGEE. I think we are united very strongly in our feelings that we have to make sure that we take the right step to protect the authorizing process and to make sure that it is not strained or abused or violated by the appropriating processes in this body. Nobody disagrees with that. We have tried to arrange an agreement that would enable us to take that step.

I am a little concerned that, having made this specific commitment from this committee at this time—and the amendment can only apply to this particular appropriation today, anyway, and we have taken care of that—this protects

the time lag between now and whenever we can get this change in legislation affecting the Comptroller General which I hope will be very soon in the next session. But I am a little disturbed that we would now proceed to attach the amendment, the point of which we have accepted and spelled out carefully in the RECORD.

It seems to me that, because of existing rules, we are perfectly in order to proceed without the amendment now. I obviously had misunderstood the chairman of the Committee on Foreign Relations last night, but I had understood him to say in our discussion here that once we can spell this out and agree on our procedure and get the figures cut back to the authorizing level, there would be no need to proceed with the amendment.

In view of the history behind this, I would think that this body would be better advised not to tack this on to this bill at this time; because we have resolved this point in the bill and we have made it abundantly clear that our order of business ought to be to move ahead with clearing up the instructions to the Comptroller General.

Mr. FULBRIGHT. I regret it very much if the Senator misunderstood me. This is not a matter just for gentlemen's agreements. This is a matter of law. The Senate has to go to conference with the House, and this is always an uncertain matter.

I did not mean to say—if I did, I certainly did not mean to—that the principle would be served merely by a colloquy on the floor. The colloquy was necessary to state the reasons why this has arisen and to show that the Committee on Appropriations was acting in good faith—that is the purpose served by the colloquy; that we were not trying to override it; that it was simply because of the unfortunate circumstances of timing that led to this discrepancy in the amount.

However, the basic principle, which has already been described by the majority leader so well, is a principle of law that will cover not only this bill but, I hope, all other appropriation bills as well. I think it is very important that it be adopted by the Senate and that it serve as a precedent for future bills. I would hope that on any bill of any consequence, certainly one in which I am interested, this would be so. I cannot understand why the Senator would object to it. There has been no objection to it on principle.

Mr. McGEE. I am not objecting on principle. I am objecting to the procedure now, inasmuch as we went one step further.

Mr. FULBRIGHT. I do not think the Senator had any alternative there.

Mr. McGEE. Under the rules of the Senate, we could go to conference with a higher figure. But we have agreed to accept the amounts authorized out of deference to the Senator.

Mr. FULBRIGHT. I do not think the Senator could have got this bill through the Senate with those figures. The Senate would have to act on those figures, and I do not think it would for a moment accept them.

Mr. McGEE. Whether or not the Senate accepts any of our figures is a prerogative of the Senate, no matter how low or how high. So that that is not the point.

Mr. FULBRIGHT. I do not quite know what the point is.

Mr. McGEE. The point is that we went one step further and tailored these figures in advance, without controversy, without votes, without amendments, in order to conform to the Senator's request. We think the point made by the Senator is an extremely astute one and should have been made long ago. Because the point has now been made and the good faith has likewise been demonstrated, I just raised the question of the wisdom of attaching that, in view of our agreement that we are going to change the whole order of procedures with the Comptroller General.

Mr. FULBRIGHT. I regret it, but I see no harm that would ensue. I think we ought to have the yeas and nays on the amendment.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

ORGANIZED CRIME CONTROL ACT OF 1969—REPORT OF A COMMITTEE—INDIVIDUAL AND SUPPLEMENTAL VIEWS (S. REPT. NO. 91-617)

Mr. McCLELLAN. Mr. President, the President's Crime Commission concluded its analysis of organized crime in the United States in 1967 with this observation:

> In many ways organized crime is the most sinister kind of crime in America. The men who control it have become rich and powerful by encouraging the needy to gamble, by luring the troubled to destroy themselves with drugs, by extorting the profits of honest and hardworking businessmen, by collecting usury from those in financing plight, by maiming or murdering those who oppose them, by bribing those who are sworn to destroy them. Organized crime is not merely a few preying upon a few. In a very real sense it is dedicated to subverting not only American institutions, but the very decency and integrity that are the most cherished attributes of a free society. As the leaders of Cosa Nostra and their racketeering allies pursue their conspiracy unmolested, in open and continuous defiance of the law, they preach a sermon that all too many Americans heed: The government is for sale; lawlessness is the road to wealth; honesty is a pitfall and morality a trap for suckers. (The Challenge of Crime in a Free Society, The President's Commission on Law Enforcement and Administration of Justice at 24, 1967).

Mr. President, it is with these sobering and disturbing observations in mind that I am pleased to report to the Senate today in behalf of the Judiciary Committee S. 30, as amended, the Organized Crime Control Act of 1969. This action culminates a year of detailed study, hearings, and consultations, and it is the product of one of the most thoroughly bipartisan efforts in which I have ever had the pleasure to participate.

The process began early this year when I introduced S. 30, on January 15, 1969, and continued through the introduction of seven separate bills, which were drafted to deal with different aspects of organized crime, and which were introduced by Senators on both sides of the aisle. Impetus, too, was given to our efforts by the President's "Message on Organized Crime," which was sent to the Congress on April 23, 1969.

The bill that I now report in behalf of the Judiciary Committee to the Senate consists of 10 substantive titles, and it embodies what is, in our judgment, the best of the recommendations for dealing with organized crime of the President's Crime Commission, the National Commission on the Reform of Criminal Laws, the American Bar Association Project on Minimum Standards of Criminal Justice, the Model Penal Code, the Model Sentencing Act, and the various witnesses who testified before our subcommittee or with whom we were in consultation throughout the United States. The bill has been endorsed in principle by such diverse and concerned groups as the National Chamber of Commerce and the International Association of Chiefs of Police, and every title of the bill now has, I am pleased to report, the support of the Department of Justice.

Mr. President, I sincerely hope the Senate will have an opportunity to act on this important measure, if not in the next few days, at least as soon as we return from the holidays in early January. Now, however, I should like to outline for the Senate its major provisions.

TITLE I—GRAND JURY

This title establishes special grand juries authorized to sit for extended terms in the major metropolitan areas of our Nation. At the conclusion of its term the grand jury is authorized, subject to careful safeguards, to issue grand jury reports, so that our citizens may be fully informed on the dimensions of organized crime and its attendant governmental corruption and inefficiency.

TITLE II—IMMUNITY

This title unifies and expands Federal law dealing with the granting of immunity from self-incrimination in legislative, administrative, and court proceedings.

As the compulsory process of the grand jury makes a witness available to give testimony, these provisions will work to guarantee that the privilege against self-incrimination will not frustrate an investigation at the outset.

TITLE III—RECALCITRANT WITNESSES

This title codifies existing Federal civil contempt law designed to deal with recalcitrant witnesses in grand jury and court proceedings. It authorizes the taking of such actions as are necessary to secure testimony from witnesses who would, through their contemptuous conduct, unlawfully thwart an investigation.

TITLE IV—FALSE DECLARATIONS

This title creates a new false declaration provision applicable in grand jury and court proceedings.

This provision will facilitate such prosecutions by eliminating outmoded evidentiary restrictions rooted in history, but today constituing only an impediment to the truth-finding process.

TITLE V—WITNESS PROTECTION FACILITIES

This title authorizes the Attorney General to protect and maintain Federal or State organized crime witnesses and their families.

All too often in the past, where wit-

nesses have decided to cooperate with the Government, they have, unfortunately, subjected themselves to the possibility of the fearsome retribution of the forces of organized crime. This title meets society's obligation to protect those witnesses who seek to do their duty.

TITLE VI—DEPOSITIONS

This title authorizes, subject to constitutional safeguards, the taking of depositions in criminal cases.

A deposition, taken in such a fashion that it may be used at trial, since it preserves the witnesses' testimony, removes a major incentive from the forces of organized crime to kill or mutilate those who would testify against its operations.

TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

This title regulates litigation seeking to suppress reliable and material evidence at trial. It limits direct access to government files by a defendant seeking to vindicate a claim of improper police behavior by requiring a court screening before such files are made available to the defendant. It also places a statute of limitations on the derivative evidentiary consequences of law enforcement conduct to foreclose litigation over stale claims made to harass or confuse the true issue of guilt or innocence.

TITLE VIII—SYNDICATED GAMBLING

This title would assist the States in the control of illegal gambling by making it unlawful to obstruct the enforcement of criminal law of a State to conceal an illegal gambling business. Such illegal gambling businesses affecting commerce are also made federally unlawful. In addition, a National Gambling Commission is set up.

Gambling is the lifeblood of organized crime. If we can constrict that lifeblood, we will be able to constrict organized crime itself. In addition, it is in this area that the forces of organized crime are most vulnerable to law enforcement investigative techniques. If we can remove the syndicate gambler from circulation, we will have at the same time eliminated the extortioner, the corrupter, the robber, and the murderer—the gangster himself.

TITLE IX—RACKETEER INFLUENCED ORGANIZATIONS

This title would prohibit the infiltration of legitimate organizations by racketeers or the proceeds of racketeering activities, where interstate or foreign commerce is affected. Civil remedies, paralleling those now available in the antitrust field, are also authorized to prevent such activity.

Organized crime's threat to the viability of our free enterprise system is as serious as its threat to our integrity and decency. It must be responded to by every lawful law enforcement technique available to us.

TITLE X—DANGEROUS SPECIAL OFFENDER ORGANIZATIONS

This title provides for increased sentence—up to 30 years—for dangerous adult special offenders—the "recidivist," the "professional" offender, and the "organized crime" leader.

Rehabilitation or deterrence are not realistic goals with these hard core offenders. To protect itself, society has no choice but to seek to incapacitate, through long-term imprisonment, those who would destroy us.

Mr. President, the President's Crime Commission in 1967 concluded its study of organized crime with these words:

> The extraordinary thing about organized crime is that America has tolerated it for so long. (Ibid.)

Mr. President, the time for toleration is at an end. For too long now society has ignored this enemy within, debated what responses to make to it, and delayed the implementation of vigorous control measures. I suggest that the time for action is now.

Mr. President, I now submit the report on S. 30, and I ask unanimous consent that the report be printed, together with the individual views of the Senator from Maryland (Mr. TYDINGS) and the supplemental views of the Senator from Pennsylvania (Mr. SCOTT), and individual views of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Michigan (Mr. HART).

The PRESIDING OFFICER. The report will be received and the bill will be placed on the calendar; and, without objection, the report will be printed together with individual and supplemental views requested by the Senator from Arkansas.

REPLY TO SENATOR GOODELL ON GRAND JURY REPORTS

Mr. McCLELLAN. Mr. President, it was not possible for me to be on the Senate floor December 9, 1969, at the time the junior Senator from New York remarked on S. 30, the "Organized Crime Control Act of 1969." I was at that time engaged in conference committee meetings on appropriations bills and was not given an opportunity to see the remarks before delivery. I now have had the opportunity, however, to read the Senator's remarks, and I welcome his expression of support for the bill. In the hearings process, in the Subcommittee on Criminal Laws and Procedures and in the full Judiciary Committee, we have fashioned legislation that I believe contains, as the Senator noted, "many useful provisions which will increase the capacity of law enforcement officials to cope with the powerful, resourceful and illusive criminal elements that pose such a serious threat to the welfare of the Nation."

Mr. President, I particularly welcome the support of the junior Senator from New York, for New York, perhaps more than any other single State, has had to face one of our Nation's most aggravated organized crime problems. Over half of our known narcotics addicts live in New York City, each a victim of organized crime. Six of the 26 identified families of La Cosa Nostra operate in New York State; five in New York City alone. Two thousand of the estimated 5,000 members of La Cosa Nostra make their home in New York. Indeed, a subcommittee review of some 2,992 serious charges leveled against 386 leaders of organized crime indicated that 40 percent of those offenses occurred in the State of New York.

Mr. President, New York has, in addition to our Nation's most aggravated organized crime problems, a law enforcement leadership that has traditionally pioneered in developing legal techniques to respond to the special challenge of organized crime. As I am sure that the junior Senator from New York is aware, it was in 1935 that a New York County grand jury, dissatisfied with the service furnished it by the district attorney, called upon Governor Lehman to appoint a special prosecutor. Governor Lehman responded by appointing Mr. Thomas Dewey, who then went on to establish in New York County his nationwide reputation as a "racket buster." It was Dewey, and men under him, who first developed the "racket bureau" concept, which now underlies the successful Federal "strike force" approach to the investigation of organized crime. Incidentally, Mr. President, it was in New York City itself that the first Federal-State strike force was recently established. In addition, it was in New York that the technique was first perfected of granting witnesses immunity from self-incrimination to secure testimony in organized crime cases.

It was in New York, too, that court-order wiretapping and electronic surveillance were first brought to bear on the problem of organized crime, and I note that title III of last year's Omnibus Crime Control Act, which authorized its use on the Federal level, was modeled on that experience. Mr. Dewey, it should be recalled, was able to secure through wiretaps the conviction for compulsory prostitution of Charles "Lucky" Luciano, the organizational genius who put together a large part of organized crime in the form that it exists today. It has been in New York, too, that the grand jury report has been used most effectively as a device to inform citizens of the special dangers associated with organized crime. Mr. Dewey, in 1946, then Governor of New York, vetoed legislation that would have denied grand juries report, writing powers, calling these powers "one of the most valued and treasured restraints upon tyranny and corruption in public office."

In another connection, it was in that same year that a New York County grand jury report dealing with the infiltration of legitimate boxing by organized crime led to the enactment of section 9133 of the New York Code, which made it a crime in New York to act as an undercover manager or matchmaker. Subsequently, Frankie Carbo, a member of the Lucchese "family" of La Cosa Nostra in New York City, was convicted, through the use of wiretaps, by District Attorney Frank Hogan, of New York County, in 1958, for this very offense. Lastly, I note that Mr. Hogan, characterized by the President's Crime Commission as "one of the country's most outstanding" prosecutors endorsed, in a statement before the subcommittee, the report writing provisions of S. 30, which are, he noted, modeled on New York law—a law, incidentally, that was passed in 1964 by the New York Legislature and signed by Governor Rocke-

feller to restore report writing powers to New York grand juries after a court decision had restricted them. In Mr. Hogan's words, the New York law has authorized reports under safeguards that "insure fair and proper administration of this power."

Mr. President, it was in this context that I was disappointed to learn that the junior Senator from New York had tentatively decided to oppose the restoration to Federal grand juries of their historic report writing powers. I would hope that after the Senator has had the opportunity to read S. 30 as reported, and the committee report, he might be led to reexamine his position in light of the careful attempt we have made to meet all legitimate objections to grand jury reports and our pressing need to make an adequate response to the challenge of official corruption by organized crime in New York and throughout the Nation. The restoration of these powers to Federal grand juries has been endorsed by such diverse groups as the National Chamber of Commerce, the International Association of Chiefs of Police and the National Association of Counties. Mr. President, these last two endorsements are most significant.

If the grand juries are to comment on inefficiency and corruption, it will be, sadly, in some cases, police chiefs themselves who will be the subjects of these reports. In addition, we may realistically expect that some members of the National Association of Counties will likewise be the subjects of reports. Yet these two groups felt compelled, in light of the challenge of organized crime and the need for greater information in our communities on its dimensions, to endorse in principle the report-writing provisions of S. 30. I note, too, the cogent testimony of the National Association of Counties in response to an objection similar to that raised by Senator GOODELL, that Federal grand juries should not comment on State matters:

> Federal grand jurors are usually drawn from the communities or districts wherein the misconduct has taken place. . . . The jurors are citizens of those communities just as much as they are citizens of the United States, and they have precisely the same interest in such matters as they would have if they were sitting on State or local grand juries.

Mr. President, it is not my intention to take up and respond to each of the objections raised by the junior Senator from New York. Each of them was considered in detail in our hearing process and rejected in the subcommittee, and again in the full committee. I would like, however, to draw the attention of this body to the position of the U.S. Department of Justice on these provisions of S. 30 as introduced and to excerpts from a scholarly article by Mr. Richard H. Kuh that appeared in the Columbia Law Review in 1955. The Department supports the report-writing powers of S. 30 as now drafted. I commend the Senate to the entire text of Mr. Kuh's article, but I only want to incorporate in the RECORD those portions immediately relevant to the objections voiced by the junior Senator from New York.

Mr. President, I ask unanimous consent that the position of the Department of Justice and excerpts from the Columbia Law Review appear in the RECORD at this point.

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

[From the Columbia Law Review, Vol. 55, December 1955, No. 8, pp. 1104–1122]

(By Richard H. Kuh)

THE GRAND JURY "PRESENTATION": FOUL BLOW OR FAIR PLAY?

I. HISTORY OF GRAND JURIES AND GRAND JURY REPORTS

The opposition to grand jury reports contends that they pervert the historic purpose for the jury's existence. Allegedly, the jury's proper function is to serve as a buffer between the individual and the power of the state, to protect the citizenry from despotic prosecution.[8] A jury report does not protect a person from an improper charge; further, opponents of reports urge, it of itself constitutes an improper charge in that the persons criticized are deprived of a judicial forum in which the truth or falsity of the attack may be determined.[9]

The history of the grand jury, herein considered, reveals three fallacies in this argument. (1) The original purpose of the grand jury was not to serve as a buffer against despotic prosecution. Rather, the grand jury increased the power of the king in an age when there was little regard for personal rights. (2) When later in its history the jury became such a buffer, the need for protection from *formal* criminal charges continued to be all important. The trial that followed the grand jury's accusation, although no longer based on superstition, included few of the protections now guaranteed. Criticism without indictment, however, did not then and does not now expose persons to a trial of this nature. (3) The grand jury has had a reporting function apart from, and in addition to, its indicting functions for the past several hundred years.

A. Origins of the Grand Jury

Historians find institutions analogous to the indicting jury in various cultures antedating the Norman conquest, although no actual link has been established between any of these pre-Norman bodies and the grand jury.[10] The Athenians utilized an accusatory body prior to the start of the Christian era. The Saxons, who settled in England in the fifth to seventh centuries, the Scandinavians, in the eighth century, and the Franks, in the ninth, may have had similar groups of accusing persons. But the ancestral body of the modern grand jury was created in the reign of Henry II.

This monarch's position in history rests on his centralization of feudal England of governmental power.[11] Of great importance in bestowing power on royal courts was the creation of the earliest form of the grand jury in 1166 by the Assize of Clarendon.[12] This assize established bodies of laymen charged with reporting, under oath, those persons accused or believed to be robbers, murderers, thieves, or harborers of such criminals. Reports were made to the royal sheriff and royal justices, before whom the prisoners could defend themselves by swearing to their denials and submitting to the ordeal by water.

Use of this progenitor of the grand jury was not the only mode of charging crime in twelfth century England. Private accusations could still be made. But although no private accuser might come forward, this Grand Assize had the responsibility of determining community repute, and making charges premised on it. This undertaking, *inter alia*, strengthened the royal power.[13] The assize was clearly not designed to guarantee any individual rights, nor were such rights in any way strengthened as its by-product. This new instrument for charging crime only increased the number of persons standing trial by the established methods, which made no provision for individual rights.[14]

For the first two hundred years of its existence, the Grand Assize had little to do with the safeguarding of individual rights. The logic of using persons drawn from the locale of the crime to determine the truth (or possibly the feelings of the community) was gradually recognized, and hence the petit jury slowly developed from the Grand Assize. Trial by ordeal and compurgation were finally abandoned, partially because of church dissatisfaction with methods that, having no logical relationship to guilt or innocence, too often resulted in the acquittal of persons deemed to be heretics.

B. Development as a protection against tyranny

During the next three hundred years, it apparently became a grand jury function to lodge all charges of crime whether or not private accusers came forward. The grand jury also adopted the custom of hearing witnesses in private.

Two cases which arose in 1681, and in which departure from this custom of secrecy was forced, marked the start of the grand jury's role as an alleged protector against tyranny. The cases were heard at a time of political unrest.[15] Indeed, it is against this background of suspicion and of nearly equal struggle between the king and a delicately balanced Parliament that *Colledge's* case[16] and the *Earl of Shaftesbury's* case[17] must be evaluated. In each case, the grand jury that first heard the evidence of treason, presented by the royal prosecutor, refused to indict, returning the bill of indictment endorsed "ignoramus" or "we know nothing of it." These cases are celebrated for establishing the grand jury as a bulwark against despotism.[18] In the light of the times, however, it is not unlikely that in fact each defendant was guilty of treason. The "ignoramus" endorsement by the grand jurors before whom each case was initially presented may, at least in part, be explained by the fact that their political beliefs were similar to those of the accused. Thus the action by these two juries may mirror practical politics rather than any lofty refusal to charge crime because of inadequate evidence.

Moreover, as the later history of *Colledge's* case proved, an indictment in 1681 was generally tantamount to a speedy conviction in a trial lacking all the safeguards now assured by "due process of law." Hence, protection from false indictment made the difference between life and death. Protection from a false jury report does not have this acute significance.

A half century after these two English cases, the early stirrings of American reaction to British colonial rule were mirrored by a New York colonial grand jury. Peter Zenger, publisher of the *Weekly Journal*, savagely attacked the colony's English governor, William Cosby. In 1734, Cosby sought to have Zenger indicted for criminal libel. The grand jury twice refused to indict. Thereafter, Zenger was charged with libel in an information. The prominent New York attorneys who represented him in habeas corpus efforts were disbarred by the Chief Justice of New York's Supreme Court. But Zenger—through the able services of his distinguished Philadelphia lawyer, Andrew Hamilton—was acquitted.[19]

Regardless of the political motivation, the action of the two 1681 grand juries and of the New York colonial grand jury has been celebrated as heroic conduct protecting the rights of the citizen from tyranny. This view of these events is not wholly unfortunate: an official body with power to protect against

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Footnotes at end of article.

government excesses and to negate improper actions of tyrants is desirable. Grand juries, by refusing to indict, clearly have those powers. Nothing in these seventeenth and eighteenth century cases, however, affords any precedent barring a jury from taking the affirmative action of reporting on the derelictions of government officials.

C. Early use of the grand jury report

An objection voiced today to the grand jury report is that the secrecy obligation of the jury is violated when, without charging crime, it issues a report. This objection ignores the historic fact that grand jury reports were utilized during the years when the jury was developing as an instrument against despotism.

In 1683, an English grand jury in Chester without returning a formal indictment charged certain Whigs, including the Earl of Macclesfield, with disloyal and seditious conduct. The Earl sued the members of the grand jury for libel.[20] In defense, on oral argument, it was urged that "it is the constant universal practice" of grand juries to present to court any matters concerning the business of the county, and that this was commonly done in "every assizes and sessions." [21] In answer to this, plaintiff's contention was to the effect that "the law never did impower a jury or any other, to blast any man's reputation without possibility to clear it," and that grand juries may lodge only specific charges of crime. The defense also urged that if a grand jury learned of any national danger, the juror's oaths bound them to make "prudent and discreet representations of their fears, and the grounds and reasons of them." [22] The court, without opinion, unanimously found for the defendants, apparently sustaining the propriety of grand jury reports.

Sidney and Beatrice Webb have set forth specific instances of early grand jury inquiries into misconduct of royal officers.[23] They mentioned grand jury reports in the seventeenth and eighteenth centuries criticizing constables and justices for their abusive market practices. They also referred to reports on horseracing and cockfighting, on the supervision by the justices of houses of correction, on the use by innkeepers and vendors of false drink measures, on the improper care of bridges, gaols, highways, and other county property, and on justices of the peace who accepted excessive fees. A Gloucestershire grand jury in 1678 noted the increasing beggar nuisance and suggested that the constables, and others so charged, enforce the law. In 1697, a county coroner was criticized by an Essex County grand jury for "vexing" a coroner's jury that failed to follow his direction to find a verdict.

This grand jury practice of issuing reports on matters of public concern was followed in the American colonies. In New York in 1688, a grand jury urged that persons selling liquor should keep lodgings.[24] Subsequent New York colonial grand juries reported on highway repair and other matters of state proprietorship. Grand juries in New Jersey rendered reports on matters of public affairs as early as 1680.[25] In Virginia, it was common practice for grand juries to express their opinions on colonial administration.[26]

D. The opposition to grand jury reports

There are four objections that the adverse authorities assert when holding against grand jury reports. Three of these—that reports violate secrecy oaths, that they expose the jurors to libel actions, and that they violate the separation of powers principle—appear to be without merit.

1. *Secrecy.* If a grand jury indicts or dismisses after an arrest has been made, knowledge of the jury action, and hence of some of the facts adduced, ordinarily soon becomes public. But as indictment and dismissal are concededly proper functions of the grand jury, it is not contended that they violate the secrecy oath. Similarly, if reporting is a proper grand jury function, it cannot become improper because of necessity it departs from secrecy.

Indeed, one of the principal advantages of grand jury secrecy has greater strength in connection with grand jury reports than in connection with indictment.[56] Secrecy, in affording protection to grand jury informers, facilitates the collection of information. Trials following indictments are likely to reveal informers as witnesses—thus partially vitiating this benefit of secrecy—but reports need never reveal the informers. Another reason for grand jury secrecy—to prevent persons about to be indicted from fleeing—has no application to reports. The fear of flight cannot arise when a report is publicized since no criminal action is contemplated against those criticized in it.

The violation of grand jury secrecy in the public interest by ways other than formal indictment has ample precedent. Where the general welfare requires it, grand jury minutes will be made public.[57] Such a revelation may, of course, be far more harmful than a report, as it exposes testimony unsifted for the elimination of hearsay and ill-founded canards. How much more logical it is to permit the temperate and well based conclusions of a grand jury to be expressed in a report written for the benefit of the public. If jurors' oaths are not violated when a court makes public the minutes of testimony taken before them, they are not violated when with court sanction a careful report dedicated to the public interest becomes a matter of public record.

2. *Libel.* Another argument that raises itself by its own bootstraps is that jurors, by reporting, may expose themselves to libel actions.[58] If a report is a proper judicial utterance, it is privileged and cannot give rise to a libel recovery. Moreover, even in jurisdictions in which reports are considered improper, it has been held that grand jurors do not, by reporting, expose themselves to libel actions; their good faith belief that criticism was a proper jury function clothes their action with privilege, even though such action exceeds the jurors' proper authority.[59]

3. *Separation of powers.* Another argument urged against reports is that they contravene the constitutional separation of powers. It is contended that the grand jury, an arm of the court, should not charge executive or legislative officers with conduct other than criminal and that the efficiency of these branches of government is not the concern of the jury. One historical flaw in this argument must be noted. Almost three hundred years ago, the grand jury developed into a check on the possible abuse of the executive power. Yet today, when it reports on other governmental abuses, it is criticized as violating the separation of powers principle. Historically, the grand jury has for centuries exercised both the reporting and indicting functions. As both roles have long been ascribed to the judicial branch of government, the exercise of the reporting function by this department is no more violative of the separation of powers principle than is the indictment of a governmental official for criminal conduct in the performance of duties.

It has never been contended that courts abuse their trust when, noting statutory defects, they suggest to the legislature that it consider amendment.[60] In criticizing public officers and calling for improvements, the grand jury performs an analogous function. It does not remove these persons from office, or assume their duties by its criticism, any more than a court legislates when it makes suggestions to the legislature. Success of the separation of powers principle depends to some extent on the interaction and cooperation of the arms of government, not on their total isolation from each other.[61] This mutual assistance is achieved when the grand jury exercises its historic public function of *suggesting* improvements.

The only serious argument against grand jury reports is that they charge wrongdoing while effectively denying the use of a judicial forum in which to reply. This argument requires full consideration and evaluation against the background of our contemporary society.

III. CURRENT USE OF GRAND JURY REPORTS

The proper scope of the grand jury's reporting function is determined by a synthesis of three factors, the first two of which—the jury's history and the judicial reception of jury reports—have already been considered. The third factor is our contemporary society. Two facets of this society must be considered. One is the present day role of the grand jury as an investigator of official misconduct; the other is the injury inflicted on a person subjected to jury criticism that cannot be answered in a judicial forum.

A. The grand jury as an investigator of official misconduct

As Chief Justice Vanderbilt of New Jersey has noted, government today "has taken on a complexity of organization and of operation that defies the best intentions of the citizen to know and understand it." [62] Part of this new complexity is attributable to the greatly expanded hierarchy of public employees. As this hierarchy grows, its branches are ever further removed from those officials who are directly answerable to the electorate. At the same time detailed familiarity of the public with the activities of even the elective officials steadily decreases. As this breach between the public and its servants widens, a need develops for new modes of policing the growing body of public employees to protect their ranks from the encroachment of the corrupt, the neglectful, and the incompetent. This need has in recent years been met by an outburst of probing bodies of questionable efficiency. Although these bodies have received the greatest notoriety in the federal field, their counterparts exists on state, city, and local levels. It is not a function of this paper to analyze in detail the weaknesses of such free-swinging investigatory groups; it will suffice for the instant purposes to contrast their fitness to conduct serious investigations of official misconduct with that of the grand jury, whether state or federal, which always acts subject to enforceable restraints.

Investigatory committees, whether of the legislative or of the executive arm of government, suffer common defects. Their members, being either elected or appointed by elected officials, ordinarily are not completely free of political motivation. Elected officials and profesisonal investigators are apt to find their own personal interests best fostered by publicity. Consequently, investigations are most often either conducted in full public spotlight, or are punctuated by frequent reports to the public of interim results. The hearings conducted and the ensuing reports are often uninhibited by the limitations imposed by rules of evidence. As the outcome of all these investigations is probably influenced by political considerations, partiality and a deliberate lack of thoroughness are apt to be present.[63]

These defects are not necessarily found in all such investigations. However, there exists no immediate check, no supervision, no overseer to guarantee that legislative or executive committees act fairly while conducting their investigations and before making public the results of their activities.

Similar weaknesses exist as to inquiries privately fostered. Newspaper conducted investigations are ordinarily not impartial. Their reports are likely to be in line with the prevailing editorial policy and are, at least in part, designed to sell papers. Private organizations, whether lawyers' or veterans' associations, or other publicly spirited groups,

Footnotes at end of article.

often bestir themselves to investigate only because of a preconception as to how their studies will turn out. A further severe limitation on private inquiries is that they depend wholly on the willing cooperation of the persons supplying the necessary information since subpoena power is lacking.

Grand juries appear better suited than either legislative or executive committees or private bodies to police the conduct of public officials. Because of the breadth of grand jury authority, contentious refusals to answer questions alleged to be beyond the scope of the investigation [64] will probably not hamstring investigations. The combination of subpoena power and secrecy permits testimony to be taken with minimum embarrassment and, indeed, with minimum risk of reprisals to the subpoenaed witnesses.[65] Although the rules of evidence need not be strictly enforced by investigating grand juries ferreting out leads, these rules are generally enforceable by court review as to the public emanations of the jury, whether indictments or reports.[66] The jurors, non-professionals, ordinarily are not dually engaged in both investigating the misconduct of public officials and in fostering their own public careers.[67] The effect of any unworthy ambitions of the states attorney on an investigation may be minimized by the mature judgment and at least nominal control exercised by the non-political lay jurors. Most significantly, the grand jury is not an autonomous group, completely the master of its own investigation. Its action is subject to immediate control by the court of which the jury is but an arm.[68]

Grand juries may be misled into rendering reports outside of their competence by a judge and a prosecutor, one of whom ignores the proper limitations on jury action, while the other passively tolerates this abuse.[69] But since judges are ordinarily appointed or are elected for longer terms than other public officials, they should tend to be less concerned with public relations. Furthermore, jury, prosecutor, and judge all exist as an immediate restraint on each other's conduct. Should such cross checks prove ineffective, the appellate courts may be available.

B. Injury inflicted by reports

That the grand jury can be an effective body for the investigation and report of public officials' inaction and wrongdoing has been widely noted.[70] It is then necessary to consider whether the weight given to a jury report so seriously harms persons criticized therein as to merit the appellation "foul blow" that it has been given.[71] It is submitted that although criticized individuals may be injured by reports which they cannot publicly answer in a judicial forum, the lack of such a forum is no longer as significant as it once was.

In the first place, urbanization has diminished the importance of the courthouse as a gathering place for community entertainment. Public interest in judicial spectacles is currently fed by radio, newspapers, magazines, television, and motion pictures, so that—indirectly—the courtroom now plays to its largest audiences.[72] But the courtroom has no unique advantage with these media. They are available for the lodging and refutation of charges of wrongdoing, whether or not such charges originate in a judicial forum. Notorious examples of their unprecedentedly broad use were the 1954 "Army-McCarthy" hearings which went on for many weeks with complete coverage by all communications media.[73]

Indeed, even when charges are pending in a judicial forum, their pre-trial or concurrent "litigation" out of the courtroom and in the public press—whereby the opinions of the great public "jury" are molded—is a common, if unfortunate, phenomenon.[74] It also bears witness to the litigants' recognition of the importance of the public, as well as the judicial, forum. This great public jury is, of course, available to hear the case of anyone criticized in the grand jury report whose denials are sufficiently newsworthy. Whether or not charges or answers originate in a judcial forum, their good or harm can be similarly amplified. Thus, in reality, the importance of the judicial forum for the determination of charges of ineptitude has yielded place to the broader forum created by our mass media of public information.

Secondly, persons criticized in grand jury reports have an advantageous position in the public forum absent in a judicial forum. The jury, its report issued, has spoken. It can speak again (if, indeed, with the rendering of its report it has not been dismissed) only through the cumbersome method of meeting, having its membership consider a further report, and having such a report accepted and filed by the court. In this additional utterance, the jury is still bound by rules of evidence and by the limitations on the scope of a report. Persons criticized are subject to none of these restrictions. Dynamic denials and countercharges can be issued, unlimited by rules of evidence or even basic requisites of truth. If sufficiently dramatic, they may outplay in their news-worthiness—and hence in their command of the public forum—the original grand jury charges. Thus, the alleged unfairness of depriving persons criticized of a judicial forum in which to raise their defenses may in some instances actually cloak them with their most effective means of defense: the freedom to deny and make countercharges without fear of eventual judicial discrediting of their position.[75]

Thirdly, the report is not the only type of grand jury action that injures persons without affording them the opportunity of vindication in a judicial forum. An indictment that is not prosecuted, or one that is quietly dismissed, has similar damning effect while not providing full opportunity for publicized vindication.[76] Nor does an indictment naming persons as co-conspirators, but not as defendants, offer an opportunity for vindication.

Finally, the good to the public resulting from justifiable charges of wrong-doing made against public officials may counterbalance whatever harm is done to the affected individuals. As Judge Learned Hand noted over thirty years ago:

> No doubt grand juries err and indictments are calamities to honest men, but we must work with human beings and we can correct such errors only at too large a price. Our dangers do not lie in too little tenderness to the accused. Our procedure has been always haunted by the ghost of the innocent man convicted. It is an unreal dream. What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime.[77]

In today's climate, the presence or absence of a *judicial* forum does not determine the harm to the individual that may be done by charges of his incompetence and neglect.

Footnotes at end of article.

DEPARTMENT OF JUSTICE COMMENTS ON S. 30

TITLE I—GRAND JURY

Title I makes various changes in the law affecting the summoning, term, and powers of grand juries which would strengthen the powers and independence of grand juries. While we support most of the provisions contained in this Title, we have alternate proposals to offer as to certain others. Our views with respect to each Section of this Title will be set forth separately.

Section 101 seeks to amend 18 U.S.C. 3321 (Number of grand juries; summoning additional jurors) by adding at the end thereof the following new sentence: "Members of a grand jury shall be selected in accordance with the provisions of Chapter 121." This provision refers to the chapter of Title 28 which specifies the manner of selecting jurors. For clarity it is recommended that the phrase "Title 28" be added after the words "Chapter 121."

Section 102 would amend 18 U.S.C. 3322, which incorporates by reference Rule 6(a), Federal Rules of Criminal Procedure, which provides that "The Court shall order one or more grand juries to be summoned at such times as the public interest requires", to require the convening of a grand jury at least once during each eighteen month period by each district court. While the Department favors the convening of a grand jury at least once during each eighteen month period where the needs of justice require it, we are not aware that any serious problem exists in this regard in any district.

The difficulty we have experienced in some districts, however, is obtaining a sufficient number of grand juries to accommodate at the same time the general needs of the district and the special needs of the typically lengthy organized crime investigation. To remedy this problem, we recommend that present Section 2322 of Title 18 be amended to provide in addition that a grand jury be impaneled in each district court in which the Attorney General certifies in writing to the chief judge of the district that in his judgment such a grand jury is necessary because of major organized crime activity in the district.

We, therefore, recommend that the first sentence of the proposed revision of Section 3322 of Title 18 be amended to read as follows:

Section 3322—Summoning and term

(a) Each district court shall order one or more grand juries to be summoned at such time as the public interest requires, or whenever the Attorney General certifies in writing to the chief judge of the district that in his judgment a grand jury is necessary because of major organized crime activity in the district.

Section 102 would also amend Section 3322 of Title 18 to provide that a grand jury may, by majority vote, extend its term of eighteen months for additional periods of six months, not to exceed a total term of thirty-six months. This provision appears to be desirable on several grounds. It would have the effect of stimulating prosecutors and investigators to take effective and timely action against organized crime in their districts. It would also insure that grand juries would stay in session long enough for the unusually lengthy period of time often required to build an organized crime case. Lastly, it would eliminate the possibility of arbitrary termination of a grand jury by supervisory judges.

Section 103 would amend Section 3324 of Title 18, which incorporates by reference Rule 6(c) of the Federal Rules of Criminal Procedure, in five respects. Rule 6(c) presently states that "The court shall appoint one of the jurors to be foreman and another to be deputy foreman." There then follow other provisions which are not affected by the proposed amendment.

The proposed Section 3324(a) would provide that "Each grand jury when impaneled shall elect by majority vote a foreman and deputy foreman from among its members." While this proposal changes the existing rule, this is purely a matter of statutory law and policy. This provision appears to be desirable in that it increases the independence of the grand jury by removing it from any possible restrictive influence present as a result of selection by the court or at the court's direction by court personnel. In practice, the court or his delegate (the court clerk) examines the case history of each juror as to his education, profession, civic activities, etc., and many are interviewed personally. By this process a foreman and deputy foreman are selected. This screening process, however desirable, makes a person foreman who is acceptable to the court even though such a

person may not reflect the attitudes or have the concerns of the community at large or the grand jury in particular.

Proposed Section 3324(b) provides that "It shall be the duty of each grand jury impaneled within any judicial district to inquiry into each offense against the criminal laws of the United States alleged to have been committed within the district which is brought to the attention of the grand jury by the court or by any person." This provision is a statutory recognition of existing case law holding that the inquisitorial powers of a grand jury are virtually unlimited and that the grand jury can initiate a case on its own and investigate any alleged violation of Federal law within its jurisdiction. See *Hale* v. *Henkel*, 201 U.S. 43 (1906); *Blair* v. *United States*, 250 U.S. 273 (1919); *United States* v. *Hartke-Hanks Newspapers*, 254 F. 2d 366 (C.A. 5), *cert. denied*, 357 U.S. 938 (1958); *In Re Grand Jury Investigation (General Motors Corp.)*, 32 F.R.D. 175 (S.D.N.Y.), *appeal dismissed*, 318 F. 2d 533 (C.A. 2), *cert. denied*, 375 U.S. 802 (1963); *United States* v. *Smyth*, 104 F. Supp. 283 (N.D. Calif.) (1952); *United States* v. *Gray*, 187 F. Supp. 436 (D.C.D.C. 1964). Consequently, we can see no objection to this proposal.

Section 3324(c) provides that no person shall be deprived of opportunity to communicate to the foreman of a grand jury any information concerning any offense against the criminal laws of the United States alleged to have been committed within the district. Section 1504 of Title 18, United States Code, presently makes it an offense for anyone to attempt to influence the action or decision of any grand or petit juror upon any matter pending before it by a written communication. This provision is apparently intended to make it clear that no violation of this Section is committed by a person who merely communicates to the foreman of a grand jury any information regarding any offense against the laws of the United States. This provision could well encourage wider organized crime and we, therefore, support it.

Section 3324(d) provides that when the grand jury determines by majority vote that the volume of its business exceeds its capacity to fulfill its obligations, it may apply to the district court to impanel an additional grand jury. Upon such application and a showing of need, the district court shall order an additional grand jury to be impaneled. If the court refuses to hear the application or refuses to impanel a new grand jury, the grand jury may appeal to the chief judge of the circuit who shall have jurisdiction to order a new grand jury impaneled. This provision seems reasonable, especially since the grand jury must make a showing of need to the court before the request may be granted. We support this provision.

Section 3324(e) provides that whenever a grand jury determines by majority vote that any attorney or investigative officer or agent appearing on behalf of the United States before the grand jury for the presentation of evidence with respect to any matter has not performed or is not performing his duties diligently and effectively, the grand jury may transmit to the Attorney General a written request, along with the reasons therefor, for a new attorney, agent or investigator. The Attorney General is then required to promptly inquire into the merits of the application and to take appropriate action to provide for prompt and effective representation on behalf of the United States.

The Department is opposed to this provision on several grounds. First, it is felt that the provision is unnecessary since sufficient control over such personnel already exists in the Department. As a practical matter, moreover, the grand jury can at present undoubtedly make such a complaint to the Attorney General and appropriate action will be taken where merited. Second, it is felt that placing such an express power in the grand jury has too great a potential for mischief and might well tend to unduly limit the discretion of attorneys charged with investigation of unpopular or sensitive matters. Third, this provision could also be expected to invite the making of unfounded, though perhaps good faith, complaints in those hard or close cases where the layman grand jury refuses to accept the legal judgment of an experienced prosecutor that the evidence is insufficient as a basis for an indictment. For these reasons, then, the Department does not feel that this provision should be enacted.

Section 104 would amend Chapter 215 of Title 18, United States Code, by adding at the end thereof a new section, Section 3330, entitled "Reports". This new Section 3330 would allow the grand jury, on majority vote of its members, to submit the court a report: (1) concerning noncriminal misconduct, nonfeasance, or neglect in office by a public officer or employee as the basis for a recommendation of removal or disciplinary action, or (2) stating that after investigation of a public officer or employee it finds no misconduct, nonfeasance, or neglect in office by him, provided that such public officer or employee has requested the submission of a report, or (3) proposing recommendations for legislative, executive, or administrative action in the public interest based upon stated findings. Such a report shall be submitted to the court who will approve and accept it for filing only if the report is based on facts revealed in the course of an authorized investigation and is supported by the preponderance of the evidence. A report concerning noncriminal misconduct of a public official can be accepted only if the named individual had been afforded an opportunity to testify before the grand jury prior to the filing of the report. Any other report must not be critical of a named individual.

A public official may file an answer to a report critical of him and may also file an appeal to the circuit court. At the expiration of an appropriate time as set forth in the provision the United States Attorney must deliver a true copy of the report for appropriate action to the public officer or agency having removal or disciplinary power over the public officer named therein, but if a criminal action is pending the court may seal the report until the matter is disposed of. If the court is not satisfied that all these requirements are met, it may direct that additional testimony be taken before the same grand jury, or it may direct that the report be sealed and not filed as a public record. Finally, this provision defines public officer or employees as "any officer or employee of the United States, or any State or political subdivision, or any department, agency, or instrumentality thereof."

This proposal would substantially change existing Federal law and procedure. See in general, *Orfield, The Federal Grand Jury*, 22 F.R.D. 343, 402 (1958). Two cases which are particularly illustrative of present judicial thinking that any grand jury action beyond indicting or refusing to indict is beyond the power of the grand jury are *Application of United Electrical Radio and Machine Workers*, 111 F. Supp. 858 (S.D.N.Y. 1953), and *In Re Petition for Disclosure of Evidence Before October 1959 Grand Jury*, 184 F Supp. 38 (E.D. Va. 1960). In the former case, the court held that a grand jury report which made recommendations to the NLRB was beyond the powers of the grand jury, an abuse of the principle of separation of powers and a violation of the secrecy provision of Rule 6(e), Federal Rules of Criminal Procedure. In the latter case, the court held that a grand jury report on noncriminal conduct of state officials was likewise beyond the power of the grand jury, an infringement upon the provinces of State and local Governments and a violation of the secrecy provision of Rule 6(e).

While the problem of secrecy under Rule 6(e) can be remedied by statute, the other problems must await judicial testing.

The present proposal also goes beyond that of the President's Commission on Law Enforcement and Administration of Justice which recommended:

When a grand jury terminates, it should be permitted by law to file public reports regarding organized crime conditions in the community.

It is noted that this recommendation restricts the use of a report: (1) until the grand jury terminates, (2) to organized crime conditions, and (3) in a presumably general context. This type of report would apparently be unobjectionable in view of the dicta by the court in *Application of United Electrical Radio and Machine Workers* (*supra*) at 869, that "We are not here concerned with reports of a general nature touching on conditions in a community. They may serve a valuable function and may not be amenable to challenge."

We believe that considerations of public policy and interest favor some expansion of the grand jury's power in this area, and though we recognize there are constitutional problems involved, we do not believe they are of an insuperable nature.

The history of the growth and development of the grand jury system discloses that the issuing of reports has been an historic grand jury function in England for almost three hundred years. The practice of rendering reports on matters of public concern was also followed in the early American colonies, and today, despite the weight of authority against it, reports are authorized either by statute or by judicial decision in such States as New York, California, Illinois, New Jersey, Florida, and Tennessee. Despite this, however, and despite the fact that the grand jury has been described by the Supreme Court as a "prototype" of its ancient British counterpart, *Blair* v. *United States*, 250 U.S. 273, 282 (1919), its power to issue reports has not survived intact with its virtually unchallenged investigatory power.

The principal objections to the use of grand jury reports seem to be that they violate the traditional secrecy of grand jury proceedings, they expose grand jurors to libel actions, they violate the principle of separation of powers, and, perhaps most importantly, they charge wrongdoing while effectively denying the use of a judicial forum in which to reply. Upon close examination, the first three of these reasons do not appear to have much merit. The problem of secrecy under Rule 6(e) of the Federal Rules of Criminal Procedure may, of course, be solved by statutory amendment. There is in fact already ample precedent under Rule 6(e) for violation of grand jury secrecy when the general welfare requires it. See, for example, *In Re Petition for Disclosure of Evidence Before October 1959 Grand Jury*, 184 F. Supp. 38 (E.D. Va. 1960), where Federal grand jury minutes were made available to Commonwealth Attorney for use in state grand jury proceedings.

The libel objection can perhaps be discounted as the least troublesome since, in light of recent Supreme Court decisions on this subject, grand jurors actions in this regard are undoubtedly privileged.

The argument that the grand jury reports contravene the principles of separation of powers proceeds on the theory that the grand jury, being an appendage of the court, should not invade the province of the legislative or executive branches and charge them with misconduct or inefficiency. This argument loses much of its force, however, when it is considered that historically the grand jury has for centuries exercised both the reporting and indicting functions, and the exercise of its reporting function is logically no more violative of the separation of powers principle than is the indictment of a governmental official for criminal conduct in the

performance of his duties. In criticizing public officers and calling for improvements in the legislative and executive branches, moreover, the grand jury performs a function analogous to the court's function when it notes statutory defects and suggests that the legislature consider amendment. As New Jersey's late Chief Justice Arthur T. Vanderbilt observed, success of the separation of powers doctrine depends to some extent on the interaction and cooperation of the arms of Government, not on their total isolation from each other. See *Vanderbilt, The Doctrine of the Separation of Powers and Its Present Day Significance, 43–45 (1953).*

Finally, on this point, it may be observed that since so much of Title I changes the basic character of the grand jury that in effect it is no longer merely an arm of the court, but a more independent body, the separation of powers argument is no longer a valid objection.

Perhaps the most serious objection to grand jury reports is the charge that they are essentially lacking in fairness since they make a charge of wrongdoing but deny the "accused" a judicial forum in which to reply. In an attempt to meet this criticism, the New York legislature enacted a statute, New York Code of Criminal Procedure, Section 253(a), effective July 1, 1964, which contains elaborate safeguards such as allowing a named individual an opportunity to testify before the grand jury and file an answer prior to the filing of a report, as well as allowing an appeal to a higher court before filing. The constitutionality of this New York statute was upheld in *In Re Grand Jury, January 1967,* 277 N.Y.S. 2d 105 (1967).

Since the present proposal is almost word for word identical in its substantive provisions with the New York statute, we feel that it meets the necessary test of fairness against the charge that it makes an accusation without providing an adequate judicial forum for a denial.

In sum then, we believe this revival of the grand jury's historical report making power, as narrowly circumscribed in this proposal, is constitutionally sound and we support it as being in the interest of good and effective Government.

In accord with recommendation of the President's Commission, we would suggest that the grand jury also be allowed to file general reports on organized crime conditions in the community. This would be accomplished by adding the following new subsection at the end of the proposed new Section 3330(a):

(4) regarding organized crime conditions in the district, provided it is not critical of an identified or identifiable person.

Finally, in order that the regular business of the grand jury may be conducted with dispatch and without interruption, and in secrecy, we would recommend that this proposal be amended to include the phrase "upon the conclusion of its term." In line with this suggestion, the first sentence of new Section 3330(a) would be amended to read, in pertinent part as follows:

a majority of its members, may, upon conclusion of its term, submit a report . . .

FOOTNOTES

NOTE—Footnotes 1 to 7 not printed in RECORD.

[8] Sec. 4 BLACKSTONE, COMMENTARIES *349–50; 2 STORY, *op. cit. supra* note 1, at 564; New York, FOURTH REPORT OF THE COMM'RS ON PRACTICE AND PLEADINGS, CODE OF CRIM. P. XXXV (1849). See also Hoffman v. United States, 341 U.S. 479, 485 (1951); Hale v. Henkel, 201 U.S. 43, 59 (1906); Charge to Grand Jury, 30 Fed. Cas. No. 18,255 at 993 (C.C.D. Cal. 1872).

[9] The most frequently cited opinion supporting this position is the dissent of Mr. Justice Woodward in Jones v. People 101 App. Div. 55, 59, 92 N.Y. Supp. 275, 277 (2d Dep't), *appeal dismissed,* 181 N.Y. 389, 74 N.E. 226 (1905). For other New York authorities taking the same position, see, *e.g.,* Matter of Healy, 161 Misc. 582, 597–98, 293 N.Y. Supp. 584, 600–01 (County Ct. 1937); People v. McCabe, 148 Misc. 330, 333–34, 266 N.Y. Supp. 363, 366–67 (Sup. Ct. 1933); Matter of Gardiner, 31 Misc. 364, 374–75, 64 N.Y. Supp. 760, 767 (Gen. Sess. 1900). For similar reasoning in other states, see, *e.g., In re* Hudson County Grand Jury, 14 N.J. Super. 542, 545–46, 82 A.2d 496, 497 (L. 1951); State v. Bramlett, 166 S.C. 323, 326–30, 164 S.E. 873, 874–76 (1932); Hayslip v. State, 193 Tenn. 643, 647–49, 249 S.W. 2d 882, 884, *cert. denied,* 344 U.S. 879 (1952).

[10] In preparation of this section on the early history of the grand jury, the following have been consulted: ADAMS, THE ORIGIN OF THE ENGLISH CONSTITUTION 106–35 (2d ed. 1920); EDWARDS, THE GRAND JURY 1–44 (1906); FORSYTH, HISTORY OF TRIAL BY JURY 1–196 (new ed. 1875); 1 HOLDSWORTH, A HISTORY OF ENGLISH LAW 312–27 (3d ed. 1922), 10 *id.* 146–51 (1938); PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 16–19, 86–88, 102–21 (3d rev. ed. 1940); 1 POLLOCK & MAITLAND, THE HISTORY OF ENGLISH LAW, 136–53, 2 *id.* 598–662 (2d ed. 1903); STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND 184–86, 250–58 (1883); THAYER, A PRELIMINARY TREATISE ON EVIDENCE 24–84 (1898); Green *The Centralization of Norman Justice Under Henry II,* in 1 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 111–38 (1907); Stephen, *Criminal Procedure From the Thirteenth to the Eighteenth Century,* in 2 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 443–89 (1908).

[11] In centralizing power, control over the courts was of much importance. See ELIOT, MURDER IN THE CATHEDRAL 78–79 (pt. II, 2d scene) (2 ed. 1936).

[12] Latin text in STUBBS, SELECT CHARTERS OF ENGLISH CONSTITUTIONAL HISTORY 170–73 (9th rev. ed. 1913), translation in ADAMS & STEPHENS, SELECT DOCUMENTS OF ENGLISH CONSTITUTIONAL HISTORY 14–18 (1901).

[13] Henry II soon discovered that the creation of a centralized bureaucracy necessitated the setting up of machinery to minimize corruption. Four years after the promulgation of the Assize of Clarendon, Henry ordered certain of his barons to conduct an inquest of his sheriffs, bailiffs, archbishops, bishops, earls, barons, stewards, foresters, and other officers to ascertain that the royal funds were being dealt with properly, and that royal property was being protected. Inquest of the Sheriffs, Latin text in STUBBS, *op. cit. supra* note 12, at 175–78, translation in ADAMS & STEPHENS, *op. cit. supra* note 12, at 18–20.

[14] The assize expressly provided for trial by the orderal by water, wherein the accused was slowly lowered by rope into a body of water. His innocence was vindicated by his sinking; if he floated, he was found guilty. For those who might survive this ordeal, the assize specifically provided the imposition of banishment and outlawry. These sanctions were invoked although the accusation and submission to the ordeal, not necessarily based on direct evidence of guilt, might have been solely premised on the local opinion that the prisoner was guilty. If convicted, punishment was the loss of a foot, supplemented in 1176 by a provision of the Assize of Northampton to include the loss of the right hand. See Latin text in STUBBS, *op. cit. supra* note 12, at 179–81, translation in ADAMS & STEPHENS, *op. cit. supra* note 12, at 20–23.

[15] By 1681, the Puritan dictatorship of Cromwell had been replaced for some twenty-one years by the Restoration of the Stuart rulers. In 1679, the Exclusion Bill had been introduced; it was designed to bar succession to the throne of Charles II's younger brother, James, a Catholic. It barely missed becoming law in 1680 when, passed by the House of Commons, it was rejected by the Lords. At the same time rumors of a plot to assassinate the king and to establish his bastard son, the Protestant Duke of Monmouth in his stead, discredited his opponents and strenghtened his pro-Catholic government. For this background, against which these two 1681 cases should be considered, see ADAMS, CONSTITUTIONAL HISTORY OF ENGLAND 334–61 (1920); 2 HALLAM, THE CONSTITUTIONAL HISTORY OF ENGLAND 303–468 (new ed. 1897); 2 OGG. ENGLAND IN THE REIGN OF CHARLES II 559–656 (1934).

[16] The Trial of Stephen Colledge, at Oxford, for High Treason, [1681] 8 How. St. Tr. 550. In this case, an array of witnesses before a Middlesex grand jury stated that Colledge spoke threateningly against Charles II and participated in a plot to kill him. After the jurors returned the already prepared bill of the royal prosecutor with the indorsement "ignoramus," they replied on questioning by the presiding justice as to their reasons that it was "according to their consciences and that they would stand by it." The jury foreman was subsequently sent to the tower and later forced to flee England. The case was then presented to an Oxford grand jury, which indicted; Colledge was forced to plead without seeing a copy of the indictment and without the assistance of counsel. Papers outlining his intended defense were taken from him and given to the prosecution, and the attorney who helped him prepare the papers was held under bail. At his trial Colledge contended that his Protestant faith was the reason for his prosecution. He was convicted and executed.

[17] Proceedings at the Old-Bailey upon a Bill of Indictment for High Treason, against Anthony Earl of Shaftesbury, [1681] 8 How. St. Tr. 759. This case for treason was presented to a London grand jury three months after Colledge's head had been set upon Temple Bar as a warning to others. The London jury returned the prosecutor's bill indorsed "ignoramus." Shaftesbury sought to prosecute his accusers for conspiracy, but was met by their motion that they not be tried in London, where the sheriff and others were Shaftesbury's friends. He fled to Holland, and soon died there. Shaftesbury's treason, and his role as Monmouth's champion, were satirized by Charles II's poet laureate. See DRYDEN, ABSALOM AND ACHITOPHEL. A POEM (1681).

[18] See SOMERS, THE SECURITY OF ENGLISHMEN'S LIVES (1681). The author's partisanship, however, may be indicated by the fact that once James II had been forced to flee, Somers was knighted for his legal services in helping to establish the legality of the reign of William and Mary.

[19] HEARTMAN, JOHN PETER ZENGER AND HIS FIGHT FOR THE FREEDOM OF THE AMERICAN PRESS (1934); MORRIS, FAIR TRIAL 69–95 (1952); THE TRIAL OF JOHN PETER ZENGER, OF NEW YORK, PRINTER (1765).

[20] Proceedings between Charles Earl of Macclesfield and John Starkey, Esq., [1684–85] 10 How. St. Tr. 1330.

[21] *Id.* at 1355.

[22] *Id.* at 1371.

[23] S. AND B. WEBB, ENGLISH LOCAL GOVERNMENT FROM THE REVOLUTION TO THE MUNICIPAL CORPORATIONS ACT: THE PARISH AND THE COUNTY 448–456 (1906). See also 10 HOLDSWORTH, A HISTORY OF ENGLISH LAW 146–51 (1938).

[24] GOEBEL & NAUGHTON, *op. cit. supra* note 1, at 361–63.

[25] See *In re* Camden County Grand Jury, 10 N.J. 23, 41–44, 89 A.2d 416, 426–428 (1952).

[26] SCOTT, CRIMINAL LAW IN COLONIAL VIRGINIA 70–71 (1930).

NOTE.—Footnotes 27 to 55 not printed in the RECORD.

[56] The authorities are in agreement that the purpose of grand jury secrecy is *not* the protection of the accused. Secrecy serves (1) to encourage the free expression of witnesses

by affording them maximum freedom of disclosure without fear of reprisals from outsiders, (ii) to prevent perjury by witnesses who come forward to controvert or reinforce other testimony of which they learn, (iii) to conceal the jury's interest in order to prevent prospective defendants from escaping, (iv) to prevent disclosure of investigations that result in no grand jury action, and (v) to assure the grand jury freedom from outside interference. See United States v. Amazon Industrial Chemical Corp., 55 F.2d 254, 261 (D. Md. 1931); United States v. Smyth, 104 F. Supp. 283, 303–40 (N.D. Cal. 1952); Howard v. State, 60 Ga. App. 229, 236, 4 S.E.2d 418, 423–24 (1939); Bennett v. Stockwell, 197 Mich. 50, 56–57, 163 N.W. 482, 484 (1917).

[57] *In re* Grand Jury Proceedings, 4 F. Supp. 283 (E.D. Pa. 1933) (minutes of investigation which led to indictments for violation of the prohibition laws released on United States Attorney's application for use in proceedings re beer license revocation); In the Matter of Quinn, 293 N.Y. 787, 58 N.E.2d 730 (1944) (affirmance of order divulging minutes of investigation which led to report criticizing official for his negligence); In the Matter of Crain, 139 Misc. 799, 250 N.Y. Supp. 249 (Gen. Sess. 1931) (minutes of market investigation conducted by New York County District Attorney released to investigators into the conduct of that office); In the Matter of the Attorney General, 160 Misc. 533, 291 N.Y. Supp. 5 (County Ct. 1936) (minutes of state investigation which led to grand jury report concerning banking operations released, for use in connection with federal criminal trial, on application of United State Attorney General); *In re* People *ex rel.* Sawpit Gymnasium, 60 N.Y.S.2d 593 (Sup. Ct. 1946) (minutes of investigation which led to grand jury report concerning police collusion in gambling operation released on application by village seeking to stop conditions. See also Note, 27 N.Y.U.L. REV. 319 (1952).

[58] In Posten v. Washington, A. & Mt. V.R.R., 36 App. D.C. 359 (1911), the appellate court held that the grand jury was without any authority to report, and hence its members were exposed to actions in libel. That decision relied on the often cited case of Rector v. Smith, 11 Iowa 302 (1860), in which, however, the court had stated that the lack of malice would be a good defense.

[59] The conditional privilege of grand jurors to report on misconduct of public officers, honestly believing such reports proper and in the performance of their duty, was sustained in Rich v. Eason, 214 S.W. 581 (Tex. Civ. App. 1919). In Alabama where reports are improper, "fair" comment on the activities of public officials by grand juries was held to be privileged. Parsons v. Age-Herald Publishing Co., 181 Ala. 439, 61 So. 345 (1913). See also *Ex parte* Robinson, 231 Ala. 503, 504, 165 So. 582, 582–83 (1936), 17 B.U.L. REV. 438 (1937). See Dession & Cohen, *supra* note, 28, at 709–10 (1932).

[60] See, *e.g.*, Hoadley v. Hoadley, 244 N.Y. 424, 437, 155 N.E. 728, 733 (1927); First State Bank v. Hidalgo Land Co., 114 Tex. 339, 343, 268 S.W. 144, 146 (1925); 102 U. PA. L. REV. 254, 257–58 (1953).

[61] See VANDERBILT, THE DOCTRINE OF THE SEPARATION OF POWERS AND ITS PRESENT-DAY SIGNIFICANCE 43–45 (1953). See also Note, 37 MINN. L. REV. 586, 588–89 (1953).

[62] See *In re* Camden County Grand Jury, 10 N.J. 23, 65, 89 A.2d 416 443 (1944).

[63] For an excellent critical analysis of congressional investigations, see TAYLOR, GRAND INQUEST; THE STORY OF CONGRESSIONAL INVESTIGATIONS (1955). For the prosecutor's view of the contrasting roles of investigating commissions and committees, and of the public prosecutor, see REPORT OF THE DISTRICT ATTORNEY, COUNTY OF NEW YORK, 1949–54, 17–19 (1955).

[64] See Dession & Cohen, *supra*, note 28, at 700–02; Note, 39 CALIF. L. REV. 573, 574–75 (1951).

[65] See note 56 *supra*. The advantage of hearing witnesses publicly, with the possibility that this may provoke strangers to come forward and give the lie to false statements, has been recognized. See People v. Jelke, 308 N.Y. 56, 62–63, 123 N.E.2d 769, 771–72 (1954). This possibility, however, is probably outweighed by the advantages afforded by secrecy.

[66] See note 39 *supra*, and notes 95 and 96 *infra*.

[67] There may be some danger that handpicked grand jurors, not drawn from the same broad base as petit jurors may be politically influenced. See Morse, *A Survey of the Grand Jury System*, 10. ORE. L. REV. 217, 236–39 (1931).

[68] For discussion of the manner in which a grand jury's action can be controlled by the court, see part V, text at notes 117–41 *infra*.

[69] One New York Grand Jury, impanelled in December, 1949 by a Kings County Judge, filed thirteen reports in almost four and a half years of existence. Successfully completed prosecutions for police corruption, bookmaking, and waterfront racketeering were initiated by this grand jury. The jury's story is told, complete with the full text of each of the reports, in the 154-page printed REPORT OF SPECIAL INVESTIGATION BY THE DISTRICT ATTORNEY OF KINGS COUNTY AND THE DECEMBER 1949 GRAND JURY (1954) (page references are to this report). The success of the investigation does not, however, render proper the interim filing of the periodic "progress reports." The intemperate language contained in several of the reports ascribed criminal conduct to some persons who were not formally charged with crime, was unfair to innocent persons who were tarred with broad brush strokes intended for their colleagues, and detracted from the dignity of both the grand jury and the court.

Two years after the jury's inception, and long after its normal term had expired, it launched into a new and major field of investigation, the waterfront, although no reason appears why a new and less professional corps of jurors could not have handled such an investigation. Apparently while this jury was still in existence a second jury, under the aegis of the same Kings County Judge, assumed an expert role concerning youthful delinquents and issued a series of reports in that field. One such report pitted the jurors' expertise against that of a state commission which had conducted an extensive study of youth in the state courts. This was the thirteen-page report of the holdover October 1952 Kings County Grand Jury entitled "A Critique of the Report of the Subcommittee on Youth and Family in the Courts," issued Jan. 19, 1955. See account in N.Y. Times, Jan. 20, 1955, p. 33, col. 8.

[70] In the course of a dissenting opinion in Hurtado v. California, 110 U.S. 516, 538, 554–55 (1884), Mr. Justice Harlan noted that the grand jury, since free of control by the electorate and free from the public clamor, was ideally suited to the impartial and nonmalicious consideration of charges. The grand jury report has been considered a healthy check on autonomous units of government, giving the inhabitants an opportunity to express themselves thereon. 10 Holdsworth, *op. cit. supra* note 23, at 149. See also ORFIELD, CRIMINAL PROCEDURE FROM ARREST TO APPEAL 187 (1947); WILLOUGHBY, PRINCIPLES OF JUDICIAL ADMINISTRATION 193–94 (1929); NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, REPORT ON PROSECUTION 37 (1931); Medalie, *supra* note 28, at 7; Miller, *Informations or Indictments in Felony Cases*, 8 MINN. L. REV. 379, 405 (1924); Morse, *supra* note 67, at 333–38; 4 STAN. L. REV. 68, 78 (1951).

[71] See People v. McCabe, 148 Misc. 330, 333, 266 N.Y. Supp. 363, 367 (Sup. Ct. 1933); Comment, 52 MICH. L. REV. 711, 716–20 (1954).

[72] In 1954, the murder trial of Dr. Samuel Shepard in a Cleveland Court of Common Pleas received tremendous coverage in all media of mass communication. Similarly, in 1955, the second trial of Minot F. Jelke III, on the felony charge of living on the earnings of prostitution, also received detailed coverage.

[73] Throughout their duration, these hearings were directly televised on a nation-wide television network; this coverage was supplemented by nightly summaries of the highlights, on both radio and television; newspaper coverage was similarly extensive. For an account of this spectacle, see STRAIGHT, TRIAL BY TELEVISION (1954).

[74] See Brownell, *A Free Trial and a Free Press*, 132 N.Y.L.J. Nos. 66, 67, p. 4, col. 1 (Oct. 4–5, 1954); Ludwig, *Journalism and Justice in Criminal Law*, 28 ST. JOHN'S L. REV. 197 (1954). On May 11, 1954, by resolution, the Association of the Bar of the City of New York called on the ABA to amend § 20 of the Canons of Professional Ethics to make comment on pending cases by counsel improper. See account in N.Y. Times, May 12, 1954, p. 27, col. 5. Thereafter, on June 26, 1954, by resolution, the N.Y. State Bar Association similarly directed that action be taken to amend the canons. See account of N.Y. Times, June 27, 1954, p. 1, col. 1.

[75] The New York grand jury report on police recruiting and the Municipal Civil Service Commission of April 29, 1954, *supra* note 5, criticized an expert on police matters for certain charges he had made that, in part, had given rise to the jury's investigation. After the report was issued, and the jury had passed out of existence, this expert issued press statements critical of the jury, its report, and the district attorney. See N.Y. Times, May 1, 1954, p. 36, col. 5.

[76] See *In re* Camden County Grand Jury, 10 N.J. 23, 66–67, 89 A. 2d 416, 444 (1952).

[77] United States v. Garsson, 291 Fed. 646, 649 (S.D.N.Y. 1923).

FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes.

Mr. ELLENDER. Mr. President, I attended most of the hearings held on the bill now before the Senate. With respect to the question of whether or not the amounts involved in various categories were authorized, we had an understanding in committee that in regard to the amounts placed in the bill we would have to await the decision of the conferees on the authorizing bill in respect to foreign aid.

This matter has come up on many occasions and most of the overages were settled in conference because on many occasions the authorizing legislation was still pending before final action was taken by the committee. As an example, this year we had an appropriation of $750 million for the food stamp program. The authorization had not yet been enacted by Congress but the Senate had acted on an authorization of $750 million. As the Presiding Officer well knows, the conferees waited until the House had acted upon the bill so that no point of order could be made to the $750 million. Finally, the House came out with an authorization of $610 million and it was then that the conferees on the Agriculture bill for this year met and adopted

the $610 million that was finally authorized by the committee.

In regard to the foreign aid bill, we had an understanding with the chairman—in fact, the whole committee knew about it—that we would proceed to put in the bill the figure agreed upon by the subcommittee. I did not favor all of the amounts that were suggested, but I spoke to the chairman in committee and out of committee, that I felt that if, as, and when the conferees made their decision as to the amount in each category, that that could be attended to either in conference or when the committee considered the bill.

As I understand it, the chairman of the committee has reduced all of the items in keeping with the authorizations made by the Foreign Relations Committee. Yesterday the distinguished Senator from Arkansas presented a proposed amendment, and I felt at that time that an amendment of that kind would be good if it applied to all bills. But I have just learned, instead of applying to all bills, it applies only to this one.

Mr. FULBRIGHT. Mr. President, will the Senator from Louisiana yield?

Mr. ELLENDER. I yield.

Mr. FULBRIGHT. I am willing to make it apply to all of them. I thought other people might think it was presumptuous of me to do that. But I am more than willing to accept an amendment that would make it apply to all of them, if it is possible to do so. I may have said that I think it should apply. I understood that it would apply. I thought it was the rule, but it turns out that it is not the rule. But the only reason I offered it to this bill is that it was a special responsibility of my committee. With the Senator's assistance, I am more than willing to make it apply to all of the appropriation bills if it can be done.

Mr. ELLENDER. That is it. Can it be done on the bill and not be legislative in character?

Mr. FULBRIGHT. Yes. The Parliamentarian said last night that this is not subject to a point of order; that this is not legislation.

The PRESIDING OFFICER. The Chair would inform the Senator from Arkansas that this one is not subject to a point of order, but if applied to all bills, it would be subject to a point of order.

Mr. ELLENDER. That is the point I wish to make, Mr. President.

Mr. FULBRIGHT. If the Senator will yield further, I would be perfectly willing to offer it to all that come up, one by one. I am not trying to welsh on the proposal that way.

Mr. ELLENDER. I understand the position of the Senator from Arkansas, but personally I had in my mind the question as to whether we could make this apply to all bills, and I felt that in order to make it apply to all bills it would be necessary to put legislation in the Senator's amendment. But the point I wish to emphasize at this time is simply this: that the chairman of the Subcommittee for Foreign Appropriations agreed—in fact, the whole committee agreed—that they would go along and put into the bill the amounts authorized by Congress when the bill came up for consideration before the Senate or in conference, and we would agree to limit the appropriation in each category. Since that has been done, I do not see any point in attaching the amendment to the bill. I want to make that plain. But, if it were possible to make it apply to all, I would be for that. It strikes me an act to that effect might be advisable, and I want to tell my good friend from Arkansas that I will do all I can to try to enact a bill that would make this principle apply to all bills that come before Congress.

Mr. AIKEN. Mr. President, it appears to me that if we do not adopt this amendment now, we are, in effect, agreeing that the Appropriations Committee does have the power to exceed authorization amounts which have been agreed to by Congress. We do not know when any new legislation would be enacted. It might be 6 months. It might be 6 years. By that time, we do not know what sort of government we might be having here.

In the matter of the authorization bill itself, the conferees on the Committee on Foreign Relations approved a lump sum for military assistance which could be used for Korea or for any other part of the world where military assistance appeared to be needed most at the time.

I, for one, did not feel that we were in a position to tell the executive branch exactly where such emergencies or such needs might occur from month to month, unless we wanted to be continuously legislating on these matters.

We also included in the bill funds for the additional items which the Appropriations Committee brought forth. Several of them, can be seen on page 3 of the foreign aid appropriation bill, but we did not undertake to tell the executive branch that it must use the funds for that or any particular purpose, although it was clearly understood why the amounts were added.

Thus, last week, I took exception to a proposal which would have told the Government of South Vietnam that we would give them $80 million a year for 4 years if the South Vietnamese Government would enact legislation which we approved of.

Now I think we are trying to tell the executive branch of our own Government the same thing.

I disapprove of that, too.

The executive branch should be held accountable for the manner in which it uses the money, but Congress should not attempt to tell the executive branch in detail when, where and how it should spend every dollar.

If we agree this morning that the Appropriations Committee has authority to submit legislation which exceeds the authorization, we are in effect abdicating our authorization power.

As I remarked a few months ago, the Appropriations Committee would, in effect, become a presidium.

If one reads the constitution under which the Soviets operate, it reads very nicely, but the Presidium has such power that whatever it recommends to both Soviet Houses, the Presidium gets approved every time, and usually it is by unanimous action.

We do not want to work in that direction.

The time to stop this trend is now.

Mr. STEVENS. Mr. President, I have looked through the pending bill with interest to ascertain if there was anything in the bill that was for the support of the General Assembly of the United Nations, because I have a great feeling concerning a resolution adopted by that assembly on December 15, I am informed, which I ask unanimous consent be printed in the RECORD at this point.

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

RESOLUTION, UNITED NATIONS GENERAL ASSEMBLY

Question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind: Report of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction

Brazil, Ceylon, Chile, Ecuador, Guatemala, Kuwait, Mauritania, Mexico and Trinidad and Tobago; revised draft resolution

The General Assembly,

Recalling its resolution 2467 A (XXIII) to the effect that the exploitation of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, should be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries,

Convinced that it is essential, for the achievement of this purpose, that such activities be carried out under an international regime, including appropriate international machinery.

Noting that this matter is under consideration by the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction,

Recalling its resolution 2340 (XXII) on the importance of preserving the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, from actions and uses which might be detrimental to the common interests of mankind,

Declares that, pending the establishment of aforementioned international regime:

(a) States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction;

(b) No claim to any part of that area or its resources shall be recognized.

Mr. STEVENS. Mr. President, I would like to read one portion of it. This is a resolution of the First Committee of the General Assembly, which states the following. The resolution—

Declares that, pending the establishment of the aforementioned international regime:

(a) States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction;

(b) No claim to any part of that area or its resources shall be recognized.

Mr. President, that is directly contrary to the existing state of international law.

I ask unanimous consent that there be placed in the RECORD at this point a sur-

vey of coastal state mineral jurisdiction and the continental margin in the North Sea Continental Shelf cases which involved Germany, Denmark, and the Netherlands.

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

COASTAL STATE MINERAL JURISDICTION AND THE CONTINENTAL MARGIN

SURVEY OF NATIONAL PRACTICE

To date, 102 nations,[1] including 98 coastal nations, have recognized the principle of the coastal state's jurisdiction over adjacent offshore mineral resources. Forty nations (36 of them coastal) have asserted this principle by ratifying the Convention on the Continental Shelf.[2] The other countries have done so by one or more of the following methods: (1) by domestic legislation, (2) by agreement with other nations, or (3) by granting offshore concessions.[3]

Of the 98 coastal nations which have asserted their general jurisdiction over offshore minerals, at least 39 have done so with respect to specific submarine areas which, according to available information, appear to be beneath waters deeper than 200 metres. In most cases, this has been done by the issuance of deep-water leases; [4] in others by decree, agreements with neighboring states or offers of such agreements,[5] or announcements of national policy.[6] At least 14 coastal nations have granted leases which include areas beyond both the 200-metre isobath and 50 nautical miles from shore.[7]

A summary of this national practice appears below. Compilation of this information is complicated by (1) the variety of ways in which assertions of offshore seabed jurisdiction have been made, (2) apparent inconsistencies between law and practice in several nations, and (3) the fact that some nations have asserted seabed jurisdiction by more than one method. This summary is not limited to the practice of members of the United Nations.

ANNEXED LISTS

I. Parties to Geneva Convention on the Continental Shelf (40).

II. States, not parties to the Convention, which have made declarations or enacted legislation concerning jurisdiction over the continental shelf (49).

A. Adopted the Convention's definition (8).

B. Adopted the exploitability criterion (3).

C. Adopted other definitions (15).

D. Adopted shelf concept in general legislation or proclamation, but no precise definition (23).

III. Other states and territories, not parties to the Convention, which have granted offshore concessions in apparent absence of general legislation (19).

IV. States (whether or not parties to the Convention) which have granted offshore concessions for areas in which waters deeper than 200 metres have been provisionally identified (31).

V. Practice of the United States.

I. Parties to Geneva Convention on the Continental Shelf (40)[8]

Albania, Australia, Bulgaria, Byelorussian SSR, Cambodia, Colombia, Czechoslovakia, Denmark, Dominican Republic, Finland, France, Guatemala, Haiti, Israel, Jamaica, Kenya, Madagascar, Malawi, Malaysia, Malta. Mexico, Netherlands, New Zealand, Poland, Portugal, Romania, Senegal, Sierra Leone, South Africa, Sweden, Switzerland, Thailand, Trinidad and Tobago, Uganda, Ukrainian SSR, USSR, United Kingdom, United States, Venezuela, Yugoslavia.

Footnotes at end of article.

II. States, not parties to the Convention, which have made declarations or enacted legislation concerning juridiction over the continental shelf (49)

A. Adopted the Convention's Definition (8)

1. Argentina: National Executive Power, Law No. 17,094–M. 24 of 29 Dec. 1966 (U.N. Doc. A/AC 135/11 at p. 10).

2. Germany: Federal Republic: Proclamation on the Continental Shelf, 20 Jan. 1964.

3. Honduras: Congressional Decree No. 21 of the Constituent National Assembly, 19 Dec. 1957.

4. India: Petroleum and Natural Gas Rules, 1959, Art. 3 (U.N. Doc. A/AC 135/11/Add. 1 at p. 13).

5. Italy: Act No. 613 of 21 July 1967, Law for Exploration and Production of Liquid and Gaseous Hydrocarbons in the Territorial Sea and Continental Shelf (U.N. Doc. A/AC 135/11 at p. 38).

6. Morocco: Petroleum Code, Dahir No. 1–58–227, 21 July 1958.

7. U.A.R.: Decree on the Continental Shelf, 3 Sept. 1958 (54 Am. J. Int'l L. 497 (1960)).

8. Uruguay: Decree, 16 July 1963.

B. Adopted the exploitability criterion (3)

1. Brazil: Boletim Especial #196, 20 Oct. 1967, Embassy of Brazil.

2. Norway: Provisional Act of 21 June 1963 relating to the Exploitation and Exploration of Submarine Natural Resources (U.N. Doc. A/AC 135/11 at p. 46).

3. Philippines: Proclamation No. 370 of 20 Mar. 1968 (U.N. Doc. A/AC 135/11 at p. 47).

C. Adopted other definitions (15)

1. Canada: Statement of Canadian representative before U.N. Ad Hoc Committee on March 11, 1968 (U.N. Doc. A/AC 135/1, at p. 33), confirmed by Canadian Embassy, Washington, D.C. ("at least to the abyssal depths").

2. Chile: Presidential Declaration Concerning the Continental Shelf, 23 June 1947 (U.N. Doc. A/AC 135/11 at p. 26); Declaration Over the Maritime Zone, Santiago, 1952, ratified by Decree 432, 23 Sept. 1954 (200 miles).

3. Costa Rica: Article 1 of Decree-Law No. 803 of 2 Nov. 1949 and Article 6 of the Constitution ("submarine shelf and continental base").

4. Dahomey: Decree No. 74 of 7 March 1968 (100 miles) (U.N. Doc. A/AC 135/11/Add. 1 at p. 11).

5. Ecuador: Art. 630, Civil Code, 20 Aug. 1960 (U.N. Doc A/AC 135/11 at p. 30) (200 metre isobath), but compare Declaration of Santiago, 1952, ratified by Executive Decree No. 275, 7 Feb. 1955 (200 miles), and Supreme Decree No. 1542 of 10 Nov. 1966, amending Art. 633 of Civil Code (200 miles). (Inconsistency in article numbers appears in U.N. and P.A.U. documents).

6. El Salvador: Arts. 1 and 8, Constitution of 1962 (200 miles).

7. Germany: Democratic Republic: Declaration on the Continental Shelf of the Baltic Sea, Moscow, October 23, 1968 ("the surface and subsoil of the bed of the Baltic Sea as a shallow sea are a continuous continental shelf").

8. Ghana: Act. No. 175, The Territorial Waters and Continental Shelf Act, 19 April 1963 (U.N. Doc. A/AC 135/11 at p. 34) (100 fathoms).

9. Indonesia: Government Regulations substituting Law No. 44 of 26 Oct. 1960 on the Mining of Petroleum and Natural Gas (Continental Shelf of the Indonesia Archipelago).

10. Ivory Coast: Offshore Law, Decree 67–334 of 1 August 1967 (200 metres).

11. Nicaragua: Declaration in May 1949 under Constitution of 1948 (200 metres). Executive Decree of 5 April 1965 (200 miles) appears to apply only to living resources. The Constitution of 1 Nov. 1950 states that the National Territory includes the "continental shelf" and "submerged foundation."

12. Panama: Law No. 31 of 2 Feb. 1967 (200 miles).

13. Pakistan: U.N. Legis. Series ST/LEG/SER. B/6, Dec. 1956, at 38 (100 fathoms adopted in 1950).

14. Peru: Presidential Decree No. 781 of 1 Aug. 1947 (200 miles); Petroleum Law No. 11780 of 12 March 1952 (200 miles).

15. South Korea: Presidential Proclamation of Sovereignty Over Adjacent Seas, 18 Jan. 1952 (Continental Shelf regardless of depth of water).

D. Adopted shelf concept in general legislation or proclamation, but no precise definition (23)

1. Bahamas (U.K.): Bahamas (Alteration of Boundaries) Order in Council No. 2574, 26 Nov. 1948.

2. British Honduras (U.K.): Oil Mining Regulations, 2 Sept. 1949.

3. Brunei: The Petroleum Mining Enactment, 1963.

4. Burma: Concession Rules, 1962.

5. Greece: Petroleum Law (Law 3948) of 10 April 1959.

6. Iran: Law of 19 June 1955.

7. Iraq: Proclamation of 24 Nov. 1957 (U.N. Doc. A/AC 135/11 at p. 36).

8. Jamaica: Jamaica (Alteration of Boundaries) Order in Council (No. 2575) of 26 Nov. 1948.

9. Kuwait: Proclamation of 12 June 1949 (U.N. Doc. A/AC 135/11 at p. 39).

10. Libya: Petroleum Law of 1955.

11. Nigeria: Mineral Oil (Amendment) of 17 Dec. 1959.

12. Saudi Arabia: Royal Pronouncement of 28 May 1949; Regulations for the Ownership of Red Sea Resources, Royal Decree No. M/27 of 1 October 1968.

13. Spain: Hydrocarbons Act of 26 Dec. 1958.

Persian Gulf States

14. Bahrain: Proclamation of 5 June 1949.

15. Muscat & Oman: Offshore activity, Petroleum Press Service, June 1968 at 204.

16. Oatar: Proclamation of 8 June 1949.

Trucial States

17. Abu Dhabi: Proclamation of 10 June 1949.

18. Ajman: Proclamation of 20 June 1949.

19. Dubai: Proclamation of 14 June 1949.

20. Fujairah: Offshore activity, Petroleum Press Service, June 1966 at 274.

21. Ras al Khaimah: Proclamation of 17 June 1949.

22. Sharjah: Proclamation of 16 June 1949.

23. Umm al Qaywayn: Proclamation of 20 June 1949.

III. Other states and territories, not parties to the Convention, which have granted offshore concessions in apparent absence of general legislation: (Data from announcements and press reports)[9]

1. Angola (Portugal): Boletim Oficial Sept. 12, 1964. See also Petroleum Press Service, June 1968 at 204. (The jurisdiction of Portugal outside of its territorial seas is set forth in Law 2080 of March 21, 1956. This law applies to all overseas territories of Portugal. Basis II limits concessions to the 200-metre isobath, except "when a special law otherwise disposes.")

2. Cameroon: Petroleum Press Service, June 1968 at 204.

3. Cuba: Concession map of October 1957, reproduced in Barrows, Petroleum Legislation. Presumably expropriated.

4. Equatorial Guinea (Fernando Poo, Rio Muni): See Decreto 1043/1968 of 2 May 1968 re: Rio Muni (published 27 May 1968); Petroleum Press Service, June 1968 at 204.

5. Ethiopia: Several offshore concessions are in effect.

6. Gabon: Decree No. 375 of July 5, 1968.

7. Guyana: Two offshore concessions are in effect.

8. Japan: Petroleum Press Service, August 1968 at 305. Two offshore concessions are in effect.

9. Mauritania: Two concessions are in effect; "Oil & Gas Discoveries," February 1968, at 33–34.

10. Mozambique (Portugal): Petroleum Press Service, No. 1967 at 420. See Diario do Voerno 11 Oct. 1967, "Bases Anexas ao Decreto," No. 47,990.

11. Somalia: Concession granted 29 May 1961.

12. Spanish Sahara (Spain): Petroleum Press Service, No. 1966 at 427.

13. Sudan: Exploration licenses have been granted for deep-water metal-containing brines in the Red Sea.

14. Surinam (Netherlands): Petroleum Press Service, July 1966 at 275.

15. Timor (Portugal): Petroleum Press June 1968 at 204.

16. Togo: Petroleum Press Service, June 1968 at 204.

17. Tunisia: Petroleum Press Service, Jan. 1967 at 33.

18. Turkey: Three offshore concessions were in effect in 1966.

19. Yemen: One offshore concession was granted in 1961.

IV. States (whether or not parties to the Convention) which have granted offshore concessions, or undertaken development, in areas provisionally identified as including waters deeper than 200 meters

Note a: This listing is based in part on examination of published concession agreements, concession maps, decrees, etc., and in part on unpublished information from sources believed to be reliable.

Note b: In countries marked with an asterisk (*), the seaward boundary of concessions appears to approximate the 100-fathom isobath, but lies beyond that isobath in one or more areas.

Note c: In the 14 countries marked (#), the seaward boundary of at least one concession appears to be beyond the 200-metre isobath and more than 50 nautical miles from shore.

1. Australia.#
2. British Honduras.*
3. Canada.#
4. Cuba (concession outstanding in 1957).
5. Denmark.*
6. Equatorial Guinea.
7. Ethiopia.*
8. Gabon.#
9 Ghana.
10. Guyana.#
11. Honduras.*#
12. Indonesia.*#
13. Italy.
14. Jamaica.*#
15. Japan.#
16. Malaysia.#
17. Mauritania.*
18. Norway.#
19. Oman.#
20. Panama.*
21. Peru.*#
22. Philippines.*
23. Senegal.#
24. Spanish Sahara.
25. Sudan.
26. Surinam.#
27. Trinidad.
28. Turkey.
29. United Kingdom.
30. U.S.A.
31. U.S.S.R.

On March 13, 1969, the U.S.S.R. representative stated in the United Nations Committee on the Peaceful Uses of the Seabed Beyond the Limits of National Jurisdiction that, "In the Soviet Union drilling was being carried out in the Caspian Sea at depths of from 300 to 600 metres. . . . " (U.N. Press Release GA/3929, 13 March 1969, at p. 4).

V. Practice of the United States

The Department of the Interior, in 1961, granted a phosphorite lease off the California coast in water depths ranging from 240 to 4,000 feet (1,340 metres). This lease was subsequently surrendered.[10]

In 1963 and 1964, the Department issued oil and gas leases in water depths ranging up to 1,500 feet (457 metres).[11] In 1968, oil and gas leases issued in Santa Barbara Channel included an area in 1,800 feet of water (550 metres).

In 1968, a United States oil company drilled a well in 1,299 feet of water (395 metres), penetrating rock to a depth of 13,622 feet. This well was plugged and abandoned.

The Department has published leasing maps for areas off the California coast as far as 100 miles from the mainland, at depths as great as 6,000 feet.[12]

In 1967, the Department granted a permit to Humble Oil and Refining Company to drill 21 coreholes beneath the Atlantic Ocean in water ranging in depth from 650 feet to 5,000 feet on "the continental slope beyond the continental shelf off Florida and northward to points seaward of Cape Cod and Georges Bank." The areas in which drilling was authorized lie as far as 300 miles from the coast. The permit was not exclusive, and does not include rights to any mineral leases.[13]

The United States has asserted jurisdiction over resource development on the Cortes Banks about 100 miles from the California mainland, separated from the mainland by a trench about 1,500 metres deep.[14]

FOOTNOTES

[1] These 102 are identified in Parts I, II, and III of this Appendix. To these 102 nations may be added 5 territories which are partially self-governing, making a total of 107 jurisdictions. See note 9 *infra*.

[2] These 40 are identified in Part I of this Appendix.

[3] These 63, plus 5 territories which are partially self-governing, are identified in Parts II and III of this Appendix.

[4] 31 nations which have apparently authorized or undertaken development in water deeper than 200 meters are identified in Part IV of this Appendix.

[5] Decrees or international agreements or tenders of international agreements have been found to include water deeper than 200 metres in instances which involve eight nations, in addition to the 31 nations which have issued deep-water leases. These eight are: Chile (200 miles); Dahomey (100 miles); East Germany (Baltic Sea Decree); Ecuador (200 miles); El Salvador (200 miles); Poland (Baltic Sea Decree); Saudi Arabia (Red Sea Decree); U.S.S.R. (Baltic Sea Decree). See also Soviet announcement in the U.N. of drilling in Caspian Sea at depths of 300 to 600 metres (Press release GA/3929, 13 March 1969, p. 4).

[6] For example, Canada.

[7] These 14 are identified in Part IV of this Appendix.

[8] U.S. State Department, *Treaties in Force*, January 1, 1969 (Publication 8432).

[9] Of the 19 jurisdictions listed here, 5 are territories (Angola, Mozambique, Spanish Sahara, Surinam and Timor).

[10] *Interim Report on the United Nations and the Issue of Deep Ocean Resources*, by the Subcommittee on International Organizations and Movements of the House Committee on Foreign Affairs, H.R. Rep. No. 999, 90th Cong., 1st Sess. (1967) at 151. The memorandum opinion of the Associate Solicitor, Department of the Interior, dated May 5, 1961, concerning the application of the Outer Continental Shelf Lands Act to the lease area, is printed in the *Interim Report* at 165–68.

[11] These leases are listed in the *Interim Report* at 164.

[12] Barry, *The Administration of the Outer Continental Shelf Lands Act*, 1 Natural Resources Lawyer 38, 47 (July 1968).

[13] Geological Survey Release, "Core Drilling to Begin on Continental Slop Off Atlantic Coast," (No. 94, 229–67) May 26, 1967.

[14] Barry, note 12 *supra*, at 47.

EXTRACTS FROM THE JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE IN THE NORTH SEA CONTINENTAL SHELF CASES—GERMANY-DENMARK, GERMANY-NETHERLANDS

[1969 Rep. I.C.J. 1 (20 Feb. 1969)]

19. More important is the fact that the doctrine of the just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it—namely, that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. Its existence can be declared (and many States have done this) but does not need to be constituted. Furthermore, the right does not depend on its being exercised. To echo the language of the Geneva Convention, it is "exclusive" in the sense that if the coastal State does not choose to explore or exploit the areas of shelf appertaining to it, that is its own affair, but no one else may do so without its express consent.

41. As regards the notion of proximity, the idea of absolute proximity is certainly not implied by the rather vague and general terminology employed in the literature of the subject, and in most State proclamations and international conventions and other instruments—terms such as "near", "close to its shores", "off its coast", "opposite", "in front of the coast", "in the vicinity of", "neighboring the coast", "adjacent to", "contiguous", etc.—all of them terms of a somewhat imprecise character which, although they convey a reasonably clear general idea, are capable of a considerable fluidity of meaning. To take what is perhaps the most frequently employed of these terms, namely "adjacent to", it is evident that by no stretch of imagination can a point on the continental shelf situated say a hundred miles, or even less, from a given coast, be regarded as "adjacent" to it, or to any coast at all, in the normal sense of adjacency, even if the point concerned is nearer to some one coast than to any other. This would be even truer of localities where, physically, the continental shelf begins to merge with the ocean depths. Equally, a point inshore situated near the meeting place of the coasts of two States can often properly be said to be adjacent to both coasts, even though it may be fractionally closer to the one than the other. Indeed, local geographical configuration may sometimes cause it to have a closer physical connection with the coast to which it is not in fact closest.

42. There seems in consequence to be no necessary, and certainly no complete, identity between the notions of adjacency and proximity; and therefore the question of which parts of the continental shelf "adjacent to" a coastline bordering more than one State fall within the appurtenance of which of them, remains to this extent an open one, not to be determined on a basis exclusively of proximity. Even if proximity may afford one of the tests to be applied and an important one in the right conditions, it may

not necessarily be the only, nor in all circumstances, the most appropriate one. Hence it would seem that the notion of adjacency, so constantly employed in continental shelf doctrine from the start, only implies proximity in a general sense, and does not imply any fundamental or inherent rule the ultimate effect of which would be to prohibit any State (otherwise than by agreement) from exercising continental shelf rights in respect of areas closer to the coast of another State.

43. More fundamental than the notion of proximity appears to be the principle—constantly relied upon by all the Parties—of the natural prolongation or continuation of the land territory or domain, or land sovereignty of the coastal State, into and under the high seas, via the bed of its territorial sea which is under the full sovereignty of that State. There are various ways of formulating this principle, but the underlying idea, namely of an extension of something already possessed, is the same, and it is this idea of extension which is, in the Court's opinion, determinant. Submarine areas do not really appertain to the coastal State because—or not only because—they are near it. They are near it of course; but this would not suffice to confer title, any more than, according to a well-established principle of law recognized by both sides in the present case, mere proximity confers *per se* title to land territory. What confers the *ipso jure* title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion—in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea. From this it would follow that whenever a given submarine area does not constitute a natural—or the most natural—extension of the land territory of a coastal State, even though that area may be closer to is than it is to the territory of any other State, it cannot be regarded as appertaining to that State—or at least it cannot be so regarded in the face of a competing claim by a State of whose land territory the submarine area concerned is to be regarded as a natural extension, even if it is less close to it.

Mr. STEVENS. Mr. President, my State of Alaska is very vitally affected by the resolution that was adopted by the General Assembly. I feel very strongly that we should review the actions of the General Assembly when the purport to interfere with the jurisdiction of this Nation over the seabed which is the logical extension of the land mass of this continent that we claim off the coast of Alaska. The Outer Continental Shelf and Outer Continental Shelf Margin comprise an area probably about as large as our State, which, again, is one-fifth of the size of the United States as a whole.

If we were to abide by the resolution adopted by the General Assembly of the United Nations, it would mean we would forgo development of the area outside of our "national jurisdiction," which is not only in conflict with the Outer Continental Shelf Act but in conflict with the 1958 Convention whereby the coastal nations of the world agreed that a coastal nation had the right to claim the seabed under the oceans to the farthest extent that it is exploitable—is to the edge of the Continental Margin.

To adopt the position of the United Nations in relation to this area and to tie up this area in international jurisdiction would be limiting the area that our Nation could rely upon for the future for minerals, oil and gas, and living resources that inhabit the floor of the sea.

I feel very strongly that we should take a very close look at any future appropriations that deal with this activity of the United Nations. I am happy to see the Senator from Rhode Island (Mr. PELL) present on the floor at this time. I would be very pleased if we could do something to resolve the position of the United States on this matter. Our position before the United Nations on this issue was very cloudy. And, it is I feel, incumbent upon this Congress to clearly state the limits of our claim of sovereignty over the seabed adjacent to our shores.

Mr. McGEE. Mr. President, I ask unanimous consent that we might correct the figures in the adjustments to the bill that have already been acted upon.

The figures contained on page 2 of the bill, lines 11 and 12, do not add up to the total we submitted on line 10.

The figure on line 11 should be $183,500,000.

The figure in line 12 should be $90,750,000.

I ask unanimous consent that those technical corrections be made.

The PRESIDING OFFICER. Is there objection to the consideration of those amendments while the amendment of the Senator from Arkansas is pending? The Chair hears none, and the technical amendments are considered and agreed to.

Mr. FULBRIGHT. Mr. President, at the same time, I may point out that there is a typographical error on line 4 of my amendment. The word "expended" should be "appropriated." I ask unanimous consent that the amendment be modified accordingly.

The PRESIDING OFFICER. Is there objection to the requested change? Without objection, the correction will be made.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

[No. 254 Leg.]

Aiken	Gurney	Prouty
Bellmon	Hatfield	Proxmire
Bible	Holland	Ribicoff
Boggs	Hruska	Schweiker
Byrd, W. Va.	Hughes	Scott
Church	Javits	Sparkman
Cook	Kennedy	Spong
Cotton	Mansfield	Stennis
Cranston	McGee	Stevens
Dole	McGovern	Williams, Del.
Dominick	McIntyre	Yarborough
Ellender	Mondale	Young, N. Dak.
Fong	Montoya	Young, Ohio
Fulbright	Muskie	
Griffin	Pell	

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Missouri (Mr. SYMINGTON), the Senator from Alaska (Mr. GRAVEL), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Texas (Mr. TOWER) is necessarily absent.

The PRESIDING OFFICER. A quorum is not present.

Mr. BYRD of West Virginia. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Allen	Goldwater	Miller
Allott	Goodell	Moss
Baker	Gore	Murphy
Bayh	Hansen	Nelson
Bennett	Harris	Packwood
Brooke	Hart	Pastore
Burdick	Hartke	Pearson
Byrd, Va.	Jackson	Percy
Cannon	Jordan, N.C.	Randolph
Case	Jordan, Idaho	Saxbe
Curtis	Long	Smith, Maine
Dodd	Magnuson	Smith, Ill.
Eagleton	Mathias	Talmadge
Eastland	McCarthy	Thurmond
Ervin	McClellan	Tydings
Fannin	Metcalf	Williams, N.J.

A quorum is present.

Mr. McGEE. Mr. President, now that a quorum of the Senate is present, I think it would be in order to summarize very quickly the question that is at stake in this particular vote. It is a procedural question.

The amendment proposed by the chairman of the Committee on Foreign Relations would suggest that in this appropriation bill any sums finally approved in the conference process in excess of the authorization by the two authorizing committees would automatically be reduced to the ceiling authorized by the Congress. I believe I state the point of the amendment fairly.

The reason for our objection to it on the Appropriations Committee is a simple one. We agreed that we should not appropriate beyond the authorizing level.

The only reason that this question surfaced at all was that we did not have an authorizing level when we had to meet on the House appropriations bill. So we made the best guesses we could of the range of the likely authorization. Some items turned out to be higher than the authorizing conference agreement that was arrived at late yesterday.

So, in conference with the Senator from Arkansas, I, as chairman of the Subcommittee on Foreign Operations of the Appropriations Committee agreed that we ought to correct this if we can for the future. As a first step, our committee proposed to cut back any of our recommended figures to the level authorized by the two authorizing groups. We have done so. Those have been submitted and approved as the pending figures in the legislation. We do not have a single figure over the authorizing level.

So, my position is that in view of the fact that we have worked out our first step in this matter, we ought then to take the necessary logical step which has

been explained to us by the Parliamentarian. That is for the Senate to take positive action to change the rule guiding the Comptroller General so that it applies to all appropriations operations, if that is the will of the Senate.

Whether that should be done or not will be the question that will be debated at that time. But it is our objection that now that we have made this effort to take this step forward—that we ought to be within the authorization—it is not only gilding the lily to go ahead with an amendment reminding us that that is what we ought to have done, but also, it casts the committee in the role, I think, of being at least called into question; and the committee has made every effort to abide by this proposal.

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

Mr. McGEE. I yield.

Mr. PASTORE. I think that the Senator has just put his finger on the nub of the problem. I know it is not intended for this reason, but obviously this amendment, coming in at this juncture, could have the appearance of criticizing the Appropriations Committee for a situation that we have constantly condemned.

Had the legislative committees passed their own authorization bills, and had the conference agreed on this before we began to mark up the bill, we would not have had this problem at all.

The Senator from New Hampshire has raised the point, and I have raised the point several times—as a matter of fact, we wrote it in our report. This is a bad way to run a railroad, the idea that we are reporting and are being forced to report appropriation bills on many occasions even before the authorization is resolved. That is a bad practice.

I do not think our committee is of any mind to go above the authorizations. As a matter of fact, we discussed that matter at length in our committee, and we made it abundantly clear that if we were misguessing, we would correct it on the floor, to make sure that we would abide by the authorized figure agreed to in conference. To put it in now looks to me a little like punishing those who have been criticizing the very situation that confronts us now.

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

Mr. McGEE. I yield.

Mr. HOLLAND. I certainly subscribe to what my distinguished friend, the Senator from Rhode Island, has just said, and I want to add one other point.

The practice is as old as my membership in the Senate—and I have been here nearly 24 years—that when an item comes over in a House appropriation bill, which they put in, which is not in the authorization, even if the authorization is complete, a point of order cannot be raised. We have to consider it.

We had two such items in this bill when it came over, one relating to South Korea and one relating to Taiwan. One of them we knocked out in the committee and the other one we approved.

Are we going to criticize the House for a practice as old as the Senate—that when something comes up that is not in the authorization but is regarded by that House, or later by this House, as being of sufficient importance to be handled, it can be placed in the bill?

The question is, are we going to slap at the other body because they have two items in this bill which were not authorized? I do not think we can do that, especially when our committee has approved one of those items. I feel very keenly that that item was correctly approved, because I think we should modernize or help to modernize the South Korean Army, which confronts North Korea. They are fighting by our boys in South Vietnam. They have shown extreme loyalty to us. They are friends in the Orient who have shown abundantly some gratitude for the many things we have done for them.

I do not want to vote for something which not only appears to slap at a practice that is as old as the Senate and to slap at the House in this bill, but also to slap at an objective which our Appropriations Committee already has approved and which is now in the bill, and which I think is appropriately in the bill. I would welcome an up and down vote on it.

If the Senate does not approve our helping South Korea in this military way, not in the authorization bill, that is well and good. But the committee felt that South Korea was entitled to be helped. So far as the Senator from Florida is concerned, he still feels that way and does not want to take action that appears to be a slap at the House and the Senate committee and at the same time at a practice which is age-old in Congress and is strictly in accord with the rules.

Mr. McGEE. I might say to the Senator from Florida that a pending amendment by the Senator from Arkansas will raise the direct question of the Korean issue, and there will be a vote on that. We have separated that from this principle in terms of this amendment, so that will be treated separately.

Mr. HOLLAND. It seems to me that the amendment as worded applies to every part of the bill. As I read the amendment, it says:

> No funds appropriated by the act may be expended to the extent that such funds exceed those authorized to be expended for the fiscal year ending June 30, 1970.

We all know that those items were not authorized, we all know that they caused the bill to go over the total authorized amount, and we all know that the practice exists and was approved long, long ago by the House rules and followed by the Senate. We all know that we have a rule in the Senate that, prior to authorization, if we, the Senate had passed an authorizing bill, we can put the measure in the Appropriations Committee even before the House has considered that authorization bill. We did that in the food stamp matter earlier in the year.

It seems to me that this amendment strikes in many ways at what is the normal practice in the Senate and in Congress as a whole.

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

Mr. McGEE. I am glad to yield.

Mr. FONG. Now that the authorization bill has been accepted by the House-Senate conference committee has the chairman of the Foreign Operations Subcommittee, in conformity with the understanding of the Appropriations Committee, revised the figures to conform with the authorization bill?

Mr. McGEE. Every figure that was in excess of the authorization has been revised down to the authorized figure. There is no exception to that.

Mr. FONG. In other words, there is no figure here that exceeds the authorization ceiling?

Mr. McGEE. No. Even though the committee had approved a higher figure, we have agreed to adjust these figures in conformity with the authorization—as a matter of fact, as a product of the discussion between the chairman of the Foreign Relations Committee and the members of our committee.

Mr. FONG. In other words, as the bill now reads, the figures have been revised downward?

Mr. McGEE. All those figures have been revised downward.

I should explain that we did exempt military assistance, because that is going to be a separate amendment, which is pending. We did not want to confuse the two.

Mr. FONG. My understanding is that this amendment is directed only to this bill. Is that correct?

Mr. McGEE. Only to this bill. It specifies only this bill.

Mr. FONG. Has any such amendment been attached to any other appropriation bill?

Mr. McGEE. I could not say that it never has, but I have no knowledge of one having been attached to an appropriation bill.

Mr. FONG. Since this committee has already acceded to the figures of the Foreign Relations Committee, is there any need now for this provision?

Mr. McGEE. In my opinion, not only is there no need for it, but also, it really sort of kicks us in the face, after we have made this very genuine effort to address ourselves to the problem that the Senator from Arkansas has raised.

Mr. FONG. The only reason why this matter has come up is that we did not get the figures of the Foreign Relations Committee when we worked on this bill.

Mr. McGEE. That is correct. That was the only reason why it could have arisen, theoretically. It did not arise in fact because we had the tentative agreement that whenever we got those figures from conference, we would cut the figures back to whatever the level was.

Mr. FONG. In fact, if this provision is passed, it will show that the Appropriations Committee alone—not any other committee—has been slapped?

Mr. McGEE. First, it will show that this committee made a conscious effort to cooperate on this and to make the point, and then, in the face of that cooperation, received this thrust in the form of this amendment.

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

Mr. McGEE. I yield.

Mr. COTTON. Mr. President, I commend the chairman for his statement. I doubt that many people outside Congress would know a rollcall vote could be in-

terpreted as a reprimand of this particular subcommittee of the Appropriations Committee. But the fact remains that, obviously, we have to vote for this amendment, because many of us have been constantly striving to see that we stay within the authorization. We vote for it and then, it is interpreted as a reprimand of the committee. I regret that the distinguished author or authors of this amendment insist on having a record vote.

ORDER OF BUSINESS

Mr. COTTON. Mr. President, will the Senator yield to me for one-half minute on another matter?

Mr. McGEE. I yield.

CHANGE OF CONFEREES ON LABOR-HEW APPROPRIATION BILL

Mr. COTTON. Mr. President, when the conferees were named for the Labor and Health, Education, and Welfare conference, the chairman of the subcommittee understood that the Senator from New Jersey (Mr. CASE) would have to be absent from the Senate, and, therefore, the chairman omitted naming him as a conferee. At that time it was thought we would meet today. The House will not be ready to meet until tomorrow.

It would be regrettable, therefore, to have it appear that the Senator from New Jersey (Mr. CASE), who is the second ranking minority leader, had been left out purposely.

I have been trying to contact the Senator from Washington (Mr. MAGNUSON). I shall contact him, and if he has any objection, I shall bring the matter back to the Senate, although I know he will not object to naming the Senator from New Jersey. The representation on that committee of conference will retain its balance between majority members and Republicans if the distinguished chairman of the Committee on Appropriations (Mr. RUSSELL) is put on ex officio, just as the Senator from North Dakota (Mr. YOUNG) is a member ex officio.

Therefore, I am going to ask unanimous consent that the name of the Senator from New Jersey be restored next to my own name in his position as second ranking Republican member of the committee and that the committee be counterbalanced by naming the distinguished Senator from Georgia (Mr. RUSSELL), who certainly can be represented by proxy. In that way, the balance will be retained. I give the Senate my word, because I am sure there will be no objection; but if it does meet with objection, I will bring the matter back to the Senate. I wish to add again that it had been the understanding of the Senator from Washington that the Senator from New Jersey would be out of town and could not serve.

Mr. President, I ask unanimous consent that the request I have stated above may be carried out.

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

Mr. COTTON subsequently said: Mr. President, I ask unanimous consent to modify the unanimous-consent agreement I obtained before the Senator from Washington arrived on the floor by changing it as follows: Instead of adding the name of the Senator from Georgia (Mr. RUSSELL) to the conferees on the Labor-HEW appropriation bill, add the name of the Senator from Rhode Island (Mr. PASTORE).

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

FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15149) making appropriations for Foreign Assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes.

The PRESIDING OFFICER. The Senator from Wyoming has the floor.

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

Mr. McGEE. I would be glad to yield to the Senator from Arkansas.

Mr. FULBRIGHT. Mr. President, we had a live quorum to assure an adequate number of Senators. Does the Senator expect to debate this matter much longer?

Mr. McGEE. I was only trying to be courteous to Senators who had asked me to yield.

Mr. FULBRIGHT. I wonder if we could get to the vote.

Mr. McGEE. I am ready to vote.

Mr. FONG. Mr. President, in view of the fact we have revised the figures downward and conformed with the figures of the Committee on Foreign Relations, I move that this amendment be laid on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. The yeas and nays have not been ordered.

The question is on agreeing to the motion to table.

Mr. FONG. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Arkansas. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Texas (Mr. TOWER) is necessarily absent.

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from Kentucky (Mr. COOPER). If present and voting, the Senator from Texas would vote "yea" and the Senator from Kentucky would vote "nay."

The result was announced—yeas 34, nays 57, as follows:

[No. 255 Leg.]

YEAS—34

Allott	Fannin	Muskie
Bellmon	Fong	Pastore
Boggs	Goldwater	Percy
Brooke	Griffin	Randolph
Cannon	Gurney	Scott
Cotton	Holland	Smith, Ill.
Curtis	Hruska	Stennis
Dodd	Jackson	Stevens
Dole	Jordan, N.C.	Williams, N.J.
Dominick	McGee	Young, N. Dak.
Eastland	McIntyre	
Ervin	Montoya	

NAYS—57

Aiken	Harris	Murphy
Allen	Hart	Nelson
Baker	Hartke	Packwood
Bayh	Hatfield	Pearson
Bennett	Hughes	Pell
Bible	Javits	Prouty
Burdick	Jordan, Idaho	Proxmire
Byrd, Va.	Kennedy	Ribicoff
Byrd, W. Va.	Long	Saxbe
Case	Magnuson	Schweiker
Church	Mansfield	Smith, Maine
Cook	Mathias	Sparkman
Cranston	McCarthy	Spong
Eagleton	McClellan	Talmadge
Ellender	McGovern	Thurmond
Fulbright	Metcalf	Tydings
Goodell	Miller	Williams, Del.
Gore	Mondale	Yarborough
Hansen	Moss	Young, Ohio

NOT VOTING—9

Anderson	Hollings	Russell
Cooper	Inouye	Symington
Gravel	Mundt	Tower

So Mr. FONG's motion to lay Mr. FULBRIGHT's amendment on the table was rejected.

Mr. FULBRIGHT. Mr. President, I am sorry the Senator from Hawaii moved to table. I did not intend to engage in a long debate. As a matter of fact, I had not said anything at that stage. I had no notice whatever that the Senator from Hawaii intended to move to table a very simple amendment. All the amendment which is now before the Senate and which is to be voted on would do is assert the principle which I had thought was already the law—I did not know it was not the law; namely, that money which is not authorized by the legislative committees may not be appropriated or spent.

It does not happen to be the law. Money can be spent, and the General Accounting Office and the Comptroller General will approve the expenditure of money that has not been authorized by the legislative committees in the regular authorization bills.

It is a very simple proposition to put into this bill a principle which I dare say 90 percent of the Senators thought was already the law. I thought it was.

This amendment is not intended, nor should it be considered, as a slap at the Appropriations Committee. I do not know why members of that committee should be so sensitive about a matter which I believe some of them thought was the law until it was brought to our attention it was not, due to the very peculiar circumstances of this matter.

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

Mr. FULBRIGHT. I yield.

Mr. STEVENS Mr. President, I sat here this morning and overheard or witnessed

a colloquy between the Senator from Wyoming and the Senator from Arkansas. It was my understanding that we had deleted from the bill all items that were not authorized by the authorization bill. Is there some item that is not authorized by the authorization bill still in the appropriation bill?

Mr. FULBRIGHT. Yes, there is, and I have another amendment that will deal specifically with it. There is an item in this bill that is not authorized by the authorization bill. It is a specific item.

Also, prior to this morning's colloquy and the actions of the committee, the amounts were different and higher with regard to other amounts. But there is a specific item earmarking funds for Korea, and as soon as we have finished the matter now before us, I will offer an amendment on the Korean item. But that is a separate matter, and the Senator from Wyoming agrees that we should handle it separately.

But the pending amendment is a general proposition that legislation which is properly enacted is the controlling limitation upon the expenditure of funds. I had thought that was the law.

Mr. STEVENS. As I understand the ruling, as advised by the Parliamentarian, it is that this is not general legislation. It is legislation that pertains only to funds in this bill, and there were funds in the bill that were not authorized by law.

Does the Senator's amendment affect the planes for Nationalist China provided in the bill?

Mr. FULBRIGHT. That is not in either bill.

Mr. STEVENS. It is in the House bill.

Mr. FULBRIGHT. What I mean by the "bill" is the report of the conference committee, the conference report which will be voted on today in the House. It has been agreed to. It is not in that. Neither is the Korean item in the authorization bill as agreed to yesterday in conference. It is not authorized in the authorization bill.

Mr. STEVENS. Either the amendment that the Senator has offered is legislation, and is subject to a point of order, or it merely is setting forth a fact that exists in the bill.

Mr. FULBRIGHT. If the Senator wants to make a point of order, he may. I do not think it is legislation on an appropriation bill, because I confine it to this bill. I would have made it applicable to all bills, but it would have been legislation on appropriation bills. If the Senator wants to make a point of order, he may.

Mr. HOLLAND. Mr. President——

Mr. FULBRIGHT. Just a word or two before I yield the floor. I had not expected this to precipitate a great deal of objection, particularly on the part of senior members of the Appropriations Committee. I realize that in this body we do a great many things by agreement and by personal obligation, and I do not downgrade the importance of that in the least; but this is a matter of principle which should apply to all bills. It certainly should apply to this bill. I do not see why members of the committee should feel offended or should feel that this is a slap in the face. Nobody intends this as a slap against anybody. We agree that this is a government of law and not of men. We admit that as a generalization. I admit that very often we do things without law and by gentlemen's agreement, but I hardly believe that this is the kind of issue that should be decided by such an agreement. It seems to me very proper that it should be voted on.

As I said a moment ago, I personally thought this was already the law. I did not realize the complexities of appropriation bills, especially when legislative provisions are put in the House bill under a special rule and are no longer subject to a point of order in the Senate. This kind of development, while often used, had escaped my notice, possibly because no bill I had been interested in had been involved before.

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

Mr. FULBRIGHT. I yield.

Mr. COTTON. If the Senator broadened his amendment to lay it down for all appropriation bills, and no Senator raised the point of order, it would go through, and it would be a very good thing to do. Would the Senator attempt to test that?

Mr. FULBRIGHT. The only reason why I did not raise it was that I was confident a point of order would be raised. I know of no way to anticipate the Senate in this way.

I am interested in this bill because this matter is one of the important issues before my committee. I felt a special responsibility for it.

I would certainly think the principle ought to be made applicable to all bills. Before the Senator came into the Chamber, I think, I stated I was willing and intended to offer general legislation, after the recess, to affect all bills. That was not aimed at this subcommittee, or the Appropriations Committee, either. It is the assertion of a general principle of what I had thought was already the law. I wanted to make very certain that it was.

As the Senator well knows, it is only when an occasion arises that raises a point that it is time to offer an amendment. We do not offer such an amendment apropos of nothing: we do it when something happens. In this particular case I did not assert any blame on the part of the committee.

It is a fact that the bill came out with substantially larger appropriations than had been authorized due to no fault of the committee. It was over $200 million, I think. That circumstance gives rise to asking the question. That is why we asked the question of the Comptroller General: "What is your attitude? Will you honor a voucher that had not been authorized?" He said he would, which surprised me very much.

Mr. COTTON. It is the intention of the Senator from New Hampshire, after the recess, to introduce a measure to provide that authorizations cannot be exceeded, but that if the legislative committees have failed to determine their authorizations by the first of July, the Appropriations Committee may go ahead and appropriate, and that will be the authorization. This would avoid the situation we have had on two or three different bills of trying to report appropriations when we did not know what the authorizations were.

Mr. AIKEN. May I say, that is the situation now under a continuing resolution, but the expenditure is restricted to the maximum amount which had been appropriated for the current year. We may have to have a continuing resolution on this bill before we get through, if it is not a good bill.

Mr. FULBRIGHT. Of course, that would not be a bad solution. I discussed it with the chairman of the Appropriations Committee once before. I had thought that might be the best solution, in view of the President's plan. He appointed a task force headed by a very prominent banker, Mr. Peterson, from California, and a number of other prominent people, who are studying this matter. In fact, Mr. Peterson came to see me yesterday. It would not be out of order, it seems to me, to have a continuing resolution.

Mr. AIKEN. No, I know it would not be. However, I have not seen quite eye to eye with my chairman about continuing the foreign aid program by using the continuing resolution process. I have felt we ought to try our utmost to get legislation through. However, if the bill as we finally vote on it is not good, I would have no compunction against voting against it, and then relying on a continuing resolution to continue the program for the rest of the year. I hope we do not have to do that, however.

Mr. FULBRIGHT. I hope so, too. And I hope, Mr. President, that the members of the Appropriations Committee who have voiced their views that this is a slap at them will reconsider that view. I do not think it should be so interpreted. I think this is a straightforward proposition, dealing with an important aspect of our basic, fundamental governmental practices, and I see no reason why anyone should take it personally.

The fact is, in the way we operate, that only on an occasion such as the one that has developed here, through no fault, certainly, of the Appropriations Committee, would this problem occur. The committee is very free in alleging fault on the part of the authorizing committee, but the fact is that the bill did not pass the House of Representatives until very recently, and it has been our practice to wait and take up their bill. We had hearings early in the year, the administration's bill, but we did not act upon it until the House of Representatives had acted. That happened very recently.

I might say, in review of this matter, that, having had a new administration at the beginning of the year, the foreign aid bill did not come up until late in May. I do not remember the exact date, but it was late May before the bill was sent up from the administration. I am sure next time they will send it earlier. That is what has happened in the past.

I hope the Senate will agree to the amendment.

Mr. HOLLAND. Mr. President, certainly there is nothing personal in this matter at all, as far as the Senator from

Florida is concerned. I simply want to call attention to the fact that this amendment does not mean what the distinguished Senator from Arkansas evidently meant it to mean, and that it does fly in the face of a continuous practice that has existed here since long before I came to the Senate, which is this: That when the House of Representatives includes in an appropriation bill an item that is not authorized, sometimes even over a point of order when the point of order is voted down, then that item is in the bill, and is added to the bill for the purpose of consideration by our committee, and a point of order cannot be raised to it here. There is no question about that; this has been the uniform practice with reference to appropriation bills.

The amendment of the distinguished Senator from Arkansas does not recognize that that is the case. From what I understand, the distinguished chairman of the subcommittee has reduced all the line items that are in this bill, that were also in the authorization bill, to where they are not greater, in any case, than the figures shown in the authorization bill. But the trouble is, this amendment applies not just to those line items, but to the entire bill; and the trouble is that the House of Representatives put two items in this bill, which they had the perfect right to do under their rules and under established practice, which are not in the authorization bill. They were, first, an item to modernize or help modernize the army of South Korea. I believe it was $50 million.

The second was an item for Taiwan, something to do with furnishing some planes.

The committee, of course, had to consider those two items. They were properly in the bill. They had been placed in the bill by the other House. They were in the bill when it came to us.

The committee knocked out the Taiwan item, but approved the South Korean item, because I believe it was the unanimous attitude of the committee that South Korea was entitled to some help from us, that she was over there fighting with us in South Vietnam, that she had been one of our allies who had stood by us, that she was confronted by an army that was modernized in Korea, on the north side of the line, and that it was entirely appropriate to go ahead with the modernization of the South Korean army.

Mr. President, that item is in the bill, and it is in the bill in a sufficient amount to run the total well over the authorization, even though I understand that our distinguished chairman, the Senator from Wyoming, has reduced all the line items that were in the authorization bill to where none of them exceed the same line items in the authorization bill.

Mr. President, the vice in this amendment is that it applies, not just to those line items that were authorized, but to the entire bill. I read the amendment:

> And no funds appropriated by this Act may be expended to the extent that such funds exceed those authorized to be expended for the fiscal year ending June 30, 1970.

The fact of the matter is that if we were considering only line items which were in the authorization act, there would be no vice in the amendment, and there would be no application of the amendment to the present situation, because all the line items have been reduced appropriately since the bill came from the Authorization Conference Committee. When it was before the Appropriations Committee, we did not know what the final authorization was going to be, because the conference report had not been agreed to at that time.

Mr. President, unless we intend to take action here which completely flies in the face of established custom with reference to appropriation bills, we should vote down this amendment, because the amendment, by its very terms, applies to everything in the bill, and there is no doubt about it.

My good friend the Senator from Arkansas says that he has another amendment later, addressed directly to the Korean item. That is fine, and we can, of course, pass on that at the proper time. But, if we agree to this amendment and take any action on the Korean amendment, we shall have taken action on this amendment, which does apply to the Korean item—there is no question about it—and which would require the elimination of a large part of that Korean item, or perhaps the reduction of other matters in the bill well below the action of the committee; and the committee has now conformed to the authorization bill with reference to all the line items.

So the fact is that this amendment simply flies in the face of established, lawful, proper practice; and that proper practice has placed in this bill, now, the Korean item. It is properly in the bill, and no point of order could be sustained against it. A point of order could perhaps be sustained against it on the House side. I do not know whether a point of order was raised there or not. But if it was raised, it was not sustained, because the item is now in the bill, and the adoption of this particular amendment would simply fly in the face of established practice, and as a matter of fact would look like we are questioning the right of the other body to formulate its own rules to add items in full conformity with their rules, and with ours, to an appropriation bill.

They have done it in this case, and we cannot just waive it out of the picture because it is there.

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

Mr. HOLLAND. I am happy to yield.

Mr. FULBRIGHT. It is my understanding that on the House side, they have a rule which prevented their raising a point of order against these items. It is true that they put this item in the bill without a budget request. The administration did not request it. But some members of the House committee put the item in the bill. I do not think it had been approved at that time by the authorization committee. Perhaps it had been, but I know that it had not been approved by the Budget Bureau.

They got a special rule so that no one could make a point of order against it. This is an example of the type activity, among others, which I think justifies the amendment I have offered.

I did not intend to argue about Korea at this stage. I thought it was appropriate to do so in the amendment directed solely to that item.

In the bill there is, I believe, $164 million in military assistance, which certainly seems to be quite ample. This is what has been recommended, and it is in the bill.

In fiscal 1970, Korea is slated to get $77 million from surplus commodities. She will get $50 million in economic assistance in the Foreign Aid Act. That amounts to $291 million for this little country.

We have already given them economic and military assistance of $7.5 billion. This little country has received $7.5 billion. In addition, we have kept roughly 50,000 or 55,000 troops there and have expended vast sums on their upkeep.

They come in now and ask for another $50 million. I do not think there is any justification for it whatsoever. It seems to me that there ought to be some limit as to what we do for this country and every other country around the world.

We have paid them well for the troops they have sent to Vietnam. We have paid for all their transportation, all their upkeep, and all their modern weapons. We have given them the privilege of the PX's, which is a bonanza to them. They can go and buy unlimited quantities of luxury goods to be sold on the black market. This is well known everywhere. It is a very good economic deal for Korea.

But I think it is ridiculous. This is taxpayers' money that we are dealing with. I see no reason to go beyond what the regular rules of the Government, that is the authorization committee and the administration, provide.

This administration is certainly not anti-Korea. I think the amount that has been recommended is quite ample. And I cannot understand going overboard for these little countries just because they sent troops to Vietnam. They sent them there at our request.

We keep 50,000 troops there, and they send 50,000 troops to Vietnam. I do not know that there is any advantage in this. There would be no advantage in keeping them in Korea other than for the casualties the Koreans have suffered. I do not know how many casualties they have suffered; but Korea does not want to bring those troops home, as far as I know, I do not see why we should add another $50 million in the bill for this little country.

The same applies to the $54 million item that is in the House appropriation bill that the conferees did not authorize for Taiwan. Taiwan has gotten as much or more assistance, I expect, from our taxpayers' dollars than Korea. I have not looked it up, but Korea has received $7.5 billion. I expect that Taiwan has received about as much. But the House bill includes an item of $54 million earmarked for Taiwan. The item was not authorized.

I am told that with respect to Taiwan, which is a much smaller country—it has

only about 12 million people—we have already given them $5 billion.

We throw billions of dollars around as if they were peanuts. A billion dollars is a lot of money even in a time of inflation.

I do not understand why we go overboard for this kind of program. We still support their armaments and help to modernize their army every few years.

We do not give economic assistance to Taiwan. They have become so prosperous as a result of our investments that they do not need economic aid. They are viable and very prosperous. I guess that Taiwan is one of the most prosperous countries in the Far East.

I submit on the merits, which I did not intend to apply strictly to the bill, that I cannot accept the statement of the Senator from Florida that we are bound to accept the bill as it came from the Committee on Appropriations.

What the Senator is saying, in effect, is that all of the other Senators—75 out of 100—who are not on the Appropriations Committee might as well go fishing and forget about it, because what they do in passing legislation does not amount to a hill of beans because if the Appropriations Committee of the House wishes to do something else, we have to accept it. That is what the Senator from Florida says.

If we want to do that, we can do so, and the Senator from Florida can spend more time in Florida and enjoy the beautiful sunshine there and forget about the troubles of authorization or anything else, because it is of no significance if his principle is accepted.

The Senator is saying, "Look, the Appropriations Committee of the House must be respected. If they put in something and it gets by without a point of order, we have to accept it." They can do that in the House under their rules. And they did it in this case.

It is suggested that it would be treasonable to challenge the opinion of the Committee on Appropriations of the House, backed up by the Committee on Appropriations of the Senate. However, I am not quite ready to accept that proposition.

This is why I am offering the amendment now pending. It says that we think authorization committees have some part to play, although it is a minor part. Even though we authorize a good program, the Appropriations Committee, if it does not approve of it on the merits, does not provide the money. And the program dies. They will exercise the final death sentence in any case on any program of which they do not approve.

It seems to me that is a pretty big power. However, I just do not accept the idea that the legislative committees have no role to play in this process.

Mr. HOLLAND. Mr. President, I want to correct something that my distinguished friend the Senator from Arkansas has said. I do not have the faintest feeling that the entire Senate does not have the right to pass on the Korean item. I expect them to have an opportunity later to do so.

I am pointing out that the amendment is so broadly drawn that it applies to the Korean item and to the entire bill.

I simply point out also—and the Senator from Arkansas has pointed it up very well—that what we are asked to do here is to disapprove of the procedure in the House, not of the action of the Appropriations Committee, but of the fact that they have a Rules Committee, and that under the action of that committee they can operate in a different way from the way in which we operate here.

This is not the action of the Appropriations Committee. It is not the action of the Rules Committee. It is the action of the House of Representatives. It comes here in a legal manner as a well settled part of the bill, and whether the Senate will approve it eventually has yet to be seen.

But the Senator from Florida has never felt that the Appropriations Committee has the last word here, and he does not feel so now. He has been voted down too often on matters raised on the floor that attack items in appropriation bills.

Mr. FULBRIGHT. Very seldom.

Mr. HOLLAND. It happened a good many times in the last few days. And that is all right. That is the privilege of the whole Senate to do.

The Appropriations Committee does not arrogate to itself any power with respect to the final action on this matter. And it did not in this instance.

I simply point out to my friend the Senator from Arkansas—and I hope he will be sufficiently reasonable to analyze the situation—that his amendment as now drawn does apply not only to line items that were in the authorization bill, and which are now in good shape in the bill, but also to other items which are properly in the bill.

Mr. FULBRIGHT. Mr. President, will the Senator yield for a correction?

Mr. HOLLAND. I will yield in a moment.

It would apply also to items that are now regularly in the bill under the proper practice, one of which has been approved by the Appropriations Committee and can be acted on, and I hope will be acted on later, as the Senate may in its discretion determine. But the amendment of the Senator goes a great deal further than he has indicated that it does, or further than my dear friend the Senator from Wyoming felt it went when, a while ago, he said he felt that since all of the line items had been drawn down if they were over the items in the appropriation bill, some of them are now no longer under the items in the authorization bill. But this other part of the authorization bill, the part affecting South Korea, is just as much a part of the bill now—legally, properly, regularly so—as are the line items that were in the authorization bill. That is the point I am making.

Mr. FULBRIGHT. The Senator keeps saying "all the items." He has not corrected the military item back to $350 million, which is the amount authorized; but he has not done that, it is my understanding, because he knew I intended to offer a separate amendment. That has not been done yet.

Perhaps I did not make the point clear. We authorized $350 million for military aid. The President, if he wishes, can give every nickel of that to Korea. In the authorization bill, we never have picked out and said, "You must spend it here, here, and here." The administration comes up and justifies an amount by talking about various programs; but the law, as passed, does not require the President to spend it for anybody.

All Presidents heretofore, all administrations, have aways said it is not good practice to specify an amount for a specific country. This creates some very difficult problems in international relations. It creates jealousies among countries. It prompts every country to come in and lobby and solicit to have their money earmarked. In a legislative way, I believe this has been against the principles not only of this administration but also of every other administration—not to specify or earmark for a special country. This is why I object to the earmarking in the bill before us.

Nothing in the authorization bill in any way inhibits the President from spending that which already is contemplated, but he can spend it all in Korea if he so decides. What is being done here is at least violating a practice of the legislative committees, of picking out an additional amount and saying that can be spent only in Korea. In other words, "If you don't spend it in Korea, you will not get it at all." The legislative committees have always frowned upon this practice, not just the Senator from Arkansas. This has been standard procedure.

So I do not quite see why the Senator from Florida gives such significance to Korea. The money car. be used if it is thought to be important. As I said a moment ago, the President did not ask for this $50 million.

Mr. HOLLAND. Mr. President, the Senator may feel that we are violating somebody's proper practice. I am just telling him that we are not. I have been serving on the Appropriations Committee a long time, and I have been giving serious consideration to what it does.

I know that the HEW bill, which we passed only yesterday, came from the House with quite a number of items that were well above the authorized amount, and we had to deal with them as the bill came from the House of Representatives; and we are in that condition with reference to this bill.

The real intent of the amendment offered by the Senator from Arkansas is to deny a practice which is universal and has prevailed since long before either of us came to the Senate, a practice under which the House of Representatives can, in the judgment of a majority of its Members, or two-thirds of its Members if a point of order is raised, and in accord with its rules add items which are not authorized to an appropriation bill first considered by the House; so that when it comes over to us, those items are included. They are regularly included, and that is the point I am making. They are part of the bill, and there is nothing unusual about this bill in that regard.

I yield to the Senator from Wyoming.

Mr. McGEE. Mr. President, I have reflected rather carefully on the point that the Senator from Florida has made in regard to the language of the pending amendment and its relevance to the Ko-

rean issue. I think that perhaps I did respond a little too broadly to that earlier this morning.

Is it the Senator's point that if we adopt this amendment, Korea would already be out of order and this body would not have the chance to consider the issue as a separate issue, as proposed by the Senator from Arkansas?

Mr. HOLLAND. No; it can be considered. But if we adopt this amendment, either a large part of the Korean item will have to go out or we will have to knock out some other items in order to make way for the Korean item; because the military item of $50 million is a good deal more than could be incorporated in the bill and still come within the purview of this amendment. The Senator from Arkansas knows that is the case, and I am glad that the Senator from Wyoming has stated that it is the case. It is.

I think we should vote on this matter, but we should remember when we vote that what we are doing is questioning an established practice and the right of the other body to include items of this kind under its own rules.

Then the Senate can come along, if it wishes, and knock out any part of this bill, including the Korean item, on a special attack to that part. The Senate has a right to do that, if it wishes to do so. But this amendment would force just the course of action which the Senator from Wyoming has indicated.

Mr. McGEE. I am ready to vote, Mr. President.

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

Mr. McGEE. I yield.

Mr. MONTOYA. Mr. President, I should like to direct a question to the Senator from Florida.

Is it not a distinct certainty that if the amendment offered by the distinguished Senator from Arkansas is adopted, it would automatically knock out the Korean item in this bill and that in order to reinstate it, a positive amendment would be required?

Mr. HOLLAND. It certainly knocks out a part of it, and possibly all of it. I have not seen the full amount. It knocks out any part of it which could not come under the roof of the amount.

Mr. McGEE. It would knock out half of it.

Mr. MANSFIELD. Mr. President, I have only a few words to say on this amendment, and I do not intend to refer to Korea, Taiwan, Lebanon, Greece, Turkey, Egypt, Honduras, Israel, or any other part of the world affected by this bill. This is a matter of principle; a principle that reaches to the very core of the Senate as an institution. For it is the Senate as an institution operating by and under a committee system that, in my opinion, is here at stake.

I did not know until yesterday that an appropriations committee could reach beyond the carefully worked out decisions of an authorization committee with respect to the formulation of legislative objectives—including the overall financial commitment that we are willing to put behind those objectives. I did not know until yesterday that the General Accounting Office—the arm between the executive and legislative branches—which is independent, which is accountable to us only, would honor vouchers for sums expended by the Government in excess of those authorized to be appropriated as agreed upon by Congress.

So the issue has nothing to do with any country or with any particular aspect of this bill. Certainly it has nothing to do with the able and distinguished chairman of the subcommittee, the Senator from Wyoming (Mr. McGEE). The circumstances in a word were unavoidable.

But it does have something to do with the committee system as it operates in the Senate.

I would hope most sincerely that this amendment would be adopted, because something vital is at stake; and I would hope that as soon as possible an all-embracing amendment to the GAO Act would be adopted by the Senate and would make what we are attempting to do now applicable to all funding proposals. This is most important. Forgetting the foreign aid measure now before us altogether, this issue and the principle involved concerns the Senate as an institution and the coequal status of each Member regardless of the State he represents or the committees for which he is assigned.

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

Mr. MANSFIELD. I yield.

Mr. HOLLAND. Does the Senator mean that he thinks we should question the right of the other body to proceed under its rules to add items, as it has through the years, to literally dozens of appropriation bills?

Mr. MANSFIELD. Mr. President, I have listened to the arguments of the Senator from Florida. What the other body does is its own business. But what this body does is our business, and that is what I am interested in.

Mr. GRIFFIN. Mr. President, I send to the desk an amendment to the pending amendment and ask that it be stated.

The PRESIDING OFFICER (Mr. BYRD of Virginia in the chair). The amendment will be stated.

The bill clerk read as follows:

On page 24, line 2, strike out the period and insert: "and no funds appropriated by this or any other Act may be expended to the extent that such funds exceed those authorized to be appropriated".

Mr. GRIFFIN. Mr. President, I realize that this could be subject to a point of order as legislating upon an appropriation bill, but I suggest, in line with the words of the distinguished majority leader, that this is a very appropriate time to adopt this as a general principle, and I would hope no one would raise the point of order.

I voted for the motion to lay on the table the amendment as it was proposed by the Senator from Arkansas primarily because this subcommittee had cut back on the figures and it would appear we were taking a slap at this subcommittee in this situation. But what we are really talking about is a matter of general principle. We can hope there will be some general legislation in the future but I think we have an excellent opportunity here to make it clear that we are not taking a slap at a particular subcommittee in cutting back, if no one raises the point of order.

Mr. MANSFIELD. Mr. President, I agree completely with the distinguished Senator. This is the way to face up to it. I hope no point of order is raised. This is a matter of principle and the usefulness and the worthiness of the committee system, the legislative committee system, as it is supposed to operate in this body. I would not care if this had to do with any other committee, the principle is still there and nothing in this proposal is meant to impugn anything to the chairman of this committee, or any other committee.

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

Mr. GRIFFIN. I yield.

Mr. COTTON. Mr. President, the Senator from New Hampshire made that suggestion and expressed the hope there would not be a point of order raised. I do not see why a point of order should be raised. I think the Senator's point is exactly right.

Mr. McGEE. Mr. President, I want to remind Members of the Senate that we have agreed to take the step toward achieving this precise goal; that we agreed to cut back all our appropriations; that we agreed to make the first order of business, going about this in the proper legislative ways.

I would hope we bear in mind the orderly way to do this would be not to accept this amendment but to vote the legislation referred to earlier as soon as possible by employing orderly legislative processes rather than by this route, which would not have occurred to us at all.

Under the rules of the Committee on Appropriations, I am compelled to raise a point of order.

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

Mr. GRIFFIN. I am happy to yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, I commend the distinguished assistant minority leader for his proposal. I hope there will not be a point of order made. I think it is a laudable suggestion, and I think it comes at the appropriate time.

Notwithstanding that there may be internal strife or conflict over the meaning of his amendment, or the previous one and the circumstances that gave rise to it, the important thing is, as the majority leader pointed out, is that the legislative committees have no reason to exist unless the authorizing process is matched to the appropriating process.

The reason I rise is that I think this is an appropriate substitute which is now offered. I will support it if a point of order is not made. I think it underscores the remarks of the Senator from Washington (Mr. MAGNUSON) some weeks ago when he pointed out we should thoroughly examine the method of appropriations. I personally hope we will reach the time when we authorize during the first half of the year, take a specified vacation to go home for a week, and then come back and appropriate and put the Govern-

ment on a calendar year basis. But for the moment I think this is the way to approach it.

Mr. PASTORE. Mr. President, will the Senator yield for a moment?

Mr. GRIFFIN. I had promised to yield to the Senator from Hawaii.

Mr. PASTORE. I know I have been seeking recognition for about one-half hour. I suggest the Senator keep his promise and I will obtain the floor in my own right.

Mr. FONG. Mr. President, I would like to ask the minority whip this question: Do we have the right to legislate for the House of Representatives? The House of Representatives, through its Appropriations Committee, has forwarded to us a bill. Before it comes to this body it has to be voted on and approved by the House. Are we saying to the House of Representatives that this procedure is illegal?

Mr. GRIFFIN. I would respond by saying it has always been the understanding up until yesterday that we could not appropriate funds which had not been authorized, although that was in the rules of both Houses. The only thing I am trying to do is to make sure that rule will be observed.

Mr. FONG. That had been my understanding also. I thought we could only pass in the Appropriations Committee on matters that have been authorized. However, I found to my astonishment that that is not so. Now, we are trying to tell the House of Representatives that with respect to what has gone on for many, many years—the practice of circumventing the authorization committee and sending the matter to the Senate—we will not be in a position when we go to conference, to negotiate an agreement with them and that these matters are absolutely out.

I think it is the gist and the import of this amendment, as proposed by the distinguished Senator from Arkansas and as now amended by the distinguished Senator from Michigan that, if we pass this amendment, we would be telling the House that, "The procedures, you used to pass this appropriations bill, even though it came not from an authorizing committee but from the appropriating committee, is not legal and, therefore, we will not deal with the appropriations bill, even to the point that we will not confer with you."

The PRESIDING OFFICER. The Chair wishes to inquire of the Senator from Michigan if he had yielded to the Senator from Wyoming for the purpose of making his point of order.

Mr. GRIFFIN. I did not. I will yield the floor if he insists at a later point.

I would like to reply to the Senator from Hawaii that we are not trying to change the rules of the House. The Senate has something to do with making laws, and this is part of the process of making laws. What we are doing is consistent and appropriate as far as the Senate is concerned.

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

Mr. GRIFFIN. I am trying to yield so that the Senator from Rhode Island can be recognized.

Mr. PASTORE. I would hope we would not keep yielding for making speeches to and fro and that we would follow an orderly process and give everyone an opportunity to speak.

Mr. GRIFFIN. I yield to the Senator from Hawaii.

Mr. FONG. Mr. President, what we are really trying to do is tell the other body that their procedure is illegal; that whatever they do we are not going to confer with them. This is a matter which passed the House of Representatives. It is before the Senate, and now we are putting in a provision which says, "If you exceed what the authorizing committees have done, we will not confer with you." This is the import of the matter.

Mr. President, since the bill has been passed by the House of Representatives, even though it was by the Appropriations Committee and not by the authorizing committee, we have to deal with the House of Representatives.

Mr. GRIFFIN. With the hope that the Senator from Wyoming will not raise a point of order, I yield the floor.

Mr. PASTORE. Mr. President, let me say in answer to what has been said by the distinguished Senator from Hawaii, that only yesterday afternoon we wrote a permanent piece of legislation into a supplemental bill, against which the Senator from Hawaii voted and against which I voted. It had an all-encompassing effect, just as the Senator from Michigan suggests. Thus, there is precedent for what the Senator from Michigan is trying to do.

All I am saying is that the rules of the committee are that the Senator in charge of a bill must raise a point of order when any legislation is suggested to an appropriation bill. I think he is compelled to do so.

I am saying, at this juncture, that I shall vote against it, for the simple reason that, if we are going to write new language into a bill at all, it should apply to every appropriation bill, if it is going to become law.

Let us not make it the law on this particular bill, but let us make it the law that will affect every appropriation bill and then this will go to the House; and, if the House accepts it, then it becomes the law that binds them, too. If they refuse to accept it—and I believe that they will refuse to accept it—it will not be the law at all.

Mr. McGEE. Mr. President, may I ask what the pending item is?

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Michigan to the amendment offered by the Senator from Arkansas.

Mr. McGEE. Mr. President, I read the following rule passed by the Appropriations Committee:

> Any member of the Committee on Appropriations who is in charge of an appropriation bill is authorized and directed to make points of order against any amendment offered in violation of Senate Rules on the floor of the Senate to such an appropriation bill.

Under this rule of the committee, a rule I did not write—perhaps I was not even born when the committee adopted it—nonetheless, I am compelled to raise a point of order in regard to the amendment of the Senator from Michigan.

The PRESIDING OFFICER. The Senator is making a point of order?

Mr. McGEE. The point of order is that it is legislation on an appropriation bill. I have no choice in raising that point.

The PRESIDING OFFICER. Under all precedents of the Senate this would be legislation on a general appropriation bill. The Chair sustains the point of order.

Several Senators addressed the Chair.

Mr. McGEE. Mr. President, may I ask the leadership if it might be possible to agree upon a time limitation on the pending matter?

Mr. MANSFIELD. How much time?

Mr. McGEE. Five minutes to a side.

Mr. FULBRIGHT. Mr. President, I would prefer to have a vote. We have already had enough debate.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a time limitation of 10 minutes on the——

Mr. FULBRIGHT. Let us vote on this now. I will not agree to a time limitation. I want to see how the vote comes out of this.

Mr. MANSFIELD. Let us get the 10 minutes and not go beyond.

Mr. President, I ask unanimous consent that there be a time limitation of 10 minutes, with 5 minutes to a side to be equally divided——

Mr. FULBRIGHT. Mr. President, I do not want any more debate. I want to see how the vote comes out. All right, I do not object.

Mr. McGEE. Mr. President, I am ready to yield back my time.

Several Senators addressed the Chair.

Mr. BAKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Tennessee will state it.

Mr. BAKER. Do I correctly understand that a point of order has been made against the Griffin substitute?

The PRESIDING OFFICER. And the point of order was sustained.

Mr. BAKER. Then the business before the Senate now is the amendment offered by the distinguished Senator from Arkansas; is that correct?

The PRESIDING OFFICER. The Senator from Tennessee is correct.

Mr. McGEE. Mr. President, I ask unanimous consent that I may yield to the Senator from Alabama (Mr. SPARKMAN) for appointment of conferees.

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

ADDITIONAL MORTGAGE CREDIT

Mr. SPARKMAN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2577.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2577) to provide additional mortgage credit, and for other purposes, which was to strike out all after the enacting clause, and insert:

TITLE I—AMENDMENTS TO EXISTING ACTS

SECTION 1. So much of section 7 of the Act of September 21, 1966 (Public Law 89-597; 12 U.S.C. 461 note) as precedes paragraph (1) thereof is amended to read as follows:

"SEC. 7. Effective March 22, 1971,"

SEC. 2. The authority conferred by section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) shall also apply with respect to noninsured banks in any State if (1) the total amount of time and savings deposits held in all such banks in the State, plus the total amount of deposits, shares, and withdrawal accounts held in all building and loan, savings and loan, and homestead associations (including cooperative banks) in the State which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks, and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State, and (2) there does not exist under the laws of that State a bank supervisory agency with authority comparable to that conferred by this section, including specifically the authority to regulate the rates of interest and dividends paid by noninsured banks on time and savings deposits, or if such an agency exists it has not issued regulations in the exercise of that authority. The authority conferred by section 18(g) may not be exercised with respect to noninsured banks after July 31, 1970, and may only be exercised to limit the rates of interest or dividends which those banks may pay on time and savings deposits to maximum rates not lower than 5½ per centum per annum. Whenever it appears to the Board of Directors that any noninsured bank or any affiliate thereof is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of that section or of any regulations thereunder, the Board of Directors may, in its discretion, bring an action in the United States district court for the judicial district in which the principal office of the noninsured bank or affiliate thereof is located to enjoin such acts or practices, to enforce compliance with this section or any regulations thereunder, or for a combination of the foregoing, and such courts shall have jurisdiction of such actions, and, upon a proper showing, an injunction, restraining order, or other appropriate order may be granted without bond.

SEC. 3. (a) The authority conferred by section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) shall also apply with respect to nonmember building and loan, savings and loan, and homestead associations, and cooperative banks in any State if (1) the total amount of deposits, shares, and withdrawable accounts held in all such nonmember associations and banks in the State, plus the total amount of time and savings deposits held in all banks in the State which are not insured by the Federal Deposit Insurance Corporation, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks, and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State, and (2) there does not exist under the laws of that State a bank supervisory agency with authority comparable to that conferred by the first two sentences of this subsection, including specifically the authority to regulate the rates of interest and dividends paid by an such association or bank on deposits, shares, or withdrawable accounts, or if such an agency exists it has not issued regulations in the exercise of that authority. The authority conferred by that section may not be exercised with respect to nonmember associations and banks after July 31, 1970, and may only be exercised to limit the rates of interest or dividends which those associations or banks may pay on deposits, shares, or withdrawable accounts to maximum rates not lower than 5½ per centum per annum.

(b) In addition to any other penalty provided by the Federal Home Loan Bank Act or any other law, any institution subject to this section which violates a rule promulgated pursuant to this section and section 5B of the Federal Home Loan Bank Act shall be subject to such civil penalties, which shall not exceed $100 for each violation, as may be prescribed by the Federal Home Loan Bank Board by rule. Any such rule may provide with respect to any or all such violations that each day on which the violation continues shall constitute a separate violation. The Board may recover any such civil penalty for its own use, through action or otherwise, including recovery thereof in any other action or proceeding under this section. The Board may, at any time before collection of any such penalty, whether before or after the bringing of an action or other legal proceeding, the obtaining of any judgment or other recovery, or the issuance or levy of any execution or other legal process therefor, and with or without consideration, compromise, remit, or mitigate in whole or in part any such penalty or any such recovery.

(c) Whenever it appears to the Board that any non-member institution is engaged or has engaged or is about to engage in any acts or practices, which constitute or will constitute a violation of the provisions of this section and section 5B of the Federal Home Loan Bank Act or of any regulations thereunder, the Board may, in its discretion, bring an action in the United States district court for the judicial district in which the principal office of the institution is located to enjoin such acts or practices, to enforce compliance with these sections or any regulations thereunder, or for a combination of the foregoing, and such courts shall have jurisdiction of such actions, and, upon a proper showing, an injunction, restraining order, or other appropriate order may be granted without bond.

(d) All expenses of the Board under this section shall be considered as nonadministrative expenses.

SEC. 4. (a) The Federal Home Loan Bank Act is amended by adding at the end thereof the following:

"SEC. 31. (a) The purpose of this section is to improve the depth and liquidity of the secondary home mortgage market.

"(b) To carry out the purpose of this section, the several Federal Home Loan Banks, under the direction of the Board and acting through such agencies and instrumentalities as the Board may deem appropriate, are authorized, pursuant to commitments or otherwise, to purchase, service, sell, or otherwise deal in mortgages which are originated by members or by any institutions whose accounts or deposits are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation."

(b) Section 11(h) of the Federal Home Loan Bank Act (12 U.S.C. 1431(h)) is amended (A) by inserting "(1) pursuant to section 31 of this Act, (2)" immediately before "in obligations of the United States,", (B) by inserting "(3)" immediately before "in obligations, participations,", and (C) by inserting "(4)" immediately before "in such securities".

(c) Section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended (A) by inserting "(1) pursuant to section 31 of this Act, (2)" immediately before "in direct obligations", (B) by inserting "(3)" immediately before "in obligations, participations,", and (C) by inserting "(4)" immediately before "in such securities".

SEC. 5. (a) Effective as of the close of December 31, 1969, section 404 of the National Housing Act is amended

(1) by striking out "plus any creditor obligations of such institutions" in subsection (b)(1), and the amendment made by this subdivision (1) shall be applicable also to any then unexpired portion of any then current premium year under subsection (b)(1).

(2) by striking out "and creditor obligations" in subsection (b)(2).

(3) by striking out "and its creditor obligations" in subsection (c).

(4) by striking out "and creditor obligations" each place it appears in subsection (g). The condition in the first sentence of that subsection shall be deemed to be met as of the close of December 31, 1969. The words "such year" in that sentence shall be deemed to include also the year beginning January 1, 1970.

(b) The Federal Savings and Loan Insurance Corporation is authorized by regulation or otherwise

(1) to make such provisions as it may deem advisable with respect to the order in which and the extent to which the components of a pro rata share of its secondary reserve shall be applied or be deemed to have been applied in the case of a reduction of such share through a use under the second sentence of section 404(e) of the National Housing Act or the first sentence of section 404(g), a transfer of part of such share under the third sentence of section 404(e), or otherwise.

(2) to take such action, including without limitation such adjustments and refunds and such deferrals of premium payments and other payments, as it may determine to be necessary or appropriate for or in connection with the implementation of this section or other legislation amending or supplementing said section 404.

SEC. 6. (a) Section 19(a) of the Federal Reserve Act (12 U.S.C. 461) is amended by inserting after the word "interest," the following: "to determine what types of obligations, whether issued directly by a member bank or indirectly by an affiliate of a member bank or by other means, shall be deemed a deposit,".

(b)(1) The fourth sentence of section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended to read as follows: "The Board of Directors is authorized for the purposes of this subsection to define the terms 'time deposits' and 'savings deposits', to determine what shall be deemed a payment of interest, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this subsection and to prevent evasions thereof."

(2) Section 18(g) of such Act is further amended by inserting after the fifth sentence the following: "The provisions of this subsection and of regulations issued thereunder shall also apply, in the discretion of the Board of Directors, to obligations other than deposits that are undertaken by insured nonmember banks or their affiliates for the purpose of obtaining funds to be used in the banking business. As used in this subsection, the term 'affiliate' has the same meaning as when used in section 2(b) of the Banking Act of 1933, as amended (12 U.S.C. 221a(b)), except that the term 'member bank', as used in such section 2(b), shall be deemed to refer to an insured nonmember bank."

(c) The first sentence of section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended by inserting "or dividends" after "interest".

SEC. 7. Section 19(b) of the Federal Reserve Act (12 U.S.C. 461) is amended by adding at the end thereof a new sentence as follows: "The Board may, however, prescribe any reserve ratio, not more than 22 per centum, with respect to any indebtedness of a member bank that arises out of a transaction in the ordinary course of its banking business with respect to either funds received or credit extended by such bank to a bank organized

under the law of a foreign country or a dependency or insular possession of the United States.".

SEC. 8. Effective for the period beginning on the date of enactment of this Act and ending March 22, 1971, section 24 of the Federal Reserve Act (12 U.S.C. 371) is amended—

(1) by changing, in clause (3) of the third sentence of the first paragraph, "80" to read "90" and "twenty-five" to read "thirty", and

(2) by striking in the first sentence of the third paragraph the comma before "shall" and inserting in lieu thereof "or, to the extent authorized by regulations issued by the Comptroller of the Currency, in the case of a large construction project not to exceed 5 years,".

SEC. 9. (a) The following provisions of the Federal Deposit Insurance Act are amended by changing "$15,000", each place it appears therein, to read "$25,000":

(1) The first sentence of section 3(m) (12 U.S.C. 1813(m)).

(2) The first sentence of section 7(1) (12 U.S.C. 1817(1)).

(3) The last sentence of section 11(a) (12 U.S.C. 1821(a)).

(4) The fifth sentence of section 11(1) (12 U.S.C. 1821(1)).

(b) The amendments made by this section are not applicable to any claim arising out of closing of a bank prior to the date of enactment of this Act.

SEC. 10. (a) The following provisions of title IV of the National Housing Act are amended by changing "$15,000", each place it appears therein, to read "$25,000":

(1) Section 401(b) (12 U.S.C. 1724(b)).

(2) Section 405(a) (12 U.S.C. 1728(a)).

(b) The amendments made by this section are not applicable to any claim arising out of a default, as defined in section 401(d) of the National Housing Act, where the appointment of a conservator, receiver, or other legal custodian as set forth in that section becomes effective prior to the date of enactment of this Act.

TITLE II—AUTHORITY FOR CREDIT CONTROL

Sec. 201. Short title

This title may be cited as the Credit Control Act.

Sec. 202. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section apply to the provisions of this title.

(b) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(c) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(d) The term "person" means a natural person or an organization.

(e) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) The term "creditor" refers to any person who extends, or arranges for the extension of, credit, whether in connection with a loan, or sale of property or services, or otherwise.

(g) The term "credit sale" refers to any sale with respect to which credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(h) The terms "extension of credit" and "credit transaction" include both loans and credit sales.

(i) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(j) Any reference to any requirement imposed under this title of any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question.

Sec. 203. Regulations

The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

Sec. 204. Determination of interest charge

Except as otherwise provided by the Board, the amount of the interest charge in connection with any credit transaction shall be determined under the regulations of the Board as the sum of all charges payable directly or indirectly to the person by whom the credit is extended in consideration of the extension of credit.

Sec. 205. Authority for institution of credit controls

(a) Whenever the President determines that such action is necessary or appropriate for the purpose of preventing or controlling inflation generated by the extension of credit in an excessive volume, the President may authorize the Board to regulate and control any or all extensions of credit.

(b) The Board may, in administering this Act, utilize the services of the Federal Reserve banks and any other agencies, Federal or State, which are available and appropriate.

Sec. 206. Extent of control

The Board, upon being authorized by the President under section 205 and for such period of time as he may determine, may by regulation

(1) require transactions or persons or classes of either to be registered or licensed.

(2) prescribe appropriate limitations, terms, and conditions for any such registration or license.

(3) provide for suspension of any such registration or license for violation of any provision thereof or of any regulation, rule, or order prescribed under this Act.

(4) prescribe appropriate requirements as to the keeping of records and as to the form, contents, or substantive provisions of contracts, liens, or any relevant documents.

(5) prohibit solicitations by creditors which would encourage evasion or avoidance of the requirements of any regulation, license, or registration under this Act.

(6) prescribe the maximum amount of credit which may be extended on, or in connection with, any loan, purchase, or other extension of credit.

(7) prescribe the maximum rate of interest, maximum maturity, minimum periodic payment, maximum period between payments, and any other specification or limitation of the terms and conditions of any extension of credit.

(8) prescribe the methods of determining purchase prices or market values or other bases for computing permissible extensions of credit or required downpayment.

(9) prescribe special or different terms, conditions, or exemptions with respect to new or used goods, minimum original cash payments, temporary credits which are merely incidental to cash purchases, payment or deposits usable to liquidate credits, and other adjustments or special situations.

Sec. 207. Reports

Reports concerning the kinds, amounts, and characteristics of any extensions of credit subject to this title, or concerning circumstances related to such extensions of credit, shall be filed on such forms, under oath or otherwise, at such times and from time to time, and by such persons, as the Board may prescribe by regulation or order as necessary or appropriate for enabling the Board to perform its functions under this title. The Board may require any person to furnish, under oath or otherwise, complete information relative to any transaction within the scope of this title including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person.

Sec. 208. Injunctions

Whenever it appears to the Board that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation under this title, it may in its discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Board, any such court may also issue mandatory injunctions commanding any person to comply with any regulation of the Board under this title.

Sec. 209. Civil penalties

(a) For each willful violation of any regulation under this title, the Board may assess upon any person to which the regulation applies, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for the recovery thereof may, in the discretion of the Board, be brought in the name of the United States.

Sec. 210. Criminal penalty

Whoever willfully violates any regulation under this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

TITLE III—SMALL BUSINESS ADMINISTRATION ACTIVITY

SEC. 301. The Small Business Administration shall promptly increase the level of its financing functions utilizing the business loan and investment fund established under section 4(c)(1)(B) of the Small Business Act (15 U.S.C. 633(c)(1)(B)) by $70,000,000 above the level prevailing at the time of enactment of this Act. In the event that insufficient appropriated funds are available to carry out the provisions of this section, request for the necessary funds shall be promptly made by the Small Business Administration and cleared by all components of the executive branch having any functions with respect to such requests. The Small Business Administration shall submit to Congress a monthly report of its implementation of this section.

And amend the title so as to read, "An Act to lower interest rates and fight inflation, to help housing, small business, and employment, and for other purposes."

Mr. SPARKMAN. Mr. President, S. 2577 has been sent to us from the House. I ask unanimous consent that the Senate disagree to the House amendment, agree to a conference requested by the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered, and the Chair appoints the following conferees: Mr.

SPARKMAN, Mr. PROXMIRE, Mr. WILLIAMS of New Jersey, Mr. BENNETT, and Mr. BROOKE.

FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATIONS, 1970

The Senate resumed the consideration of the bill (H.R. 15149) making appropriations for Foreign Assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to amendment No. 435 as modified by the Senator from Arkansas (Mr. FULBRIGHT). On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

If present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

On this vote, the Senator from Kentucky (Mr. COOPER) is paired with the Senator from Texas (Mr. TOWER). If present and voting, the Senator from Kentucky would vote "yea" and the Senator from Texas would vote "nay."

The result was announced—yeas 62, nays 28, as follows:

[No. 256 Leg.]

YEAS—62

Aiken	Gore	Nelson
Allen	Griffin	Packwood
Baker	Hansen	Pearson
Bayh	Harris	Pell
Brooke	Hart	Prouty
Burdick	Hartke	Proxmire
Byrd, Va.	Hatfield	Randolph
Byrd, W. Va.	Javits	Ribicoff
Cannon	Jordan, N.C.	Saxbe
Case	Jordan, Idaho	Schweiker
Church	Kennedy	Smith, Maine
Cook	Magnuson	Smith, Ill.
Cotton	Mansfield	Sparkman
Cranston	Mathias	Spong
Dole	McCarthy	Thurmond
Dominick	McClellan	Tydings
Eagleton	McGovern	Williams, N.J.
Fannin	Miller	Williams, Del.
Fulbright	Mondale	Yarborough
Goldwater	Murphy	Young, Ohio
Goodell	Muskie	

NAYS—28

Allott	Fong	Montoya
Bellmon	Gurney	Moss
Bennett	Holland	Pastore
Bible	Hruska	Scott
Boggs	Hughes	Stennis
Curtis	Jackson	Stevens
Dodd	Long	Talmadge
Eastland	McGee	Young, N. Dak.
Ellender	McIntyre	
Ervin	Metcalf	

NOT VOTING—10

Anderson	Inouye	Symington
Cooper	Mundt	Tower
Gravel	Percy	
Hollings	Russell	

So Mr. FULBRIGHT's amendment was agreed to, as follows:

On page 24, line 2, strike out the period and insert: "and no funds appropriated by this Act may be expended to the extent that such funds exceed those authorized to be appropriated for the fiscal year ending June 30, 1970.".

Mr. FULBRIGHT. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PELL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ATTACKS ON AMERICAN PEACE CORPS VOLUNTEERS IN ETHIOPIA

Mrs. SMITH of Maine. Mr. President, today I received a very disturbing letter from a young man of Portland, Maine—a Peace Corps Volunteer recently returned from Ethiopia.

He urges that all Peace Corps Volunteers be brought back home from Ethiopia because it is no longer safe for them to be there because of the physical attacks made on them by the Ethiopian students they have been teaching and trying to help.

He reports that many of the Peace Corps Volunteers are convinced that Peace Corps usefulness in Ethiopia has ended.

He reports that he has made these observations and recommendations to the Peace Corps officials in Washington.

This young man knows whereof he speaks for he was attacked and beaten by the very Ethiopian students he was teaching and helping.

I have asked the Director of the Peace Corps for a report on this matter.

I ask unanimous consent to place in the RECORD at this point the letter and the detailed report that Mr. Craig Johnson, 38 Prospect Street, Portland, Maine, has made to me and obviously to many others since both are in printed rather than personal form.

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

PEACE CORPS,
Portland, Maine, December 14, 1969.

Senator MARGARET CHASE SMITH,
Washington, D.C.

DEAR SENATOR SMITH: I am a Peace Corps Volunteer who has recently returned from Ethiopia. I want to bring some recent political developments in Ethiopia and their implications to your attention. I feel that the political situation in many third world countries and the role that the Peace Corps plays in these countries is generally misunderstood by people in the United States and that it is vital that this misunderstanding be corrected.

Another volunteer and I were severely beaten last month by our students in Adwa, a small town in northern Ethiopia. The statement which I'm enclosing with this letter was distributed to all volunteers in Ethiopia and describes the events leading up to the beating. I and the other Adwa volunteers have since terminated. Since we left Ethiopia less than a week ago several other beatings have occurred, one leaving a volunteer with a broken jaw. The volunteers remaining in Ethiopia are badly scared. It is likely that a large number of volunteers will come home in the next few weeks. A large number of teachers are experiencing open hostility in their schools and many now fear for their personal safety.

The reasons for the beatings are in all cases the same: violent anti-Americanism on the part of university and secondary school students. This anti-Americanism is directed against Peace Corps Volunteers in particular because they are so conspicuous.

Young Ethiopians, particularly students, are deeply frustrated about their political and economic system. They see their country's problems, its poverty, lack of schools and job opportunities and aren't able to do anything about them, because despite the trappings of a parliamentary democracy all power really resides with the Emperor and the feudal power structure. The students also see the United States as being the primary support for the Emperor, supplying him with generous amounts of military and technical aid. It is a fact that the U.S. Army is very conspicuous in Ethiopia, with a large communications base in Asmara and various military, advisory and mapping missions at work throughout the country. The students feel that the American government is interested only in supporting the anti-Communist status quo in the world today, be it democratic or undemocratic (and Ethiopia is certainly not democratic). Students this year have been referring to Ethiopia as the "second Vietnam". They are convinced that if a popular revolution breaks out and the Emperor gets into trouble the United States will send troops and planes to support the Emperor and suppress the reform-minded students, just as they feel the United States has done in Vietnam. A persistent story in Ethiopia is that the U.S. Army played a part in helping to suppress the attempted coup d'etat in 1960 against the Emperor by blackmailing Ethiopian pilots at Debre Zeit into supporting the government. It isn't important whether in fact Ethiopia could become a second Vietnam but rather that such arguments are plausible and believed by the majority of Ethiopian students. In their frustration they believe that Americans stand between them and real change in their country. They look to Tanzania or Communist China as a model for development. In Tanzania the Peace Corps was asked to leave. Ethiopian students have decided that they want the Peace Corps out too. The more politically aware believe that at best Peace Corps Volunteers are sent by the government to make friends at the grass roots level to camouflage the more devious designs of U.S. foreign policy. At worst they accuse volunteers of being paid by the CIA. In such a situation it is impossible to teach, much less to achieve a sense of understanding when mistrust runs so deep.

A backlog of hate is being built up against Americans among those young Ethiopians who will someday lead the country. It is being built up despite the best efforts of volunteers to work and relate to people as individuals and to dissociate themselves from the policies of the State Department. But the bitter frustration students feel about their country and the role the United States seems to play in it is greater than many volunteers recognize. To understand such frustration you must put yourself in the place of a secondary school student who has sacrificed and worked to stay in school. If he is lucky and talented he may reach the twelfth grade (about 10% of the 10% of the Ethiopian school-age children in school do). But then less than 10% of all twelfth graders are accepted by the universities in Addis Ababa. If a student fails to make it to the university his future is a dead end. There are no jobs available for him. His situation is worse than that of high school dropouts in the United States because his expectations have been raised so high. He can't go back to the village or the farming life of his parents, so he usually drifts to the big cities such as Addis Ababa or Asmara looking for some sort of work. It is

against this bleak backdrop of frustration and hopelessness that the students' anti-Americanism must be seen. They feel that Americans are preventing them from solving the problems they see in their country. They come to hate volunteers more and more, not as individuals but as symbols of an oppressive American presence in Ethiopia which is holding them back and supporting the present government. The sooner Americans leave Ethiopia, the sooner they feel they can begin to solve their own problems. Although I don't like being beaten, I don't blame them for the way they feel.

Many university students are ardently pro-Marxist or Maoist. One teacher at the university estimated that about 25% of the students are active radicals and violently anti-American, about 50% sympathize but aren't militant, and the remaining 25% are either apolitical or support the monarchy. Recently the snack bar at the university was renamed the "People's Bar" and the campus magazine "Struggle" is filled with references to the enlightenment of the enslaved Ethiopian proletariat, to give some idea of the radical tenor of the campus. Such communist feelings however seem to be mostly nationalistic in form. They are simply a convenient, well-packaged ideology which allows students to vent their hostility towards the present system in Ethiopia. Many students I have talked with want rights and privileges which are not usually found in communist systems—freedom of the press and freedom to travel abroad, for example. It is clear to me that their disillusionment with the United States is not based so much on a rejection of democracy as on the hypocrisy they see in American foreign policy. The United States boasts of its liberties at home but refuses to allow others to exercise them abroad. In seeking to manipulate world affairs to its own advantage the United States is willing to deny democracy to people in other countries. Much of the third world, especially students, see the United States as being committed to the status quo, as long as it is anti-Communist, be it democratic and progressive or not. Whether or not this is a fair representation of U.S. foreign policy, it is the way a great many nationalist-minded people in the third world see us. Why else does the United States give military assistance to countries such as Greece and Ethiopia if it believes in free elections and the responsibility of a government to its people? In the eyes of many foreign students the United States has abandoned those ideals which once made American democracy the model for revolutionaries the world over.

I along with many other volunteers feel that Peace Corps usefulness in Ethiopia has ended. We as volunteers are a conspicuous and very vulnerable target for students who want to strike out against the Emperor. There is a proverb in Amharic which aptly describes the situation: "Don't beat the donkey, beat the load he carries". Students have physically beaten several volunteers in the past few weeks, and many more volunteers have felt the hate and hostility of their students in the classroom. More beatings are likely now that violence has been used and has been successful in forcing at least some volunteers to leave the country. The more radical students will push for a final expulsion of Peace Corps, possibly with more violence. As we recommended to Peace Corps officials in Washington we feel all volunteers should be brought home from Ethiopia. It's doubtful that this will come as an administrative decision but more likely as an individual one as volunteers resign from the Peace Corps and come home.

I hope you see the explosiveness of the current situation in Ethiopia, and some of the reasons behind it. I hope too that if you have a chance you will comment on some of the ideas in this letter. Should you want more information you might talk with any of the many returned Ethiopian volunteers currently in Washington, or write to me in Maine.

Hoping that you will find the situation in Ethiopia worthy of your attention,

CRAIG JOHNSON.

PEACE CORPS, ETHIOPIA.

A PERSONAL MESSAGE TO ALL PEACE CORPS VOLUNTEERS IN ETHIOPIA FROM CRAIG JOHNSON, DICK OBERMANNS, AND DEB KENDALL

On Friday November 14 Dick and I were severely beaten by our eleventh grade students on our way back to school. We want to use this statement to explain the events leading up to the beating and the implications we think the situation in Adwa has for all of Peace Corps Ethiopia.

The beating followed an incident involving discipline in one of my morning classes. It was the period after mid-morning recess, and students were straggling back into class five and ten minutes after the bell had rung. After trying several times to begin the lesson I decided to shut the door and not allow any more latecomers to enter. It was well-understood in my classes that if a student is more than five minutes late he can't enter without a note from the director. Up until Friday I had no problem enforcing this rule. In a few minutes another student came and asked permission to enter. I told him that he had to go to the director for an excuse. I asked him to leave, but he refused. I asked him again to leave, but he said "Is it by force, sir?" At that point I made a mistake. I became angry, threw him bodily out of the room and shut the door. The rest of the class began to get up but I ordered them back to their seats and, still quite angry, began to explain the need for discipline and rules in the classroom. In the confusion the student who had come late had slipped back into class and taken his seat in the front row. The director heard the commotion and came quickly down to my class. I briefly explained what had happened. He then became angry and kicked and slapped the same student out of the class. At this point the student went to the other section of the eleventh grade and called them out. Dick was teaching them at the time. The other eleventh graders came storming down to my class and called them to the other classroom for a meeting. The meeting went on straight through lunch, and some angry words were coming out of the room. One of the leaders of the eleventh grade who was acting as informal mediator between the director and the students came up to me about twenty minutes before the bell and advised me to go home. He said that all the girls were crying and that the boys would kick and beat me if I tried to go to class. I wasn't worried, because I didn't believe such a thing could happen. I thought I probably wouldn't teach for a few days while the students cooled off. In the meantime I planned to stay out of their way, unless they asked me to talk with them. I felt that most of the students (basically a good bunch of kids) would see the incident as a question of student-teacher discipline and not as American prejudice against Ethiopians. I hadn't had any real discipline problems with them or the twelfth graders (although other teachers had) and felt that my classes respected me. How wrong and naive I was was shown by the beating that soon followed.

While returning to school after lunch Dick and I were surrounded by a group of about forty of our eleventh graders who came pouring down from the school. I said that I wouldn't teach them if they didn't want me to, but that I had to go to the school to sign in and was willing to talk to them anytime they wanted. Most of the students (some of whom had lived with Peace Corps or worked with me last year in the debating club) were smiling and I was completely unafraid. Then the student who had been sent out in the morning counted "One. Two. Three!" in English. The others behind us pinned our arms and began to pummel us with stones, sticks and fists. After a minute or two we were left bleeding in the dust with cuts and bruises all over our heads and upper bodies. Dick's left ear was half torn, off, and both our glasses were broken and smashed. Still in our bloodstained shirts and ties we were taken to the Adwa hospital. After being given first aid, meeting with the araja governor and describing what had happened to the police, we were taken by the local Luthernan minister to Asmara. The other volunteers came to the hospital within minutes, so we were sure they were all right. Dick's ear and scalp required more than twenty stitches, and my lip and scalp required six. We were both thankful we had not been injured more seriously.

The beating came after a series of disturbing events which, had we been more observant, might have given us some clues as to what was coming. The previous week Phil Whitcomb and Dave Davis decided to leave Shire (about sixty km. up the Gonder road from Adwa) in the face of intense student-teacher hostility. They felt that their EUS teachers had been the primary cause of the sudden change of feelings towards them in the school. This news set us on our guard. We knew that the EUS students from Shire and Adwa had been meeting almost weekly in Axum. All of us had noticed a certain aloofness in the six EUS teachers in Adwa, with the exception of the girl who was vivacious and friendly. We dismissed this as shyness. Deb however said her ninth graders were telling her that the EUS teachers were using their classes to preach against the Peace Corps, US imperialism and the Ethiopian government. When she walked into her classes she often found such questions as "Where is the second Vietnam? Ethiopia" and "Which is better, capitalism or communism? We think communism, don't you?" written all over the board. We decided to give EUS the benefit of the doubt, since we had little real evidence against them. But last week we had direct proof that their shyness was really vitriolic anti-Americanism. In the teachers' room I found a copy of the USIS pamphlet with the Apollo 11 moon pictures covered with slogans such as "Down with exploitors (Americans)", "Long live Chairman Mao", "Long live the People's Republic of Vietnam", "Capitalist pigs! We hate you. Devils" and "Exploiting the moon. Why? Because the Earth has been exploited" scribbled all over the pictures. I became angry, because it seemed to me that what they had done was a not-so-subtle insult to us, defacing the pictures and leaving them for the other teachers to see. Mostly I was angry because they were attacking us behind our backs and refused to face us. We confronted them with the magazine after school. At first they denied writing anything, but finally said "What of it?" and said we really were dupes of the US imperialism which was strangling the third world. They were pretty polemical, and we never really got beyond the "exploitor" stage, but at least we felt the problem had been brought out into the open. We asked them to get to know us as individuals and not to do anything which would jeopardize our work in the school. They seemed somewhat embarrassed that we were so frank. We invited them all over for tea the next day after school, and they came. At first we talked about school clubs, etc., but soon we worked into a freewheeling political discussion covering Marx, Mao and US imperialism. Our opinions were radically different, but this time at least there was genuine conversation and not just name-calling. After almost four hours we broke up, exhausted but smiling and apparently good friends. Both groups seemed to feel that the discussion had cleared the air. After that there

was no shyness among us at all, and we cooperated with each other on several matters, including the procedure for setting up the student council. We hoped we had forestalled for the time being the problem which had driven Phil and Dave out of Shire. We felt we could live with the pressure that was being brought to bear.

Up until Friday we had no real indication how deep anti-American feelings ran among the students. We all considered ourselves good teachers (as I'm sure most Peace Corps teachers do) and took a real interest in our students. We knew they were very curious about Kagnew Base in Asmara, and were convinced there were missiles there. We could only say we didn't think this was true. Other sources of resentment among especially the more intelligent students were rumors of new US bases in Massawa and elsewhere, the abundance of what they considered to be USIS propaganda, and the war in Vietnam. Some of my better students asked me if the US would send troops to defend the Emperor if a popular revolution broke out. They seemed convinced the US would, just as it had done in Vietnam (thus the feeling, "Ethiopia: the Second Vietnam"). Even if some of these rumors were false they were plausible and, most importantly, most of the students seemed to believe them. This hostility towards the US however didn't seem to be directed against us personally. We felt we could give and take with the students and were generally well-liked by them.

Dick's situation was somewhat different. During a week when the eleventh grade was on strike demanding electives, two of Dick's tenth grade classes refused to study history and walked out. He also had trouble with the eleventh grade. The Friday preceding the beating several students in 11A (the same section in which the discipline incident later occurred) used the opportunity of a class-time debate on Vietnam to air a variety of charges against Peace Corps and American "imperialism" in general. Dick did not think the students meant what they said seriously, but rather as an embarrassment to him. This section had more than its share of disturbers who frequently disrupted the class.

We now suspect that the disciplinary incident in the morning was a staged provocation designed to whip the students into rage against the Americans. I believe that many of my eleventh graders did not agree with the idea of a beating, but were afraid to go against the older activists in the class lest the same thing that happened to us would happen to them. Moreover, we believe that, directly or indirectly, the beating was provoked by the EUS teachers. After our confrontation the previous week, perhaps they continued to agitate against us while appearing outwardly friendly. We have no way of knowing. If indeed the EUS kept faith with us, the students had still been sufficiently stirred up against Peace Corps to conceive the plan on their own. However, the fact that all EUS left Adwa for Asmara on Friday morning, without the director's permission and just before the beating occurred, suggests foreknowledge of the event and a desire not to be around when it took place. Bruce MacWithey, the rural development volunteer in Adwa, mentioned afterwards that three students had told him the day before that they were going to "knock" Mr. Obermanns. He didn't take this threat seriously and so didn't tell us about it. All of this suggests to us that the beating may have been planned well in advance of Friday's disciplinary incident.

We feel Peace Corps is definitely not wanted in Ethiopia by the two groups with whom we are supposed to work most closely: our host country counterparts (EUS) and the secondary students. That has now been made clear to us in the most unequivocal terms.

We emphasize that this is not a localized incident. Tigre had a reputation of being somewhat more peaceful that other parts of the Empire. Yet the EUS will soon be able to unite the Empire's secondary school students, with the same national goals. Their message was not that we should leave Adwa because of a local disciplinary problem, but that all Peace Corps should leave Ethiopia because they are Americans and leave now! While we remain in Ethiopia we will only remain conspicuous targets for the very real frustrations young Ethiopians feel about their political and economic system. No matter how good a job we feel we are doing as individuals, our experience has made it clear that we are first and foremost symbols of an oppressive American presence which nationalist-minded young Ethiopians deeply resent.

As much as we may have become attached to Ethiopia or to our particular regions and towns—and there was no group of volunteers more in love with their town than we were with Adwa—we have to face the reality that this is not our country. Its future belongs to the EUS and the students, to its own educated class. That class has clearly demonstrated to us that it wants PC/Ethiopia out now. They mean this message to reach all provinces of the Empire. If we decide that we know what is best for Ethiopia, better than its own university-educated people, we are guilty of a colonialist mentality. We are engaging in the very same well-meaning paternalism that is said to justify the American direction of the war in Vietnam.

We may plead that our town, our region is a special case, not related to the problems of the whole Empire, or better understood by us than the Addis-centered EUS. This attitude supports the continued debilitating regionalism and works against the necessary unification of Ethiopia. The EUS are apparently trying to unite the students by choosing an external (foreign) presence in their country for all students to focus hatred upon. In so doing they will be drawn together by their opposition to a common external foe. This is a common phenomenon in "third world" countries to aid in creating a healthy, modern nationalism out of disparate tribal interests. We may not agree with the methods the EUS have chosen to carry out their policies, but may their success not be beneficial to Ethiopa?

We must re-examine our reasons—both idealistic and practical—for joining Peace Corps/Ethiopia. For us to leave Ethiopia suddenly in mid-year will cause considerable practical difficulties, with the draft, marking time before graduate school or employment opportunities open up, explanations to friends. The idealistic considerations, however, now seem to us to outweigh the first set. Our job is to help Ethiopians help themselves in Education, Health and Agriculture. They have rejected our offer of help, first politely and now forcefully. We will not help them by staying. Either our work will become less effective, or its purpose singularly our own. To stay would be to fly in the face of the most basic Peace Corps philosophy.

Ask what kind of a job we can do whose benefits will outweigh the hate that is being built up against Americans simply by our continued presence here. Consider also that what happened in Shire and Adwa will probably not remain isolated. Similar violent means may be used against other PCV's—in other provinces, lower levels of schools and in other lines of work.

For those reasons we recommend to Dr. Murphy, Joe Blatchford and all Ethiopian volunteers individually that we leave by Christmas, 1969. For the Adwa volunteers our constructive work and purpose here was ended by a volley of rocks on November 14th. To stay any longer would be to compromise our own ideals and the future of the Peace Corps in all parts of the world.

We recognize of course that we have no right to decide anything for anyone besides ourselves. Each volunteer (most of whom Dick, Deb and I know personally) must decide what he should do, given the particular situation in his town. We can only appeal to you to think about what happened to us, since we so strongly feel Peace Corps presence in Ethiopia has outlived its usefulness and will only lead to more violence and bad feelings in the future.

Sincerely,

CRAIG JOHNSON.
DICK OBERMANNS.
DEB KENDALL.

ASMARA, ETHIOPIA, *November 17, 1969.*

FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATIONS, 1970

The Senate resumed the consideration of the bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes.

Mr. FULBRIGHT. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The BILL CLERK. The Senator from Arkansas (Mr. FULBRIGHT), for himself and Mr. AIKEN, proposes an amendment as follows:

On page 6, in lines 21 through 24, strike out "$375,000,000, of which $50,000,000 shall be available only for the Republic of Korea" and insert in lieu thereof "$350,000,000".

Mr. FULBRIGHT. Mr. President, this amendment has the effect of making that item conform to the authorization bill.

In the Senate report of the Appropriations Committee, on page 15, there appears the following reference to the military assistance program:

The committee recommends $375,000,000 for military assistance which is the same as the sum recently authorized in the Senate authorization bill and $74,500,000 under the House allowance.

That is in error, Mr. President. The authorization bill recently approved by the Senate was for $325 million, $50 million under the amount that the Appropriations Committee thought we had approved.

Then, in the conference with the House of Representatives, the amount of $350 million was agreed to. What my amendment does is cut back this amount to the amount of the authorization conference report, which should be over here this afternoon.

My second amendment would strike out specific authorization of $50 million in military aid for South Korea. The Committee on Foreign Relations has consistently rejected attempts to authorize aid money by country for two basic reasons. One, on the theory that the executive branch should have flexibility in administering the aid program within the broad policy limits set by Congress; two, because of a firm belief that Congress has neither a duty nor is it temperamentally suited to divide up, in a sensible way, $2 billion of the taxpayers' money among the 92 countries slated to get some kind of foreign aid this year. The foreign aid authorization bill passed by the House included specific authorizations of $50 million in military aid for Korea and $54.5 million for Taiwan—in addition to the large amounts already

slated for these countries in the administration's program.

The Committee on Foreign Relations rejected this attempt to specify recipients of additional military aid and, in accordance with past practice, voted a lump-sum authorization to be distributed as the administration saw fit. It was left with the freedom to establish its own priorities—which means that any, or all, of the amount Congress provided could be given to Korea or the Republic of China. No questions were raised on the Senate floor about the committee's decision. And the committee's position prevailed in the conference yesterday. The conference agreement was to authorize $350 million in military aid for use in accordance with the administration's priority list.

The specification of $50 million for Korea in the appropriation bill is in direct conflict with the spirit and intent of the agreement on the authorization bill. If this attempt succeeds a Pandora's box of pressures will have been opened. I hope that the Senate will reject this approach.

As I say, the conference agreed on $350 million. This principle of specifying amounts for specific countries and specific programs, it seems to me, will lead the Senate into a disastrous program. Once begun, we will see no end to it. There will be a multiplication of supplications to individual Senators from abroad, for the suppliants' particular countries, all of them having very appealing cases, and it will be extremely difficult to deal with this kind of matter on a country-by-country basis in the legislation.

For example, Mr. President, I received just yesterday a letter which, in a sense, indicates a little of the problem that is involved. This is a letter soliciting me to make contributions to a "Radio Free Asia," of which the chairman of the board is a man named You Chan Yang, Ambassador at Large of the Republic of Korea. I asked the committee staff to check on who Mr. Yang was, and they found he is a former Korean Ambassador here. He also is a former Boston pediatrician who is retired and who is now living here in Washington, according to my States information, and this organization has been set up, modeled, I presume, after the Radio Free Europe, which has been widely publicized and has gathered millions of dollars from private sources, although it is also supported by Government agencies.

One of the principal purposes of this Radio Free Asia is, of course, to fight communism, and they solicit in a most appealing manner that I send them a contribution. I assume they have sent this all over the United States; that is the way these things are usually done. This letter was obviously prepared, I believe, on a modern computer, and it contains the kind of language I have already described. It says:

I know that you are anxious to do all you can to help the Americans being held prisoners in Communist North Vietnam.

As you know, American prisoners have been subjected to brutal suffering by torture, isolation, degradation and public humiliation at the hands of the Communists.

I cannot imagine what this self-styled ambassador at large here can do about that. But he says:

Because of the extreme urgency of the situation, I could not wait until I heard from you before I committed ROFA's money to this fight.

In other words, he has already committed his own funds, and he is appealing to me to help make him whole. He says:

I took a risk in the hope that you would want to help. Please don't let us and the American boys down.

If you could possibly send ROFA your Christmas gift today, we would be able to begin our campaign immediately to aid these helpless American boys.

Mr. President, I ask unanimous consent to have printed in the RECORD the entire letter from which I have been reading.

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

WASHINGTON, D.C.,
December 8, 1969.

Hon. J. W. FULBRIGHT,
Washington, D.C.

DEAR FRIEND: Since you are active in the fight against Communism in Washington, I know that you are anxious to do all you can to help the Americans being held prisoners in Communist North Vietnam.

As you know, American prisoners have been subjected to brutal suffering by torture, isolation, degradation and public humiliation at the hands of the Communists.

With the help of anti-Communist Americans such as you, Radio of Free Asia (ROFA) is fast becoming one of the most important weapons against Communism in all of Asia.

ROFA began its anti-Communist broadcasting in 1966. Each week we broadcast over 44 hours into Red China and North Korea, using powerful 500,000 watt transmitters located in Seoul, South Korea.

Radio of Free Asia is now preparing to mount a massive effort to bring this inhumane treatment to the attention of the American people and to the world. Our campaign will take three different approaches:

First—we want you and others to mail the enclosed post cards to your Senators urging them to take a firm stand and publicly denounce Hanoi's cruelties to American prisoners.

Second—we will make carefully planned mailings of the Reader's Digest article to people such as clergymen, radio and TV newscasters, editors and educators—asking them to speak out against the evils of Communism—as evidenced by the maltreatment of U.S. prisoners.

Third—we will broadcast into Red China and North Korea the truth about how inhumanely Communism treats all captive people.

Our purpose is to bring tremendous pressure to bear during the Christmas season on the North Vietnamese to stop torturing, beating and starving American prisoners.

You can have a significant part in making Christmas and all of 1970 a lot happier for an American G.I. confined in a dark, disease-infested Communist prison. The G.I. you may be helping may be someone who lives near you.

Because of the extreme urgency of the situation, I could not wait until I heard from you before I committed ROFA's money to this fight.

I took a risk in the hope that you would want to help. Please don't let us and the American boys down.

If you could possibly send ROFA your Christmas gift today, we would be able to begin our campaign immediately to aid these helpless American boys.

Sincerely,

YOU CHAN YANG,
Ambassador at Large, Republic of Korea, Chairman of the Board.

P.S.—Our finances are very tight. I am writing to you today in the prayerful hope that you will come to our aid and to the aid of the American prisoners of war.

Mr. FULBRIGHT. Mr. President, this letter is very offensive to me. Last June, I went to a great deal of trouble, as other people have, to try to do something about these prisoners, and I used the best methods I know of, with the approval and knowledge of the State Department and of other governments as well. But to have a man send letters like this, at Christmastime, appealing on that basis, seems to me to be extremely objectionable.

I think when you pick out, in an aid bill, a specific country, and say, "We are going to give you so much money, and going to give someone else so much," you are creating competition among them, or jealousy. As a matter of fact, with regard to Korea, I asked, in behalf of the committee, a long time ago, to have supplied to us what is called the Brown letter, which is the basic commitment of this Government to Korea to pay for their troops in Vietnam.

I was refused that letter. It never has been supplied to the committee. One of the grounds was, "If we give it to you, and it is made public, then other countries supplying troops will be jealous; if we pay the Koreans more than we pay the Philippines, it will create problems for us."

But that is now what we are getting into in this field. I think it is extremely bad practice.

I also ask unanimous consent to have printed in the RECORD a letter of February 28, 1968, this one from Kim Sung Eun, the minister of national defense of the Republic of Korea.

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

MINISTRY OF NATIONAL DEFENSE,
REPUBLIC OF KOREA,
Seoul, Korea, February 28, 1968.

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR MR. SENATOR: Permit me to bring to your attention the two most recent incidents: the North Korean commando team infiltrating into Seoul on 21 January 1968 to assassinate President Park, and the highjacking of the USS PUEBLO and her entire crew by the North Koreans on 23 January 1968.

These incidents or provocations are not just happenings without premeditation. These incidents have been done under a complete plan by the North Koreans.

The North Korean intention for the communization of the Republic of Korea (ROK) is backed up by plans for guerrilla operations in the rear area of ROK to join with their (North Korean) overt armed attack against ROK in 1970. These two incidents are merely preliminaries to such intentions.

We should know more about how North Koreans are preparing for war and how they are conducting their infiltration activities since the 1953 Armistice was signed.

To highlight the major areas of concern in connection with the North Korean war preparations:

a. *Significant quantity of both conventional and sophisticated equipment received from USSR:* The North Korean military strength includes approximately 500 fighter aircraft including over 30 MIG–21 supersonic fighter bombers, 24 well-camouflaged and covered air bases (14 operational, 6 in reserve, 4 underground), 186 sea craft (including 4 submarines and 60 high-speed torpedo boats), 66 surface-to-air missile sites, 3 surface-to-surface(ship) missile sites, 13 radar sites, a total of 14,814 artillery pieces including 2,016 field artillery pieces (24 203mm cannons included), 3,459 mortars, 7,768 anti-tank guns, and 1,571 antiaircraft guns, 886 tanks including T–54 type, 19 well-equipped infantry divisions supported by 28 artillery, tank and other support units (brigade or regimental size each).

b. *Incountry arsenal for production of weapons:* The North Koreans have converted a significant portion of civilian factories to production of military hardware such as rifles, machine guns, mortars, artillery pieces, grenades, etc.

c. *Red Guard Militia of 1.2 million—organized and trained:* This militia constitutes a reserve strength to augment the 400,000 regular forces of North Korea and are trained periodically. In addition, all government officials up to the level of vice minister are undergoing combat training several days each week.

d. *Reorganization of military structure—completed:* The North Korean military structure has been changed into a war time system. Each unit commander is being trained to have capabilities required for commanders two or three levels higher, i.e., a platoon leader is being trained for duty as a company and battalion commander, or a battalion commander for regimental or division command duties.

e. *Military installations hardened:* To the best of our knowledge, all of the North Korean aircraft are placed in underground shelters without loss of their operational capability and all ammunition and fuel supplies are stored underground. The fortification of positions along the De-Militarized Zone (DMZ) and along the east and west coasts are also hardened. In addition, second and third defense lines north of the DMZ are being constructed underground.

f. *Dispersion of cities:* The 1.2 million population of Pyongyang (Capital of North Korea) was cut down to 700,000 with the dispersion of even educational institutions not to mention other facilities. The North Koreans established many shelter facilities which can accommodate 50,000 persons each. The emergency food and other materials for one year operations are stored in many places throughout North Korea.

g. *Civil industries underground:* In view of anticipated air and coastal bombardment, almost all industrial facilities have been located inland and placed underground without regard to the production costs involved.

h. *Training:* Until 1965, North Korea conducted training primarily for defense but since 1966 they have been conducting command post exercises, field training exercises, aerial combat exercises, on a 24-hour basis, with the assumption of overt armed attack on ROK.

Guerrilla operations have been characterized by:

a. *Organization:* North Koreans have recently unified their entire anti-ROK guerrilla operations structure placing it under command of General Huh Bong Hak (North Korean Regular Army). One guerrilla batallion at each base in North Korea is being trained for complete harassment in one province in ROK. One battalion has a strength of 300 men and there are a total of 8 battalions since there are 8 provinces in ROK. These 8 battalions comprise the 124th Guerrilla Unit which sent the 31-man armed commando team into Seoul to raid the residence of President Park, known as Blue House. In addition, there are 283rd Guerrilla Unit and 17th Foot Reconnaissance Brigade with similar missions. The total of these units including the 124th Guerrilla Unit is 15,000 men, who have completed their training.

b. *Training:* Personnel of guerrilla units, dedicated Communists, are selected from the North Korean units and are undergoing rigid physical fitness training such as wrestling, Karate, boxing, etc. Those who have received special training can run 10 kilometers per hour at night while carrying a pack weighing 66 pounds. They make up commando teams sometimes to conduct training in company and battalion level guerrilla operations which are designed for subversive activities and psychological warfare in rear areas of ROK, airborne operations (with gliders, etc.) to prevent movement along main supply route and block sea ports along ROK south coast, harassment in rear areas, raids against atomic munitions storage areas as well as missile sites, and jungle warfare.

c. *Objective:* We must note that having failed in their attempts at takeover of ROK by long term underground operations, the North Koreans shifted tactics to secure bases in ROK rear areas for short term guerrilla harassing activities. This is an indication of their preliminary efforts in their attempts to communize ROK in 1970. By that time, their efforts will be continuously strengthened to make ROK into a second Vietnam.

d. *Ways and means:* There has been a change in training and operations from individual training to group training, from individual infiltration to group infiltration, with a corresponding change in quantity and quality of equipment, and from long term underground operations to short term build-up of guerrilla base areas. The composition of the guerrilla force is 30 percent born in ROK and 70 percent born in North Korea. For sea infiltration, well camouflaged high speed boats are used effectively.

North Korean preparations for conventional and guerrilla warfare are completed or are being completed. Their schedule is as follows:

1967—*Testing stage:* By infiltrating armed agents into ROK they tested our reactions as well as their tactics. During 1967, there were 319 violations in the DMZ area and 37 infiltrations within the rear area of ROK. Notable incidents occurring during 1967 included sinking of the ROK Navy ship PE 56 on 19 January, blowing up of 2nd US Division barracks near the Imjin River on 22 May, two incidents of railway destruction which caused derailing of railroad cars on 5 September and 13 September, machine gunning of US Engineer troops in their camp located immediately south of Panmunjom on 28 August, etc. A total of 126 ROK and US personnel were killed and 265 ROK and US personnel were wounded as a result of these and other incidents.

1968–1969 *Harassing and subversion stage:* By creating a situation resembling Vietnam at a time when the United States was becoming actively involved in the war in 1965, North Koreans are seeking an opportunity to launch an overt armed attack upon ROK in 1970.

1970—*Completion stage:* Within 1970, North Koreans plan to communize the entire ROK by means of both all-out war and guerrilla war.

The Republic of Korea is a nation restored from Communist hands by the blood of so many young men from America and other allies. Its security and independence is now being challenged anew by vicious Communist provocations steadily on the increase. If this situation is left alone, we should expect another Korean War within two or three years.

I take this opportunity to express my heartiest appreciation for the priceless assistance so generously rendered us by our American friends. I am keenly aware that such assistance has contributed vitally to the preservation of freedom and peace in Korea.

Certainly, I am reluctant to ask for additional burden to be borne by our American friends to whom we are already indebted so much. But I am sure you will understand that under the existing circumstances, I feel I must solicit your timely support and assistance in meeting those intensified, tangible challenges threatening our survival, so that our mutual efforts in the cause of freedom may prove worthy in the end. In this connection, President Johnson's recent measure calling for an immediate Congressional approval of $100 million additional military aid to Korea is a source of inspiration.

In view of the fact that 80 to 90% of the MAP are spent for operating costs, plus an annual increase in prices by 4 to 6 percent, an overall increase in MAP level should be considered in order to provide for the increased requirements due to stepped-up communist activities against ROK.

I am confident that after carefully considering all the facts, you will do what is necessary to prevent another VIETNAM from occurring here in Korea.

Thank you for your attention given to this statement. Please accept my high personal regard and best wishes.

Yours very sincerely,

KIM SUNG EUN,
Minister of National Defense.

Mr. FULBRIGHT. I assume this is direct from Seoul, Korea, from the minister of national defense, who wrote me a long letter. I have put the whole letter in the RECORD, but I want to read only two or three paragraphs, which seem to me wholly inappropriate for a foreign government, or a minister of a foreign government, to write a Member of the Senate, a legislator of this country, and make applications such as these for more funds. I shall read just a paragraph or two.

He says:

I take this opportunity to express my heartiest appreciation for the priceless assistance so generously rendered us by our American friends. I am keenly aware that such assistance has contributed vitally to the preservation of freedom and peace in Korea.

Certainly, I am reluctant to ask for additional burden to be borne by our American friends to whom we are already indebted so much. But I am sure you will understand that under the existing circumstances, I feel I must solicit your timely support and assistance in meeting those intensified, tangible challenges threatening our survival, so that our mutual efforts in the cause of freedom may prove worthy in the end. In this connection, President Johnson's recent measure calling for an immediate Congressional approval of $100 million additional military aid to Korea is a source of inspiration.

We have a law in this country on foreign agents' registration. A loyal American, representing a foreign country in lobbying in Congress to get money for them, must register if he abides by the law and must state who his employer is, and so forth. It is not a very effective law, but we have spent a good deal of time in my committee in terms of trying to make it more effective.

I think we improved it. However, here we have them circumventing the act. We have the officials of a foreign government writing directly to Members of the Senate—and I assume that they have written to all Members of the Sen-

ate—soliciting additional funds for their country.

If we are going to adopt the practice of inserting in an appropriation bill specific sums for specific countries, all we are doing is simply creating an incentive for every country to begin this practice. And to carry out the entire program in this manner, I think, would lead to a scandalous situation in our own country.

As I have already said, there is already a very large amount of money in the bill for Korea. It is not identified for that purpose, but it is understood—as indicated by the administration—to be for Korea.

It seems to me it is an ample amount in view of what has already been given to Korea. Under the Brown letter, vast sums have been given to Korea, ostensibly for the purpose of modernizing their fighting forces. We have been modernizing their troops that are fighting in Vietnam. But under the Brown letter, we agreed to give them very large additional sums to modernize their own troops in their own country, based upon a great many other privileges and payments.

This was gone over by the respective committees and by the administration. As I say once more, this particular item was not recommended in the budget. What the budget recommended for Korea was contemplated in what is carried in the regular bill.

I do not see an excuse for doing this. This has become a kind of a grab bag, as I have already said.

The President and his advisers, if they choose, can make available more money if, in their opinion, it is deemed justifiable for the modernization of Korea's armed forces.

I hope that the Senate will not start this practice of specifying sums, above the authorization to which I have already referred, and for a specific country, as in this case.

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

Mr. FULBRIGHT. I yield.

Mr. PELL. Mr. President, speaking to the Senator as the chairman of the Committee on Foreign Relations, is it not correct that this matter was considered within our committee?

Mr. FULBRIGHT. Yes; indeed it was. It was the occasion for a great deal of discussion. Both the Korean and Taiwan items were discussed.

Mr. PELL. So what has happened here is that a matter, which was very clearly and specifically discussed in the committee and, decided on in the committee, namely, not to give an additional $50 million to Korea, was then arbitrarily reversed by the Appropriations Committee as being an error of judgment on our part, and the item was inserted in their language.

It would seem to me in the light of the Senator's earlier amendment, which I am glad to say prevailed almost 2 to 1, that the Senate believes that the limits set by the authorizing committees, should be followed. I realize technically under the rules of the Senate these limits may be considered as guidelines in that the Appropriations Committee has the technical power to vote less money or more money. In fact the Senate does not agree with this rule and has just decided that the authorizing committee does have the responsibility here.

Mr. FULBRIGHT. The Senator is quite correct. What we are doing in the amendment is reconciling the item with what the conferees agreed to. Not only did the Foreign Relations Committee consider it, as the Senator has said, and strike it out, but the conferees did the same. It is not in the conference authorization.

Mr. PELL. Mr. President, what we have here is more than a specific issue. It is a question of principle, that when a matter has been decided by the authorization committee, the Appropriations Committee, no matter whether its members agree or disagree with the authorizing committee, is bound by the limits set by the authorizing committee.

I hope that the Senators when they vote on the issue will realize that the matter was fully considered by the authorizing committee and was struck out.

I was struck by the reference of the Senator from Vermont (Mr. AIKEN) to a presidium.

It would seem to me that if a Senate committee were to have all the power presently shown by inserting this $50 million item, it really would be a presidium.

Fortunately, until now the Appropriations Committee has been made up of fair-minded and decent men and they have not overextended themselves in this manner.

But if this amendment is rejected, it would give them carte blanche to go ahead and act like a presidium.

I commend the Senator from Vermont on his analogy.

Mr. AIKEN. Mr. President, I agree with what the chairman of the committee has been saying. The fact that the conference committee report does not specify an item particularly for Korea does not mean that we are denying funds to Korea.

Mr. FULBRIGHT. The Senator is absolutely correct.

Mr. AIKEN. But as far as I am concerned, I felt that the Defense Department, the State Department, and the President were better able to determine where and how much of this appropriation should be spent better than I was or better than the committee was.

Mr. FULBRIGHT. I want to make that very clear. There is more than three times this amount contemplated in the existing bill for Korea for military assistance.

Mr. AIKEN. Mr. President, I am satisfied that the administration will do for Korea what is needed to be done for Korea.

I hope no one thinks we were taking the position of denying funds to Korea.

The fact remains that I do not approve of our undertaking to tell the executive branch when, where, and how it should spend every dollar of the money appropriated.

If the Senate is going to do that, we might as well do away with the executive branch and hire a large staff on the Hill and do all the work here.

I think people in the executive branch are perfectly competent to make the decisions, much more competent than I am in this particular area.

As a matter of fact, I was the member on the committee who thought that we should provide $375 million for military assistance, rather than $350 million. This would allow for any unusual conditions in Korea. However, the majority did not agree with me.

Mr. FULBRIGHT. The Senator is correct. I remember that, and I very much appreciate the fact that the Senator is a cosponsor of the amendment.

The Senator will remember another item that was changed in the last amendment with respect to international military headquarters, so that actually it worked out that the $31 million that we thought was going to be devoted to paying for our participation in these facilities may now be taken from other funds. So, this item is larger for the purpose of assistance to Korea than we originally thought.

Mr. AIKEN. Mr. President, as a result of some of our decisions on the amounts, the administration will have the 2-year extension it desired.

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

Mr. FULBRIGHT. I yield.

Mr. JAVITS. Mr. President, I am also a member of the committee and took part in the deliberations. There is the converse of the proposition which should be established. I would not myself wish—and I hope that my chairman would not—to inhibit the Foreign Relations Committee, if in its judgment this was required, from doing what the Appropriations Committee did—based upon a foreign policy judgment or a clash of wills with the administration.

We really have two principles at stake here. One is the principle of authorization by the legislative committee, in which I am all with my chairman. The other is the principle of some independent role by Congress in respect of the foreign policy of the Nation. I would not wish, by anything that the chairman said here, to foreclose us from that privilege.

In this particular case, as the Senator from Vermont (Mr. AIKEN) has said so eloquently, the committee came to the judgment that a purse of money, as it were, for this purpose was the most desirable in our Nation's interest. In another given situation, we might or we might not. I would hope that we would not make this some major policy precedent which would limit our own judgment in respect of what ought to be done as a Foreign Relations Committee.

Mr. FULBRIGHT. The committee has expressed itself on many occasions, as the Senator knows. But when we are dealing with countries which are very sensitive in this area and very jealous, as one knows, whenever the committee felt very strongly about a matter of this kind, it usually dealt with it in a report or in the form of a consultation with the administration, and did not put it into the law.

Over the years—it is not recent—that has been the general practice, and by and large I think it has been successful. There may have been some cases in which it was not.

Mr. JAVITS. That is my feeling. But I still would not want to shut the door in a given case to giving us full legislative authority. I can hardly conceive of how we could do any less. There may be a situation in which, to assert the independent judgment of the committee, we might have to name a country, and I would not want the Senate to feel—for myself—that this would be denied to us by the position we take here.

Mr. FULBRIGHT. In the conference report this year, the Senator well knows we did this in the case of Israel, which is, I would say, an exception to what is generally a good rule.

Mr. JAVITS. I thank my colleague.

Mr. FULBRIGHT. I yield the floor, Mr. President. I am ready to vote.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

THE SECRET WAR

Mr. FULBRIGHT. Mr. President, extensive newspaper stories on American activities in Laos are no substitute for the administration, which formulates and undertakes those activities, making a full disclosure to the American people about a war it has undertaken to fight.

In the first place, newspapermen do not have access to all the facts—they can report what they are told directly, or indirectly through rumors; they can report what they see. The results of reporting efforts—as seriously as they may be undertaken—are oftentimes nowhere near the truth in fact or tone and thus misleading as those of us in public life, written about all the time, should be the first to acknowledge.

Today's Wall Street Journal, in its extensive article about Laos, illustrates my case.

"The war here costs the United States about $200 million a year," the story says. It is my hope that when the declassified record is released from Monday's executive Senate session it will still contain the amount for Laos in the Defense appropriations bill which you all will recall was many times that figure.

Today's article almost casually relates:

In the past six months, these bombings of (northern Laos not connected to the Vietnam war) have increased at least tenfold. These bombers fly out of Thailand.

Those two simple sentences have great import to the American process. How many sorties come out of Thailand to bomb north Laos? Under what authority are they undertaken? What understandings exist with the Thais to permit this and with the Lao that require them to be secret? Does any President have the right to undertake such activities?

Questions such as these cannot be debated in a newspaper because no newspaper can get the answers. The Senate should debate them and the people should be able to listen for it is their money and the lives of their sons that are involved.

As bothered as I am about the lack of facts, I am more concerned about the tone of articles such as today's on Laos. The headline reads: "The Secret War, U.S. Role in Laos Is Big. But Another Vietnam Is Not Likely To Develop."

Mr. President, that attitude about Laos, fostered by administration officials who are pressing the secrecy about our activities, shows a complete lack of understanding about the Vietnam war experience.

Have we become so callous about death and war that unless it promises to involve 500,000 of our men and kill 30,000 we can calmly pass it off as under control or in "low profile."

The writer of today's article wrongly cites $200 million as the yearly cost of the Laos war and then chalks it off cavalierly as "less than America spends on one week's fighting in neighboring Vietnam." It is nothing to be concerned about, he implies, as if that $200 million were not desperately needed in this country for a myriad of Government programs.

I mention this not because I want to attack the writer of the article. I do it because I know this is the attitude of the foreign policy officials in our Government who push our Laos policy with that argument and whose judgment is clouded by the ability to get funds and authority in the shadow of the Vietnam debacle.

Mr. President, in more ways than not Laos has already turned into a Vietnam if you consider the latter a war we undertook where we could not win and fear to lose; if you consider it a war we began at a low level of involvement and failed to comprehend the enemy's ability to escalate in pace with us; if you consider it a war where we have become tools rather than the allies of a regime that could not govern without us; if you consider that there was for a time no limit on the escalation we were willing to undertake; and if you consider it an involvement we never should have undertaken in the first place.

Laos will never become a Vietnam in only one major way—the number of Laotians killed will never equal the number of Vietnamese for there are only 3 million Lao to begin with.

I would suggest, however, that for Americans there is one element of our Laos involvement that makes it worse than Vietnam.

Until now, Laos, because of the official secrecy surrounding it, has offered a precedent to administration planners—military and civilian alike—who feel it their mission to oppose with force of arms what they believe are Communist incursions anywhere in the world whether we have a treaty commitment or not, without recourse to Congress.

It is for that reason that I wish the secrecy policy on Laos to end. In that sense I believe the administration should be talking no more Lao along with no more Vietnams.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the article to which I have referred, written by Mr. Peter R. Kann, datelined Vientiane, and published in the Wall Street Journal of December 18.

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

THE SECRET WAR: U.S. ROLE IN LAOS IS BIG, BUT ANOTHER VIETNAM IS NOT LIKELY TO DEVELOP—AMERICA FINANCES AN ARMY, COMMITS NO FIGHTING MEN; U.S. JETS AND PILOTS USED—THE ENEMY: NORTH VIETNAM

(By Peter R. Kann)

VIENTIANE, LAOS.—Gen. Vang Pao is a cocky little former sergeant in the French army who now heads a clandestine, U.S.-backed army of mountain tribesmen here. Resplendent in a fancy field uniform and bedecked by so many medals that he almost appears armor-plated, he sits for an interview.

Are U.S. jets bombing in Laos? he is asked. No, he says, though his voice is periodically drowned out by U.S. jets flying overhead. Are his troops armed with U.S.-made M–16 rifles? he is asked. No, he says, though the very men guarding him are carrying M–16s. Are U.S. helicopters supporting his war effort? he is asked. No, he says, though he boards a U.S. chopper after concluding the interview.

The interview says much of life in Laos. This Southeast Asian country is a comic-opera kingdom playing host to a tragedy. Given their choice, the three million Laotian people would prefer to doze under a parasol, much like the three-headed elephant emblazoned on their national flag. But they are involved in a war, a war that has been largely imported by outside powers who won't even admit to being at war.

The war periodically makes headlines in America, as it has this month. The Senate Monday decreed that no money in a big new defense appropriations bill can be used to finance introduction of American ground combat troops into Laos or Thailand, a stand endorsed by President Nixon. The President, asked at a press conference last week about the U.S. role in Laos and "the people are entitled to know everything that they possibly can"—and then he said little.

ANOTHER VIETNAM UNLIKELY

Just what *is* going on here? There is a war. The U.S. is deeply involved. But another Vietnam is unlikely. The war here is like a secondary act in a three-ring circus, with Vietnam, of course, in the center ring. This lesser war is less costly, less fierce and less interesting than the main act. But it's worth glancing at now and then.

The war here costs the U.S. about $200 million a year, which is less than America spends on one week's fighting in neighboring Vietnam. It is being fought in the air and on the ground. The air war is being carried out by U.S. planes and U.S. pilots, who are bombing the North Vietnamese supply route into South Vietnam. This President Nixon admits publicly. U.S. pilots also are bombing areas in the rest of Laos, and this President Nixon doesn't admit publicly. In the past six months, these bombings of other areas have increased at least tenfold. These bombers fly out of Thailand.

The ground war is not being fought by U.S. troops, and sources say it is inconceivable that U.S. combat soldiers will ever be sent here. Rather, the ground war is being fought by the Armee Clandestine, or AC, the Meo mountain tribesmen under the command of Gen. Vang Pao. This army, estimated at anywhere from 15,000 to 40,000 soldiers, is fully financed by the U.S., though only a few hundred U.S. military "attaches" and CIA agents are on hand to oversee the operation. (The discrepancy in troop estimates is typical of the shadowy nature of the war in Laos.) The U.S. pays, trains and equips the AC; it provides the AC with

helicopter mobility and tactical bombing support.

Americans plan and direct operations—at least at staff level. The army is hard-fighting, especially by Laotian standards, and it has suffered heavy casualties. In the past year alone, 11% of its men have been killed or wounded.

THE ENEMY: NORTH VIETNAM

The enemy here is the North Vietnamese. The Laotian Community Party (Neo Lak Hak Sat) and its fighting arm, the Pathet Lao, have been waging a "liberation war" ever since Laos achieved its independence in 1954 after the defeat of the French at Dienbienphu. But these days the Pathet Lao are supported—indeed, very nearly supplanted by the North Vietnamese. By U.S. estimate, there now are 50,000 North Vietnamese Army (NVA) troops here, 35,000 of them in combat units.

The Laotian war is inextricably wound up with the war in Vietnam, yet the two situations are almost reverse images in several key respects. In Vietnam, the war is being fought largely for control of population; here the war is being waged mainly for territory. In Vietnam, the U.S. often finds itself fighting a conventional war against the enemy's guerrillas; here the U.S.-backed troops are the guerrillas and the North Vietnamese often find themselves fighting a conventional war, much to their discomfort.

Diplomats here say neither side is close to holding a winning hand in this war, and many of them question whether either side really wants to "win." Hanoi is generally considered to be using Laos just as a pawn in its efforts to achieve a favorable outcome in South Vietnam. The U.S., not really concerned about "winning hearts and minds" or "nation building" or even wiping out the Pathet Lao, rather seems to be waging a defensive or delaying action aimed at stymieing North Vietnamese moves here until such time as peace is achieved in Vietnam. Peace in Laos will then naturally follow, these diplomats assert.

NO LONG-TERM COMMITMENT

Since the U.S. doesn't admit its military involvement here, it can hardly brag about any successes. But, in the view of a number of non-U.S. diplomats here, the American involvement has paid reasonable dividends at a bargain price.

The U.S. has proved capable of organizing a guerrilla army that is more at home in Laotian terrain than are the North Vietnamese, these diplomats say. U.S. air power, they add, has proved effective against enemy troops and positions, such as on the Plaine des Jarres, a strategic high plateau that had been in Communist hands from 1964 until bombing raids in August. And, say defenders of U.S. action here, there is no long-term commitment to involvement in the fighting here.

The U.S. campaign is being carried out precisely the way a counter-insurgency war should be fought, say these defenders (not all of whom are Americans). The U.S., they assert, should continue to do exactly what it is doing until Hanoi decides to talk instead of fight.

But, at the moment, nobody is really winning and nobody is losing here—except, of course, the Laotians, a charming, gentle people who deserve, but perhaps don't expect, better. There are no reliable statistics on anything in Laos, but it's estimated that up to half a million people have become war refugees since 1962. Hardest hit have been the mountain tribesmen of the north, many of whom now subsist on bags of rice dropped from U.S. planes.

The Laotians, whose country has been a battleground for years, are a peace-loving people. "The Laotians just aren't warlike. Their idea of war is avoiding, not seeking contact," says one European diplomat. The Royal Laotian army, says one Western military officer, "is without a doubt the worst army I have ever seen—it makes the South Vietnamese army look like Storm Troopers."

The Royal Laotian army is a hodgepodge of rightists, neutralists and simple opportunists that has been fighting the Pathet Lao off and on since Dienbienphu. The fighting has continued despite the Geneva accord of 1962, which was reached after the Royal Laotian government had come even closer than usual to total collapse. The accord called for a neutralized Laos under a tripartite regime led by a largely figurehead king and a neutralist prime minister. The agreement also called for removal of all foreign military forces from Laos.

A POOLSIDE ASSESSMENT

The Royal Laotian army and the Pathet Lao continue to fight, though the war now has been largely taken over by the North Vietnamese and the U.S.-backed army of tribesmen. Laotian men are in short supply, and the two ragtag armies contain youths as young as 13 years old. The manpower shortage is such that defectors from the Pathet Lao sometimes are simply issued new scraps of uniforms and immediately assigned to a Royal Laotian army unit.

The Laotians seem content to accept their lot. The men in the Royal Laotian army earn 2,350 kip, or less than $6 a month. The Pathet Lao conscripts earn even less and often wind up little more than beasts of burden, packing supplies for the North Vietnamese troops here. (The mountain tribesmen in the U.S.-backed Armee Clandestine make considerably more than the men in either local army.)

"The Lao are a very easy people. They work, remain poor, accept it and are happy. In other countries, they would strike or revolt, but not here. We are lucky they are Laotians," one cynical Laotian general says of his countrymen as he sips Scotch beside the swimming pool of his villa on the outskirts of Vientiane.

There seems to be remarkably little awareness of social injustice among most Laotians, perhaps because the poor here have always been poor and have not yet approached the stage of "rising expectations." Laos, roughly the size of Oregon and the shape of California, remains basically a feudal country run by a score of elite families who divvy up the most important and lucrative government jobs and business concessions.

This elite doesn't want to share its riches. The king, for example, refused to let workers from the American Agency for International Development resettle hapless war refugees on unused royal lands until the Americans promised to build roads to one of the royal family's private, profit-making timber concessions.

AN ANTICORRUPTION "DRIVE"

The Laotian government barely exists, much less functions, outside the larger towns. The occasional programs or policies launched by the central government generally sink without a trace. One European diplomat recounts a recent anticorruption drive: "They sacked three postal employes, who were promptly resettled in another ministry. End of drive."

Prince Souvanna Phouma, the neutralist prime minister, earlier this year announced plans for a dynamic new neutralist political party. But, says one diplomat here, "it emerged for a few weeks as a debating club and then disbanded." There is an annual effort at military reform: "Once a year, some rich old colonels, who used to be bright young colonels, present a sweeping reform plan which is accepted, ignored and forgotten. And everyone is happy," says a Westerner here.

There are Americans and others here who believe that the lackadaisical Laotian government is living on borrowed time. Someday, they say, if not in a year then in a decade, the lamb-like Laotians will demand a better deal from life, and when that happens the Pathet Lao will be the beneficiaries.

Few observers here doubt that if the Laotians were left alone they somehow could settle their differences, at least for a time. On the face of it, peace in Laos should be far easier to achieve than peace in Vietnam. Animosities between Communists and anti-Communists in Laos are not nearly as intense as in Vietnam.

The Laotian king is accepted as titular head of the country by all contending groups. The Geneva settlement of 1962 is still basically acceptable to the Communists. Souvanna Phouma, the aristocratic and autocratic prime minister around whom the Geneva accord was shaped, probably could again make himself acceptable to the Communists by some subtle political maneuvering. (He has deftly managed to survive a series of plots, counterplots and coups among various rightest and neutralist factions since he came to power, though once an American ambassador had to rescue him from an outhouse where he had been unceremoniously confined by dissident generals.) Indeed, in name at least, a coalition government, including Communist ministers, still exists here.

A MAJOR BATTLE IS EXPECTED

And yet fighting continues here—and at a quickened pace. It is the dry season here now, which is the fighting season, and there is talk that within the next few months the North Vietnamese will launch a major attack against the U.S.-backed Armee Clandestine. The attack, if it comes, will be as much for political as for military reasons, sources say. The Armee Clandestine is the only effective anti-Communist force in Laos, and the propaganda value of its defeat would outweigh the military value.

The consensus among diplomats here is that if Hanoi decided on a full-scale effort to take over Laos, using several crack divisions of the North Vietnamese Army, the effort probably would succeed. "If they're willing to put in the resources they can take anything they want in this country—or all of it," says a senior U.S. official.

There are many theories on how the U.S. would react to such an attack, but no one suggests that Washington would send in ground combat troops. Most sources doubt that Hanoi will try to overrun the country, however. For one thing, the North Vietnamese would have to divert heavy assets from the more important war in Vietnam. For another, the North Vietnamese are outsiders here and could hardly look like anything but an army of foreign conquerors if they marched, say, into Vientiane.

HANOI'S POSITION

Hanoi has made some gains in fighting here. Last March at least 10 NVA battalions were used to capture the relatively (for Laos) important military center of Muong Soui, in north central Laos. This was widely viewed as military escalation.

But Hanoi cannot be entirely pleased with its current role in Laos. To influence the future political shape of Laos (when the time comes to form a new coalition government), the Communists must take and occupy territory. This requires main-force units, not guerrilla fighters. To jolt the U.S. position in the fighting in Vietnam or the talking in Paris, the Communists need dramatic victories like Muong Soui. This also requires main-force units.

But North Vietnam is finding it difficult to move these soldiers and their supplies. To move rice and arms and men, the NVA must depend on the few roads that twist through the rugged mountains. To mount major military campaigns, the NVA must use as staging areas the few easily traversible plateaus like the Plaine des Jarres. But roads and flatlands are vulnerable to U.S. air power.

As the fighting drags on, the unfortunate Laotian people try to get by as best as possible. They can't really ignore the war. Their plight may best be summed up by the monumental arch that bestrides the main avenue of otherwise unmemorable Vientiane.

Begun nearly a decade ago, the arch has grown in tiers, like some whimsical wedding cake, encompassing the wildest fancies of waves of Laotian artisans and swallowing up tons of U.S.-donated cement destined for more practical projects. This rococo masterpiece, replete with every imaginable architectural superfluity, remains, of course, unfinished.

But its name was changed recently—from Monument to Victory to Monument for the Dead.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 14794) making appropriations for the Department of Transportation and related agencies for the fiscal year ending June 30, 1970, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. BOLAND, Mr. MCFALL, Mr. YATES, Mr. MAHON, Mr. MINSHALL, Mr. CONTE, and Mr. BOW, were appointed managers on the part of the House at the conference.

FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes.

Mr. DODD. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. FULBRIGHT. I would like the yeas and nays ordered.

Mr. DODD. Mr. President, in view of the statement by the Senator from Arkansas that he desires to have the yeas and nays, 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. FULBRIGHT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. FULBRIGHT. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. DODD. Mr. President, I strongly oppose the pending amendment.

I believe it would be interpreted as an unfriendly attitude on the part of the Senate if we strike from the appropriation bill the item earmarking $50 million for military aid to South Korea.

There is overwhelming justification for this appropriation.

First, there is the fact that the North Korean Communist government maintains a massive military establishment and that it continues to engage in numerous provocative and warlike actions directed against the Republic of South Korea and against the U.N. forces there.

The warning signs have been out for some time now. Within the past 2 years there has been the seizure of the *Pueblo*, the attempted assassination of President Park, the shooting down of an unarmed American plane 100 miles at sea and, within the past week, the hijacking of a South Korean passenger plane.

Second, there is the fact that, despite the grave peril on their own frontiers, our South Korean allies have contributed 50,000 men to the Vietnam war. These forces have borne themselves with remarkable effectiveness and courage, and they have carried a heavy share of the battle. Moreover, on a per capita basis, the South Korean contribution in manpower substantially exceeds our own.

Third, there is the fact that the authorization reported by the Senate-House conferees is already $75 million below the figure requested by the administration, as essential to our national security interests.

Mr. President, if this amendment carries, it will seriously undercut our entire position in the Far East.

It would be an affront to our South Korean allies.

It would directly increase the danger of war in Korea by encouraging Kim Il Sung, the mad Communist dictator of North Korea, to believe that we are ready to abandon our South Korean allies.

Mr. President, I am very reluctant to get into this discussion. I wish it had never taken place.

What the Senator from Arkansas has said about leaving the allocation of military aid funds to the discretion of the President makes a great deal of sense. It may be better in most cases to do it in that way, rather than on a country by country basis. I am sure the President would exercise his great care and caution in allocating such aid.

What troubles me is that this discussion is going to be interpreted, particularly in the Far East, as a lack of sympathy on the part of the Senate with the problems of South Korea.

I hope I am mistaken about that, but I fear I am not. For that reason, I think we are in a most unfortunate posture.

South Korea has been our ally, has fought with us on her own territory, and she is fighting with us in Vietnam. These facts alone, I think, make many of us feel a special concern for that little country in the Far East.

My own view is that one of the worst things that could happen to us would be the belief—on the part of the Asians, in particular—that there is a lack of sympathy in the United States for the Government of South Korea.

I am fearful that if this amendment is adopted, that is exactly what will happen.

I do not know why the administration asked for this item. I assume it did.

If I may have the attention of the Senator from Arkansas, I should like to ask him a question.

The PRESIDING OFFICER. The Senator from Connecticut wishes to ask a question of the Senator from Arkansas.

Mr. DODD. I do not know and I wish the Senator could tell me if the administration asked for this item?

Mr. FULBRIGHT. This item was not. There is a very substantial sum already in the bill.

Mr. DODD. I know that.

Mr. FULBRIGHT. There is a very substantial sum already in the bill that they recommended. This was put in by the House Appropriations Committee without any budget request.

Mr. DODD. I thank the Senator for that information.

Mr. FULBRIGHT. There is nothing in the report to justify it.

Mr. DODD. I understand that. I do not know how it got there.

I hope the Senator will give me his reaction to what I have said.

I feel that the people in the Far Eastern area will say that this is a change and that we are unsympathetic to the plight of those people.

Mr. FULBRIGHT. I do not think there is any basis for that.

Mr. DODD. I do not imply that the Senator is unsympathetic to the Koreans. I do not know any Senator who is. But I am afraid that will be the interpretation placed on the Senator's amendment, and that our enemies will make a lot of it.

They will taunt our South Korean allies and say, "There are your American friends. They obviously do not consider you very important. As soon as they can dump you, they will do so."

It would be a tremendous propaganda boon for our enemies. I hope I am wrong, but I am dreadfully afraid that it would be exploited by them and encourage them to rash action. For that reason, I wish we could somehow deal with this matter without this kind of an amendment.

Mr. President, I have said everything I can say about this matter. I know that the chairman of the Committee on Foreign Relations said it is not his purpose, and I am sure it is not, to prohibit further military aid to South Korea. He said that, in recommending a total authorization of $350 million in military aid, the administration wants that amount of money in Korea to dispose of as it sees fit.

This may be true in a formal sense. But I say again for the record, and I hope for the interest of Senators, that if this amendment is agreed to it could have a profound political impact.

Instead of underscoring our determination to help South Korea defend itself against North Korean Communist aggression, this amendment might suggest to North Korea that we are growing indifferent to the fate of South Korea; and the North Korean Communists, in consequence, would probably become more belligerent in their attitude toward South Korea, hijack more planes, sink more ships, and shoot down more planes.

This is my great fear. For that reason I think it would be a dreadful mistake to agree to the proposed amendment at this critical juncture.

Since the amendment already approved makes it essential that the figures in the appropriation bill conform with those agreed to by the authorization conferees, there is no economy of any kind to be effected by approving the pending amendment.

The only real purpose accomplished by this act would be political. It would be anti-South Korean, and it would be so interpreted by our friends and by our enemies.

I urge the defeat of the amendment. The brave South Korean people, who have suffered so much for their own freedom and who have fought so courageously on our side, deserve better than this.

Mr. MILLER. Mr. President, I rise in opposition to the amendment.

It was my privilege to visit the Republic of South Korea in 1966 and, again, in November of 1969. On both occasions I had an opportunity to see with my own eyes the equipment being used by the military services of the Republic of South Korea and also to be informed by our own intelligence sources of the nature of the military threat posed by the North Korean Communists.

Also, as all of us should know, the North Korean leaders are among the most hostile and aggressive Communists in the world. Not a week goes by without an incident provoked by North Korea—either around the DMZ or along the shores of South Korea, and many of these incidents have resulted in the death of our own American soldiers and of our South Korean allies.

The situation has grown increasingly hostile and dangerous, particularly because the North Korean military forces are equipped with the latest in weapons and aircraft. For South Korea to continue to avoid attack—or, to put it another way—for North Korean leaders to be deterred from making a miscalculation and launching an attack, the Republic of South Korean simply must have military equipment equal in quality to that of North Korea. That is what the point at issue is all about.

And it comes down to this. If the Senate wishes to run an increasing risk of war—of attack by North Korea on our ally, South Korea, then vote for this amendment. If the Senate does not wish to do so, then vote down the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the vote take place on the pending amendment not later than 5 minutes from now.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on any further amendments, if there are any further amendments, there be a time limitation of 30 minutes, to be equally divided between the sponsor of the amendment and the manager of the bill.

The PRESIDING OFFICER. Is there objection?

Mr. FONG. Mr. President, the manager of the bill, the Senator from Wyoming (Mr. McGEE), probably would like to speak. May he be given as much time as he wishes to speak?

Mr. MANSFIELD. On the pending amendment?

Mr. FONG. Yes.

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

Mr. FONG. Mr. President, in South Korea we have a very reliable, strong, and dependable ally. She has sent 40,000 troops to Vietnam. She is also willing to have America store nuclear weapons there when we remove them from Okinawa. She has in every respect been a very strong ally of the United States.

Although the administration did not ask for this item it has come to us and it has been reported favorably from the committee. I think we should not delete it. If we delete it, it would suggest to South Korea that maybe she is not the strong ally we think she is. I ask Senators to vote against the amendment.

The PRESIDING OFFICER. Does the Senator from Wyoming desire to speak on the amendment?

Mr. McGEE. How much time is remaining?

The PRESIDING OFFICER. Unanimous consent was given that the vote take place not later than 5 minutes from that time, which was approximately a minute and a half ago, except that permission was given for the Senator from Wyoming to speak.

Mr. McGEE. Mr. President, I have no extensive remarks to make. I intend to oppose the amendment for the very reason I think the need in South Korea for these additional funds has been clearly demonstrated. The Department of Defense made it very clear that the funds would be put to good and constructive use, and inasmuch as the House Committee on Appropriations as well as the House authorizing committee had included these funds in the original sum that this body would be well advised to stand by these allies.

Therefore, I oppose the pending amendment.

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

Mr. McGEE. I yield.

Mr. CANNON. Mr. President, I wish to ask the Senator if it is not a fact that to strike out this provision, as the amendment suggests now, would certainly be a clear indication that we do not intend to support South Korea which has really been our strongest ally in the Far East.

Mr. McGEE. The Senator is exactly right and it comes at a very critical moment when all kinds of pressures are being exerted to try to split or create defects in the ranks. I think it is important.

Mr. CANNON. We are doing everything to help them up on the border and, in turn, they are helping us in South Vietnam by providing troops. They provide the only substantial number of troops beside our own that are in Vietnam, outside of the South Vietnamese. I think it would be unfortunate if we took this precipitate action now to strike an apparent assist to South Korea from the bill because it could be misinterpreted as a departure from assisting a country that has been a great ally.

Mr. JAVITS. Mr. President, will the Senator from Wyoming yield at that point?

Mr. McGEE. I yield.

Mr. JAVITS. I say to the Senator from Nevada (Mr. CANNON) and all my colleagues that I do not believe it would be fair, in the absence of the Senator from Arkansas (Mr. FULBRIGHT), to leave it as it is because there were developed, in a speech by the Senator from Arkansas, in colloquy, among the Senator from Vermont (Mr. AIKEN), myself, and other Senators, two points which bear upon what was said. One, that Korea will undoubtedly not suffer. There are adequate resources in the $350 million for military assistance to Korea. The objection was to naming it as a country. This has been a longstanding policy objection in the Foreign Relations Committee. Whatever the Senate may do about this amendment I think it would be unfortunate to leave the impression if the amendment were to prevail, that it is a significant rebuff to Korea. It has been made crystal clear in the debate that there are adequate amounts in the $350 million. It was not intended for Korea to suffer as a result of the principle which the Foreign Relations Committee feels, and the Senator from Arkansas contends for, as well as the Senator from Vermont, that an individual country designation should not be made.

Mr. DODD. Mr. President, I want to compliment the Senator from Nevada (Mr. CANNON) on the views he has just expressed. I also want to compliment the Senator from Wyoming (Mr. McGEE) and the Senator from Hawaii (Mr. FONG) on their contributions to the discussion.

In answer to the Senator from New York, I do not know whether the Senator was in the Chamber when I was trying to make the point that we are going to suffer a terrific political and propaganda setback if this amendment is passed, because then our enemies and North Korea in the first instance, will be encouraged to say that the U.S. Senate is changing its attitude toward South Korea.

We do not want that to happen. But I am sure that it would happen if this amendment is adopted. And we cannot afford to run this risk.

Mr. McGEE. Mr. President, at this time, tensions have sprung up all along the 38th parallel and tests have been run against us on the part of North Korea solely to find a weakness or a breakthrough or an exposure of any American intentions to back away.

I think that the symbolism here is perhaps even more important than the actual number of dollars and I would hope that the Senate would reject the pending amendment.

Mr. President, may I ask, how much time remains?

The PRESIDING OFFICER. When the Senator from Wyoming yields the floor, the vote on the amendment will take place.

All time has expired. The question is on agreeing to the amendment of the Senator from Arkansas. The yeas and nays have been ordered——

Mr. ALLOTT. Mr. President, would the Chair be so kind as to inform me which amendment is pending?

The PRESIDING OFFICER. The pending amendment is the amendment offered by the Senator from Arkansas. The clerk will state the amendment.

The assistant legislative clerk read as follows:

On page 6, in lines 21 through 24, strike out "$375,000,000, of which $50,000,000 shall be available only for the Republic of Korea" and insert in lieu thereof "$350,000,000".

Mr. BAKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Tennessee will state it.

Mr. BAKER. May I inquire if the reduction from $375 million to $350 million was in accord with earlier proceedings held today?

Mr. McGEE. That is correct.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the Senator from Alaska (Mr. GRAVEL). If he were present and voting, he would vote "nay"; if I were permitted to vote, I would vote "yea." Having already voted in the affirmative, I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana, (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Montana (Mr. METCALF), the Senator from Georgia (Mr. RUSSELL), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his famliy.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

If present and voting, the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) would each vote "nay."

The result was announced—yeas 38, nays 47, as follows:

[No. 257 Leg.]

YEAS—38

Aiken	Hartke	Pell
Brooke	Hatfield	Prouty
Burdick	Hughes	Proxmire
Byrd, Va.	Javits	Randolph
Case	Jordan, Idaho	Ribicoff
Church	Kennedy	Schweiker
Cranston	Mansfield	Smith, Maine
Eagleton	Mathias	Spong
Ellender	McGovern	Tydings
Fulbright	Mondale	Williams, N.J.
Goodell	Moss	Williams, Del.
Gore	Muskie	Young, Ohio
Hart	Nelson	

NAYS—47

Allen	Ervin	Montoya
Allott	Fannin	Murphy
Baker	Fong	Packwood
Bayh	Goldwater	Pastore
Bellmon	Griffin	Pearson
Bennett	Gurney	Saxbe
Bible	Hansen	Scott
Boggs	Holland	Smith, Ill.
Cannon	Hruska	Sparkman
Cook	Jackson	Stennis
Cotton	Jordan, N.C.	Stevens
Curtis	Magnuson	Talmadge
Dodd	McClellan	Thurmond
Dole	McGee	Yarborough
Dominick	McIntyre	Young, N. Dak.
Eastland	Miller	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Byrd of West Virginia, for.

NOT VOTING—14

Anderson	Inouye	Percy
Cooper	Long	Russell
Gravel	McCarthy	Symington
Harris	Metcalf	Tower
Hollings	Mundt	

So Mr. FULBRIGHT'S amendment was rejected.

Mr. McGEE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. FONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. McGEE. Mr. President, I have agreed to respond to general questions that Senators want to raise about the bill. It is my understanding that the Senator from New York has some questions.

Mr. JAVITS. Mr. President, I noted with interest that the committee omitted an item which was provided for by the House of Representatives, entitled "Prototype Desalting Plant," with the amount of $20 million. This item is dealt with at page 12 of the committee report.

I think it is important, Mr. President, to point out that though the committee assigns as the reasons for not funding this project Secretary Rogers' thought that it was not feasible at this time, it is a fact that this imaginative project was not suggested or recommended by the State Department in the first place.

Mr. McGEE. Mr. President, I say to the Senator from New York——

Mr. JAVITS. I am not quite through. I was waiting because the Senator was busy.

Mr. McGEE. The Senator from New York knows I stand ready with an answer, whatever his question.

Mr. JAVITS. I know. I would just like to, if I may, lay the facts on the table.

This particular item did not originate with the State Department. Hence, it was not to be expected that the State Department could be looked to for confirmation of its feasibility or desirability. It originated in the other body, in the House authorization bill. Subsequently, I might say, due to the understanding of the Senator from Wyoming himself, it appeared in slightly different form in the authorization bill of this body.

In both cases, it was approved in the authorization process, and now is, I believe, a part of the authorization contained in the bill agreed upon in conference.

The important thing I am trying to do here in the Senate is to establish the factual foundation in the record, so that Senators will have heard about and understand the justification, should the appropriations conferees come to the conclusion that it ought to be included.

The project essentially is a pilot plant undertaking, which follows from an amendment introduced by the Senator from Wisconsin (Mr. NELSON) with 21 Senators including myself as cosponsors. Its aim is to provide for a joint venture with Israel in a critically important area, to wit, the desalting of sea water, for the purpose of making fresh water.

The PRESIDING OFFICER. The Senate will be in order.

Mr. JAVITS. It is a joint venture between two countries, with each country putting up an equal amount, and with Israel, in this case, putting up an additional $60 million for related equipment.

The reason for choosing Israel was threefold: One, it was willing, and has unique technology experience and capabilities in this field. Two, it is in an area where it can be tested practically, because of the tremendous need of water in the whole Middle East. Therefore it could be a prototype for the whole Middle East—as well as the whole United States, which also needs water. Three, the costs involved for us are very much lower than they would be if we did it all by ourselves. Also the techniques would be the most advanced techniques upon which the parties could agree. That involves our own Interior Department. If they could not agree, obviously the United States would not go into it. For all of those reasons, Mr. President, I think the project has commended itself very highly to both authorizing committees and to the House of Representatives and the Senate members as a whole.

I only make this statement so that we might have a factual record here in the Senate. I can appreciate a much better reason than that assigned in the report why the Appropriations Committee felt it could not act, because, again, this was uniquely a Congressional matter. It not being a State Department or an administration recommendation, the Appropriations Committee had no authorization when it acted.

The matter will be in conference, so really it was proper for the Appropriations Committee of the Senate not to deal with it.

I ask unanimous consent that a memorandum detailing the situation as it affects this project be printed in the RECORD, together with a copy of the amendment introduced by the Senator from Wisconsin (Mr. NELSON), with 21 Senate sponsors, of whom I am one.

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

MEMORANDUM—PROPOSED DESALTING PLANT IN ISRAEL

1. ORIGIN OF THE PROJECT

The project was developed after five years of joint study and research initiated by President Johnson in 1964.

It was recommended by George D. Woods, former president of the World Bank, who was

the head of the U.S. negotiating team, and was submitted to Congress by the Johnson Administration on January 17, 1969. (See the attached statement by Max N. Edwards, then Assistant Secretary of the Interior, on the significance of the project.)

The United States would put up $40 million to cover half the cost of construction and operation of the desalting plant for five years. Israel would contribute an equal amount. In addition, Israel would put up an estimated $60 million for the power plant.

2. WHY THIS PROJECT IS IMPORTANT TO THE UNITED STATES

The world needs to produce large quantities of fresh water for agriculture in order to augment the world's food supply and to help avert a hunger crisis. That requires large-scale efficiently operated plants to reduce the cost of desalted water to prices that farmers can afford to pay. The United States needs experience and knowledge for use in water deficient areas in our own country and to assist less-developed countries around the world.

3. WHY BUILD THE PLANT IN ISRAEL?

The argument has been made that this project should be deferred for fiscal reasons and because further research needs to be done in this country.

In our judgment it would be economical to undertake this project in Israel because new processes can be tried out there at a much lower cost than in the United States. In addition, Israel would be making its own contribution in funds and technological proficiency.

Israel anticipates a critical water shortage in the 1970s and she has an urgent need to develop new water resources. She has know-how in desalting techniques and she has experience in the management and use of her existing water supply.

During the hearings on this project in the House, testimony was submitted by two top authorities: Dr. Abel Wolman, who served as chairman of the National Water Resources Board, and Philip Sporn, who has served the U.S. government as consultant on many U.S. commissions. Both men strongly recommend the project.

Wolman said:

"Israel is one of the few countries in the world which, because of necessity, has an excellent inventory of its fresh water resources. . . . This tiny country has perhaps done more developmental work in the minute use of drops of fresh water for agricultural purposes than almost any country I know . . ."

He said that labor costs for maintenance, operation and construction are very much less than in the United States and that it would be to the advantage of the United States to learn what economy of size would mean in the operation of such a plant under skillful and intelligent management.

And Sporn said:

"The fruits of this experiment would be valuable in many parts of the United States and in many other countries which, as a matter of national interest and as a humanitarian matter, we have dedicated ourselves to help."

THE SIGNIFICANCE TO THE UNITED STATES

The outgoing Johnson Administration recommended action to build a large prototype desalting plant in Israel in a letter sent to Congress, on Jan. 17, 1969, by Max N. Edwards, who was then Assistant Secretary of the Interior.

The letter stressed the benefits of the proposal to the United States.

Excerpts:

"The proposal provides the opportunity for the United States to participate in a technologically advanced water desalting program to further its objectives of developing large-scale desalting processes. The United States will receive and have available for domestic and worldwide use all of the project information, technical data, and operating experience resulting from this project. The United States, its officers and employees, will be granted permanent rights to receive data and will have access to the plant for the purpose of observing its operation and improving science and technology in the field of desalination. It will be expected that the waterplant will be procured from United States sources. . . .

". . . In previous presentations of the saline water program to the Congress, the need for participation in the study, design, construction, and operation of such large-scale prototype desalting plants has been emphasized. Briefly, the basic reasons for such participation are as follows:

"1. To develop advanced desalting technology for design and for hardware construction.

"2. To demonstrate desalting practices and to gain operating experience with a large plant. Only through actual operation will it be possible to establish the economics of water costs, study the effects of different modes of operation, investigate pretreatment methods, and resolve operating and maintenance problems, all of which determine the price of the water.

"3. As a necessary intermediate step for eventual larger projects in all parts of the world, and specifically in the United States. This project will serve as a pilot operation for the technology and plants required before the turn of the century by our own southwest.

"The proposed financial contribution towards the capital and operating costs of this project is less than any other presently available alternative for obtaining similar technology.

"The project to be authorized by this legislation offers a unique opportunity to achieve the objectives we have just set forth. The Government of Israel has conducted a comprehensive national study of the availability and quality of its water resources. They have concluded that new incremental sources of fresh water must be made available by the mid-1970s in order to maintain their industrial and economic growth. Therefore, Israel has had a continuing interest in desalting and specifically in the United States desalting program. . . .

"Participation in this specific project provides an excellent opportunity to study a system of water use for agriculture. Israel is unique in having a fully integrated water system serving the bulk of the nation's irrigated agriculture and other uses, and it provides in effect a 'water management laboratory'. The impact of decisions involving such matters as water prices and quantities, water allocation to different uses, value and kind of crops and areas of development can be related to the cost and quantity of desalted water, and, indirectly, to other water supplies.

"In summary, while the project is vital to Israel in terms of water supply and power, its significance to the United States is the opportunity to improve and advance science and technology in the field of saline water conversion and to contribute materially to development of low cost desalination processes. We believe we should take advantage of this opportunity and we urge the early enactment of this proposal. . . ."

NELSON AMENDMENT—S. 2847

Cosponsors: Senators Nelson, Case, Eagleton, Goodell, Harris, Hart, Hartke, Hatfield, Javits, Kennedy, Magnuson, McGee, Mondale, Muskie, Pell, Ribicoff, Saxbe, Schweiker, Scott, Tydings, Williams (N.J.), Yarborough, Young (Ohio).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in furtherance of the purpose of the Foreign Assistance Act, as amended, and for the purpose of improving existing, and developing and advancing new, technology and experience in the design, construction, and operation of large-scale desalting plants of advance concepts which will contribute materially to low-cost desalination in all countries, including the United States, the Secretary of State is authorized to participate in the development of a large-scale water treatment and desalting prototype plant and necessary appurtenances to be constructed in Israel as an integral part of a dual-purpose power generating and desalting project. Such participation shall include financial, technical, and such other assistance as the Secretary deems appropriate to provide for the study, design, construction, and, for a limited demonstration period of not to exceed five years, operation and maintenance of the water treatment and desalting facilities of the dual-purpose project.

SEC. 2. Any agreement entered into under first section of the Act shall include such terms and conditions as the Secretary deems appropriate to insure, among other things, that all information, products, uses, processes, patents, and other developments obtained or utilized in the development of this prototype plant will be available without further cost to the United States for the use and benefit of the United States throughout the world, and to insure that the United States, its officers, and employees have a permanent right to review data and have access to such plant for the purpose of observing its operations and improving the science and technology in the field of desalination.

SEC. 3. The Secretary of State shall be responsible for the conduct of the technical aspects of the project.

SEC. 4. In carrying out the provisions of this Act, the Secretary may enter into contracts with public or private agencies and with any person without regard to sections 3648 and 3709 of the Revised Statutes.

SEC. 5. Nothing in this Act shall be construed as intending to deprive the owner of any background patent or any right which such owner may have under that patent.

SEC. 6. In carrying out the provisions of this Act, the Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency.

SEC. 7. The United States costs, other than its administrative costs, for the study, design, construction, and operation of a prototype plant under the Act shall not exceed either 50 per centum of the total capital costs of the facilities associated with the production of water, and 50 per centum of the operation and maintenance costs for the demonstration period, or $40,000,000, whichever is less. There are authorized to be appropriated, subject to the limitations of this section, such sums as may be necessary to carry out the provisions of this Act, including administrative costs thereof. Such sums shall remain available until expended.

Mr. McGEE. I thank my friend from New York.

Mr. President, in the wake of the action just taken by the Senate on the rollcall vote, I should like to suggest that we have accepted a limitation or ceiling on the military assistance appropriation consistent with that which was brought out of conference, and consistent with the impact of the Fulbright amendment adopted this morning in regard to it.

To follow through on that, so that we can adhere to our action this morning, I ask unanimous consent that, on page 6 of the bill, lines 21 and 22, the figure "$375 million" be adjusted to read "$350 million," in accordance with the conference authorization.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, this is the question I tried to propound to the Senator from Arkansas this morning. His response to me was that there are no funds in the authorization bill for Korea. Is this the adjustment for Korea?

Mr. FULBRIGHT. Mr. President, the Senator misunderstood me. I have never said that. There are very large funds in the bill, aside from this, for Korea.

Mr. STEVENS. I have just corrected the record. I am sorry to state this to the Senator from Arkansas. I will be glad to get the record back. That was the reason I raised the question, because I said specifically——

Mr. FULBRIGHT. Oh, it is not earmarked. I am sorry; I misunderstood the Senator. No funds are earmarked. We do not earmark them for these countries as a general practice.

Mr. STEVENS. Well, now, we have just refused to adopt the amendment offered by the Senator from Arkansas, which would have taken out the earmarking for Korea.

Mr. FULBRIGHT. That is correct.

Mr. STEVENS. And I also note that the language on page 7, where it says: "That none of the funds appropriated in this paragraph shall be used to furnish sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, to any underdeveloped country other than Greece, Turkey, the Republic of China, the Philippines, and Korea does in fact contain an authorization to turn some of this equipment, in terms of equipment, over to Korea and to Nationalist China, or Taiwan.

I shall not object if the Senator tells me that the funds involved in this reduction do not involve either Korea or Taiwan. Do they?

Mr. FULBRIGHT. I misunderstood the Senator. The authorization bill does not pick out and specify or earmark funds for countries. But the administration, in presenting these programs, states that this is their justification. It is for a very large amount, three times as much as this amount here, intended for Korea, but it is not earmarked.

That is the usual practice, and has been for 20 years. The only way this varies from that is that here it is earmarked. But there is nothing in what the Senator is asking to do that would prevent Korea getting its money. In the first place, we have already earmarked $50 million by the last vote. Korea will get, in addition to that, other funds which the administration intends for Korea.

Mr. McGEE. And may I add to that response, for I think it will clarify it a bit, in the ceiling imposed by the authorization conference report, that figure was still $25 million above our general, worldwide authorization in the military area.

The moneys, therefore, that this last vote would reserve for Korea would come in part out of that, and the rest of it presumably, as determined by the administration, would come from foreign military assistance funds.

Mr. STEVENS. Mr. President, the House bill authorized $454,500,000 for worldwide military assistance. As I understand the measure, the Senate would authorize $350 million worldwide.

Mr. McGEE. That is correct.

Mr. STEVENS. I can understand that one part, the $54,500,000, is for Taiwan. But where is the balance that the reduction is related to?

It seems to me that the conference committee that the Senator from Arkansas has under his wing, if he will pardon the expression, on the authorization bill has now been completed. I have not seen that. However, I am informed that it has, in fact, reduced the authorization for some of these items. And this is to comply with that action.

Why is it necessary to do this?

Mr. ELLENDER. Mr. President, when we had the foreign aid bill before the Senate yesterday, there was an understanding that the authorization for military assistance would be reduced in accordance with what the conferees would provide.

And the conference in the authorization bill did provide $350 million instead of the $375 million that we had in the bill.

This is simply to put it back under the authorization that was agreed to yesterday.

Mr. STEVENS. Have the House conferees agreed to this?

Mr. McGEE. The House conferees have agreed to the $350 million. This makes it consistent with the earlier action of the Senate this morning on the Fulbright amendment.

Mr. AIKEN. Will the Senator yield?

Mr. McGEE. I yield.

Mr. AIKEN. Mr. President, under the bill as agreed to by the conference, up to $350 million was available for Korea if the President and his administration should decide that is where the military assistance budget should be spent. However, the vote just taken reduces the amount available for any other country—Thailand, Vietnam, or Laos—by $50 million, because we earmarked $50 million alone for Korea.

Perhaps Korea is where we need it most. However, in the event it is not needed in Korea, the military assistance for the other countries has been reduced by $50 million. And at the present time it seems that it might be needed in other Asian countries as much as in Korea, although I do not know.

I leave that decision to the President, the Defense Department and the State Department. They know a lot more about it than I do. However, I want to emphasize that military assistance has just been reduced by $50 million because we earmarked money for Korea.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. McGEE. Mr. President, are there further amendments? I am ready for third reading.

Mr. DOMINICK. Mr. President, will the Senator yield for a short question?

Mr. McGEE. I yield.

Mr. DOMINICK. Mr. President, did the Foreign Relations Committee receive any evidence or testimony on allegations which I have recently heard that UNICEF is now supplying aid and money to North Vietnam?

Mr. McGEE. We received no testimony on it.

I am advised by the staff that the Foreign Relations Committee has received no testimony to that effect.

I did read something to that effect in one of the releases from the John Birch Society. But I have not seen anything in testimony.

Mr. DOMINICK. This was in a newspaper column. I did not know whether there was anything to it.

Mr. McGEE. I saw it in one of the speeches circulated from Belmont. However, that is the only thing I saw.

Mr. DOMINICK. The committee did not have any evidence on that?

Mr. McGEE. Not that I know of.

Mr. DOMINICK. I thank the Senator.

Mr. BYRD of Virginia. Mr. President, will the Senator yield?

Mr. McGEE. Would the Senator be willing to wait for a third reading?

Mr. BYRD of Virginia. I do not think I would have an amendment. However, I would like to have an understanding of to matter before I forgo the opportunity to offer an amendment.

Mr. President, on page 17 in dealing with the funds for the Peace Corps, there is an item of $98,450,000, of which not to exceed $30,100,000 shall be available for administrative expenses.

That is more than 30 percent of the total. I wonder if the Senator has information as to what the administrative expenses of the agency have been running.

Mr. McGEE. Mr. President, I think that the point the Senator is getting at is a very good one. It is that as the total comes down, why do the administrative expenses not come down also?

This question was put bluntly by the committee in the hearings. And the explanation, which to the chairman, at least, seemed very valid, was that the fixed costs of administering a program, whether $95 million or $120 million, are generally not very flexible.

It is that which is currently being reflected in the seeming disproportion of the two figures, with the total coming down. We were satisfied after the hearing that there was no deliberate padding in an attempt to expand the empire of the Peace Corps through the administration in my disproportionate way.

Mr. BYRD of Virginia. It would be fair to say, I assume, that of our total appropriations for the Peace Corps, $98 million, roughly one-third would be for administrative expenses.

Mr. McGEE. The Senator is correct. It would be a much lower percentage if we had $150 million. It would be about the same expenses, in other words.

Mr. BYRD of Virginia. Mr. President, I am speaking of the present time, the year for which we are legislating. Of the total amount we appropriate, roughly one-third will go for administrative expenses.

Mr. McGEE. The Senator is correct. The administrative expenses, I am re-

minded, is not to be associated with the administration of the program in Washington alone. This is naturally a significant part of it. However, in each country there has to be a fixed administrative operation. Sometimes it is only one or two persons. However, there is a fixed amount, regardless of whether we have two trainees in that country or 122. It is rather a constant factor.

Mr. BYRD of Virginia. The point I am trying to develop, which I think has been developed, is that roughly one-third of all the money appropriated for the Peace Corps is utilized for administrative expenses.

On page 21, the limitation on the Export-Import Bank, the figures which are used on line 19, one figure being $3,427,-413,000, and the other figure being on line 20, $2,420,000,000, do I read it correctly that that limitation applies to existing appropriations? It is not a new appropriation?

Mr. McGEE. That is not a new appropriation. They are limitations placed by the Congress on the operations of the banks. As the Senator knows, the Bank is subject to close congressional scrutiny.

Mr. BYRD of Virginia. Mr. President, I thank the Senator.

On page 9 of the committee report, multilateral organizations and programs, the figure totals $122 million. I take it that all of that is for the United Nations. Am I correct in that assumption?

Mr. McGEE. Most of that is for the United Nations. The lists that the Senator will note at the top of page 9 mentions five separate small groups that are also included under that general heading. However, the great bulk goes to the U.N. development program and some related agencies.

Mr. BYRD of Virginia. Mr. President, are the last five not United Nations connected, or are they entirely separate from the United Nations?

Mr. McGEE. They are affiliated but separate from the United Nations.

Mr. BYRD of Virginia. What are the special contributions for Vietnam? Is that a United Nations program?

Mr. McGEE. It is independently administered, as I recall. If the Senator will wait a moment, I will verify that.

As I remember, this had to do with some medical and food assistance. However, I will have the information in just a moment.

Mr. McGEE. I will read from the justification made to the committee, which will explain the point:

In May 1968, the United States entered into a funds-in-trust arrangement with the World Health Organization (WHO) following a request from the Vietnamese Government to WHO for assistance in establishing a National Institute of Public Health. WHO will provide the experts to train technicians, while the Government will provide the site for the Institute. Subsequently the Netherlands agreed to contribute $500,000 to WHO for this project. The plan of Operations for the project was signed on November 24, 1968.

The United States also is exploring with UNICEF the possibility of helping establish an Institute of Social Welfare, to which the Dutch have already contributed $355,000 a funds-in-trust basis.

The Institute will train relocation and rehabilitation specialists to help with the problems of Vietnamese displaced by the war.

It is proposed that $1 million be made available in FY 1970 as the U.S. contribution to special UN projects in Vietnam.

It is a public health institute that is being established there, and we are participants in it with the Netherlands.

Mr. BYRD of Virginia. I thank the Senator.

One additional question: In regard to the assistance to refugees, the total committee recommendation is $87 million. I assume that the bulk of that applies to Cuban refugees.

Mr. McGEE. That is correct. It is all for Cuban refugees.

Mr. BYRD of Virginia. I thank the Senator.

Mr. FULBRIGHT. Mr. President, I should like to ask a question in regard to the military sales.

The report states that that is dropped because it has not been authorized. I would assume from that that there is no danger of its being revived in conference.

Mr. McGEE. It is my understanding, in view of the adoption of the Fulbright amendment this morning, that that would be deleted from the bill. However, it is in the bill passed by the House.

Mr. FULBRIGHT. Good.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. McGEE. Mr. President, I had promised the Senator from Colorado that we would respond to three or four relevant questions he wanted to raise. I wonder if I might suggest the absence of a quorum until we locate him.

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

Mr. McGEE. I yield.

Mr. HOLLAND. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. HOLLAND. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. HARTKE. Mr. President, I would like to speak in support of an item contained in the House version of the appropriation for foreign assistance. The House bill appropriates $20 million for the construction of desalinization plant in Israel. This would be a joint project between the United States and the state of Israel.

My interest in this desalting project is a logical continuation of my cosponsorship of a bill introduced by Senator NELSON on August 13 of this year. This earlier initiative which I supported would have provided $40 million for desalting and power plant in Israel, with Israel contributing $100 million.

The need for such a facility is still with us, and is, in fact, growing daily. The world's rising population is gradually depleting all possible natural water resources, making it essential to create the necessary desalting plants. Israel is plagued with an especially acute problem. Within the next decade—the 1970's—all of Israel's sources of natural water will be effete. Already 95 percent of Israel's water resources have been exhausted. We simply cannot allow ourselves to postpone some form of preventive action, only to awake some morning and realize that there is no available water supply and that we have not taken the precaution of creating pure water from the massive sources of salt water.

The project which we construct in Israel is only a small example of what will be required throughout the world, if it is to remain a habitable place for its hundreds of millions of people. It also is only a projection of what we shall have to begin doing here in the United States. Although our population might not be rising at so rapid a rate as the populations of many other countries, our need for fresh water is soaring. Our rising standard of living, continuing industrialization, and new agricultural methods which demand intensive irrigation make it essential that more and more fresh water sources are available. For example, the United States uses approximately 360 billion gallons of water a day—this is a rate which increases by 25,000 gallons per minute, and which, in 20 years, is expected to triple. If we are to confront this worldwide problem and make some reasoned approach to solving it, we must now acknowledge that desalinization, from all indications, presents the greatest promise for ending the threat of water shortages. Consider simply the fact that almost 75 percent of the earth's surface is covered with water, but this water, since it contains about 3½ percent salt, cannot be used in the same way that natural water is used. If we, therefore, can reduce the salt content of the world's ocean waters, we shall have opened vast new reservoirs of usable water. For years, this was the logical solution. Only recently, however, have we developed the technical expertise to make lowering the salt content of ocean waters feasible. Now this knowledge must be fully exploited. My amendment would hopefully be a pattern for a massive followup program of desalting plants throughout the world. Already 20 countries have such plants, but clearly many more will be needed.

This seems to me to be the ideal time finally to begin shifting the focus of our foreign assistance program. For many many years I have encouraged the Senate to reconsider the military orientation of our foreign assistance program. In a world so plagued by violent hostilities which consume human and material resources at a pathetically disproportionate rate, to all humanitarian efforts, how can we ever hope to make America a nation that is truly seeking peace? How can America be a symbol of all that is good and gentle in a country, unless we stop concentrating 80 percent of our foreign assistance on military expenditures? Now we have the opportunity to use our foreign aid funds in a manner which will further not only the economic development of a country, but also the hope for

peace, and the spirit of peace. When one places his major emphasis on a program which has social and economic benefits, and which is out of the realm of the military, then the old theory about a "self-fulfilling prophecy" can take hold. That is, since our major concern focuses upon nonviolent programs instead of, for example, providing arms or military training to a foreign government, perhaps we can, therefore, lessen the tendency of one state to carry out violent actions against another state.

Although the scope of this one desalting project in Israel is relatively small when viewed against our entire foreign assistance appropriations, the essential point is that it offers an example of the kind of actions we can be taking to prevent a worldwide tragedy—such as a great water shortage—and at the same time to encourage socially oriented and peaceful foreign assistance projects.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. McGEE. Mr. President, I understand that the yeas and nays have been ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered.

The bill having been read the third time, the question is, Shall it pass?

The clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. McCARTHY), the Senator from Georgia (Mr. RUSSELL), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

If present and voting, the Senator from Kentucky (Mr. COOPER), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 55, nays 35, as follows:

[No. 258 Leg.]

YEAS—55

Aiken	Dodd	Holland
Allott	Dominick	Hughes
Baker	Eagleton	Jackson
Bayh	Fong	Javits
Bellmon	Goodell	Kennedy
Bennett	Gore	Mathias
Boggs	Gravel	McGee
Brooke	Griffin	McIntyre
Cannon	Hansen	Metcalf
Case	Harris	Miller
Cotton	Hart	Mondale
Cranston	Hatfield	Moss
Muskie	Proxmire	Sparkman
Nelson	Randolph	Spong
Packwood	Ribicoff	Williams, N.J.
Pastore	Saxbe	Yarborough
Pearson	Schweiker	Young, N. Dak.
Pell	Scott	
Prouty	Smith, Ill.	

NAYS—35

Allen	Fannin	McGovern
Bible	Fulbright	Montoya
Burdick	Goldwater	Murphy
Byrd, Va.	Gurney	Smith, Maine
Byrd, W. Va.	Hartke	Stennis
Church	Hruska	Stevens
Cook	Jordan, N.C.	Talmadge
Curtis	Jordan, Idaho	Thurmond
Dole	Long	Tydings
Eastland	Magnuson	Williams, Del.
Ellender	Mansfield	Young, Ohio
Ervin	McClellan	

NOT VOTING—10

Anderson	McCarthy	Symington
Cooper	Mundt	Tower
Hollings	Percy	
Inouye	Russell	

So the bill (H.R. 15149) was passed.

Mr. McGEE. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. HOLLAND. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

Mr. McGEE. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The PRESIDING OFFICER. Without objection, the motion is agreed to and the Chair appoints Mr. McGEE, Mr. ELLENDER, Mr. McCLELLAN, Mr. HOLLAND, Mr. MONTOYA, Mr. FONG, Mr. COTTON, Mr. PEARSON, and Mr. YOUNG of North Dakota conferees on the part of the Senate.

Mr. MANSFIELD. Mr. President, with his handling of this appropriations measure for our foreign assistance programs, the distinguished senior Senator from Wyoming (Mr. McGEE) has added another outstanding achievement to his already abundant record. It is difficult enough to take charge of a vast funding proposal. The task is made even more difficult when such a measure concerns an area that increasingly has come under attack over the years. Nevertheless, Senator McGEE handled the job with the same high degree of skill and ability, that has marked his years of public service with the greatest distinction. The Senate is deeply grateful.

The South is grateful as well for the splendid cooperation and support of the distinguished Senator from Hawaii (Mr. FONG). As the ranking minority member of this Appropriations Subcommittee he joined to assure the swift and efficient disposition of the matter.

Also to be commended for their contributions on this proposal were the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Vermont (Mr. AIKEN), the Senator from Idaho (Mr. CHURCH), and the many others who joined the discussion. Their cooperation and the cooperation of the entire Senate assured the prompt consideration of this matter with full regard for the views of every Member.

CHANGING THE LIMITATION ON THE NUMBER OF APPRENTICES AUTHORIZED TO BE EMPLOYEES OF THE GOVERNMENT PRINTING OFFICE

Mr. JORDAN of North Carolina. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 9366.

The Presiding Officer laid before the Senate H.R. 9366, to change the limitation on the number of apprentices authorized to be employees of the Government Printing Office, and for other purposes, which was read twice by its title.

Mr. JORDAN of North Carolina. Mr. President, I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The bill was ordered to a third reading, was read the third time, and passed.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. YARBOROUGH, from the Committee on Labor and Public Welfare:

Frank Charles Carlucci III, of Pennsylvania, to be an Assistant Director of the Office of Economic Opportunity, vice Theodore M. Berry;

Wesley L. Hjornevik, of Texas, to be Deputy Director of the Office of Economic Opportunity;

Dr. Jesse Leonard Steinfeld, of California, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgean General of the Public Health Service; and

Donald S. Lowitz, of Illinois, to be an Assistant Director of the Office of Economic Opportunity.

By Mr. SPARKMAN, from the Committee on Banking and Currency:

Arthur F. Burns, of New York, to be a member of the Board of Governors of the Federal Reserve System.

By Mr. EASTLAND, from the Committee on the Judiciary:

William J. Schloth, of Georgia, to be U.S. attorney for the middle district of Georgia; and

Gerald J. Gallinghouse, of Louisiana, to be U.S. attorney for the eastern district of Louisiana.

By Mr. BURDICK, from the Committee on the Judiciary:

Barrington D. Parker, of the District of Columbia, to be U.S. district judge for the District of Columbia.

EXECUTIVE SESSION

Mr. MANSFIELD. I ask unanimous consent that the Senate go into executive session to consider nominations which were reported earlier today.

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

OFFICE OF ECONOMIC OPPORTUNITY

The legislative clerk read the nomination of Wesley L. Hjornevik, of Texas, to

be Deputy Director of the Office of Economic Opportunity.

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

The legislative clerk read the nomination of Frank Charles Carlucci III, of Pennsylvania, to be an Assistant Director of the Office of Economic Opportunity, vice Theodore M. Berry.

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

The legislative clerk read the nomination of Donald S. Lowitz, of Illinois, to be an Assistant Director of the Office of Economic Opportunity, vice James D. Templeton, resigned.

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

PUBLIC HEALTH SERVICE

The legislative clerk read the nomination of Dr. Jesse Leonard Steinfeld, of California, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service, for a term of 4 years.

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

BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM

The legislative clerk read the nomination of Arthur F. Burns, of New York, to be a member of the Board of Governors of the Federal Reserve System for a term of 14 years from February 1, 1970, vice William McChesney Martin, Jr., term expiring.

Mr. JAVITS. Mr. President, today the distinguished counselor to the President, Arthur F. Burns, appeared before the House Banking and Currency Committee in connection with his nomination as Chairman of the Board of Governors of the Federal Reserve System of the United States.

Mr. President, we are indeed fortunate that this distinguished and balanced economist, whom I have known for more than two decades, will soon move into the crucial position which has been so importantly filled with distinction by William McChesney Martin since the early 1950's.

Dr. Burns will be picking up the reins at the Fed at a time when there is widespread controversy over the role being played by the Fed. At immediate issue is the unusually tight monetary policy that the Fed has maintained since late spring which has perhaps moved this economy to the brink of serious recession. The time is upon us for a new creative monetary policy which will move our economy back from this brink while at the same time continuing to curb the price inflation which has seriously distorted our economy since the peak of the Vietnam buildup.

Dr. Burns is eminently qualified to walk this dangerous tightrope. His sound and mature judgment, his modern economic ideas, and his widespread experience at the highest levels of our Government, are the qualities this Nation and world will need in the crucial months and years ahead.

Dr. Burns will need and deserve our support in the period ahead.

The PRESIDING OFFICER. The question is, will the Senate advise and consent to the nomination of Arthur F. Burns to be a member of the Board of Governors of the Federal Reserve System.

The nomination was confirmed.

U.S. ATTORNEY

The legislative clerk read the nomination of William J. Schloth, of Georgia, to be U.S. attorney for the middle district of Georgia for the term of 4 years vice Floyd M. Buford. resigned.

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

The legislative clerk read the nomination of Gerald J. Gallinghouse, of Louisiana, to be U.S. attorney for the eastern district of Louisiana for the term of 4 years, vice Louis C. LaCour.

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

U.S. DISTRICT JUDGE

The legislative clerk read the nomination of Barrington D. Parker, of the District of Columbia, to be U.S. district judge for the District of Columbia vice Joseph C. McGarraghy, retired.

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

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

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

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resumed the consideration of legislative business.

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

SUPPLEMENTAL APPROPRIATIONS, 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 15209, supplemental appropriations, 1970, which is the last of the appropriation bills to be considered.

The PRESIDING OFFICER. The bill will be stated by title.

The BILL CLERK. H.R. 15209, supplemental appropriations, 1970.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BOYD 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.

Mr. BYRD of West Virginia. Mr. President, I am happy to report to the Senate the supplemental appropriations bill for fiscal year 1970, which is the last appropriation bill to be considered in this session of the Congress.

Relatively speaking, the sums recommended by the committee for appropriantion in this bill are not large—$267,437,318, an increase of $23,211,385 over the House Bill and $47,160,534 under the budget estimate.

The budget estimates submitted to the Senate for consideration in connection with this bill total $314,597,852. The amount recommended by the House of Representatives is $244,225,933. Subsequent to the passage of the bill by the House, additional supplemental budget estimates were submitted by the executive branch to the Senate in the amount of $16,050,591, which the House did not consider.

Mr. President, a large portion of the amounts contained in the budget estimates and in the Senate bill relate in one way or an other to the effects of Hurricane Camille last August.

For the Small Business Administration, the committee recommends an appropriaiton of $175 million, which amount is required to accommodate the existing and anticipated loan demands of victims of natural disasters.

Under the Department of Agriculture, the committee concurs in the House recommendation of $3.7 million for the Soil Conservation Service. These funds are required for emergency conservation practices resulting from damages caused in 12 counties in Virginia by Hurricane Camille.

For the Federal Labor Relations Council, under the Civil Service Commission, the House recommended an appropriation of $250,000. The committee has increased this sum to $400,000, which is the amount of the budget estimate. These funds will finance the staff and services for the Federal Labor Relations Council and the Federal Services Impasses Panel, created by Executive Order No. 11491, dated October 29, 1969. The purpose of this Council is to help establish effective labor-management relations in the Federal service.

For the Commission on Population Growth and the American Future, the committee has recommended the full amount of the budget estimate of $1,443,000—to finance an inquiry into and to make recommendations about the probable course of population growth in the United States between now and the year 2000.

For the Trust Territory of the Pacific Islands, the committee has provided an appropriation of $8,380,000 for grants, subsidies, and contributions for health services, education, public affairs, resources and development, and other purposes.

For necessary Federal activities in connection with the proposed trans-Alaska pipeline, the committee has made the following recommendations:

For the Bureau of Land Management, $1.5 million;

For the Geological Survey, $700,000; and

For the Bureau of Sport Fisheries and Wildlife, $205,000.

Several Members of the Senate brought to the attention of the committee important programs which required funding, and the committee has sympathetically considered the following requests: $309,000 has been included in the bill for the care and preservation and to plan appropriate storage and a display exhibit relating to the steamboat *Bertrand* at the DeSoto National Wildlife Refuge in Nebraska.

The committee also approved a $220,000 request for the initiation of a bear management program in Yellowstone National Park, and $75,000 to reconstruct certain streets in Harpers Ferry, W. Va.

The committee has also approved the request of $190,000 to initiate the restoration of the Frederick Douglass House in Washington, D.C., and has provided an additional $1 million for increased contract medical care for Indians.

The subcommittee was requested to provide funds for Federal participation in the construction of a new community hospital in Fairbanks, Alaska, and under the head of "Indian Health Facilities" is recommending an appropriation of $1,952,000.

For the John F. Kennedy Center for the Performing Arts, the committee has concurred in the House action, which will provide $7.5 million additional funds to match gifts for continuing construction of the Center.

Under Gallaudet College, the House recommended an appropriation of $314,000 to expand security guard services and to install a new lighting system and provide better fencing. The committee has stricken this entire sum from this bill, inasmuch as an identical amount for this purpose was included in the Departments of Labor and Health, Education, and Welfare appropriation bill for fiscal year 1970, which has just passed the Senate.

For the Immigration and Naturalization Service, the committee concurs in the House recommendation of $869,000. The committee has also concurred in the allowance of the House of $700,000 for the Bureau of Narcotics and Dangerous Drugs.

Under the Environmental Science Services Administration, the committee is recommending and appropriation of $800,000 for the *Nantucket* weather ship, and $1,200,000 is recommended for this same purpose under the U.S. Coast Guard. This will provide a total of $2 million for this important weather forecasting facility.

The committee has included in the bill $4,250,000 for the U.S. Secret Service. These funds are to provide for 624 new positions for the protection of foreign diplomatic missions in the Washington, D.C., area. Of these additional positions, 514 will be police officers and 110 support personnel.

The committee concurs in the action of the House and recommends an appropriation of $8,750,000 for the Bureau of Customs. These funds will provide the Treasury Law Enforcement Training School with additional instructors, space, and equipment necessary to train new agents and to hire 915 additional personnel for a more effective program against the smuggling of drugs, marihuana, and narcotics.

Mr. President, that completes my opening statement on the bill. I wish to express my gratitude to the able senior Senator from Nebraska (Mr. HRUSKA), who so effectively worked on this bill during the subcommittee hearings and conducted several of the hearings in connection therewith, and whose valuable assistance to me is very much appreciated.

I also wish to express gratitude to the other members of the subcommittee on both sides, who have worked so diligently and have been so helpful in bringing this important bill to the floor.

I now yield to my able colleague from across the aisle (Mr. HRUSKA), for his opening statement.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HRUSKA. Mr. President, I thank the Senator from West Virginia for his kind comments and his compliments. I wish to say that, while these hearings have not been long, they were hearings well directed to the topics before us, and further thanks should be extended to the chairman for his clear description of the outline and substance of the provisions of the bill. It will not be my purpose to repeat any of the details thereof.

The hearings and the money allowances in this bill devoted themselves principally and primarily to the disaster of Hurricane Camille, which has already been referred to. The remainder of the items are that type of item which arises between regular bills for appropriations in their respective fields. There were some which could wait until next year's regular bill, or the supplemental bill which will be referred to Congress right after the first of the year, and in those instances they were deferred, to give us an opportunity to have further hearings on them and consider them in more pertinent context.

Some items originally in the estimates have been taken care of already in the regular appropriation bills, notably in the District of Columbia appropriation bill, so that was a factor also.

Aside from that, there are two sections in the bill devoted to other subjects. One is the availability of funds in the interim between the sine die adjournment of Congress and the actual enactment of the bill, and also the last section in the bill, with which we shall perhaps deal in a little greater detail later in the debate.

Again, I express my appreciation for the splendid leadership furnished by the chairman of the subcommittee.

Mr. BYRD of West Virginia. I thank my colleague. I am very grateful for his remarks.

Mr. President, I am about to propound a unanimous-consent request, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, and that the bill as thus amended be considered as original text for the purpose of further amendment, provided that no point of order shall be waived by reason of this agreement.

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

The amendments agreed to en bloc are as follows:

On page 3, line 8, after "October 29, 1969,", strike out "$250,000" and insert "$400,000"; and, in line 13, after the word "exceed", strike out "$100" and insert "$150".

On page 3, line 18, after the word "Procurement", strike out "$500,000" and insert "$2,500,000"; and, in the same line, after the amendment just above stated, insert a comma and "to remain available until June 30, 1972".

At the top of page 4, insert:

"TEMPORARY STUDY COMMISSIONS

"COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

"SALARIES AND EXPENSES

"For expenses necessary for the Commission on Population Growth and the American Future, including services as authorized by 5 U.S.C. 3109, and hire of passenger motor vehicles, $1,443,000, to remain available until expended: *Provided*, That this paragraph shall be effective only upon the enactment into law of S. 2701, 91st Congress, or similar legislation."

On page 4, line 17, after the word "resources", strike out "$1,000,000" and insert "$1,500,000".

On page 5, line 4, after the word "Islands", strike out "$7,500,000" and insert "$8,380,000".

On page 5, line 13, after the word "resources", strike out $205,000" and insert "$414,000".

On page 5, line 15, after the word "Construction", strike out "$2,200,000" and insert "$2,600,000".

On page 5, after line 16, insert:

"NATIONAL PARK SERVICE

"MANAGEMENT AND PROTECTION

"For an additional amount for 'Management and Protection', $220,000.

At the top of page 6, insert:

"MAINTENANCE AND REHABILITATION OF PHYSICAL FACILITIES

"For an additional amount for 'Maintenance and Rehabilitation of Physical Facilities', $75,000, for reconstruction of certain streets in Harpers Ferry, West Virginia."

On page 6, after line 5, insert:

"CONSTRUCTION

"For an additional amount for 'Construction', $190,000, to remain available until expended."

On page 6, after line 9, insert:

"DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE"

On page 6, after line 11, insert:

"HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

"INDIAN HEALTH SERVICES

"For an additional amount for 'Indian Health Services', $1,000,000."

On page 6, after line 16, insert:

"CONSTRUCTION OF INDIAN HEALTH FACILITIES

"For an additional amount for 'Indian Health Facilities', $1,952,000, to remain available until expended."

On page 7, after line 12, strike out:

"CHAPTER IV
DEPARTMENT OF HEALTH EDUCATION, AND WELFARE

"GALLAUDET COLLEGE

"SALARIES AND EXPENSES

"For an additional amount for 'Gallaudet College, Salaries and expenses', $75,000.

"CONSTRUCTION

"For an additional amount for 'Gallaudet College, Construction', $239,000."

At the top of page 8, change the chapter number from "'V" to "IV".

On page 8, after line 2, insert:

"SENATE

"SALARIES, OFFICERS AND EMPLOYEES
OFFICE OF THE VICE PRESIDENT

"For an additional amount for 'Office of the Vice President', $24,966."

On page 8, line 13, change the chapter number from "VI" to "V".

On page 9, line 14, strike out "$418,000" and insert "$618,000".

On page 9, line 17, after the word "construction", strike out "$440,000 and insert "$3,582,000".

On page 9, after line 18, insert:

"OFFICE OF STATE TECHNICAL SERVICES

"GRANTS AND EXPENSES

"For an additional amount for 'Grants and expenses', including grants as authorized by the State Technical Services Act of 1965 (79 Stat. 679), as amended (82 Stat. 423), $5,000,000."

On page 10, after line 8, insert:

"UNITED STATES SECTION OF THE UNITED STATES-MEXICO COMMISSION FOR BORDER DEVELOPMENT AND FRIENDSHIP

"SALARIES AND EXPENSES

"For necessary expenses of the United States Section of the United States-Mexico Commission for Border Development and Friendship, including expenses for liquidating its affairs, $159,000, to be available from July 1, 1969, and to remain available until January 31, 1970."

On page 10, line 18, change the chapter number from "VII" to "VI".

On page 10, after line 20, insert:

"OPERATING EXPENSES

"For an additional amount for 'Operating expenses', $1,200,000."

On page 11, line 5, change the chapter number from "VIII" to "VII".

On page 11, after line 18, insert:

"UNITED STATES SECRET SERVICE

"SALARIES AND EXPENSES

"For an additional amount for 'Salaries and Expenses,' including purchase of an additional forty-two motor vehicles for police-type use without regard to the general purchase price limitation for the current fiscal year, $4,250,000: *Provided*, That this paragraph shall be available only upon enactment into law of H.R. 14944, 91st Congress, or similar legislation."

On page 13, line 6, change the chapter number from "IX" to "VIII".

On page 13, at the beginning of line 12, insert "in Senate Document Numbered 91–48, and"; and, in line 13, after "Ninety-first Congress", strike out "$24,491,433" and insert "$25,021,852".

At the top of page 14, change the chapter number from "X" to "IX".

On page 14, at the beginning of line 3, change the section number from "1001" to "901".

On page 14, at the beginning of line 12, change the section number of "1002" to "902".

On page 14, after line 14, insert a new section, as follows:

"SEC. 903. The appropriations, authorizations, and authority with respect thereto in this Act, the Department of Defense Appropriation Act, 1970, the District of Columbia Appropriation Act, 1970, the Foreign Assistance and Related Agencies Appropriation Act, 1970, the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1970, the Military Construction Appropriation Act, 1970, and the Department of Transportation Act, 1970, shall be available from the sine die adjournment of the first session of the Ninety-first Congress for the purposes provided in such appropriations, authorizations, and authority. All obligations incurred during the period between the sine die adjournment of the first session of the Ninety-first Congress and the dates of enactment of such Acts in anticipation of such appropriations, authorizations, and authority are hereby ratified and confirmed if in accordance with the terms of such Acts or the terms of Public Law 91–33, Ninety-first Congress, as amended."

On page 15, after line 7, insert a new section, as follows:

"SEC. 904. In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute."

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

Mr. BYRD of West Virginia. I yield.

Mr. JAVITS. Mr. President, I should like to say to the Senator that I have made a request of him that, since I shall be engaged in a conference on the poverty program next door, I would hope no unanimous consent as to limitation of time will be requested. I am very cognizant of the problems of the Senate, and normally it would be proper to arrive at a time limitation, but interested Senators are so dispersed that it is impossible to consult with all Senators who would wish to be heard upon the question which I shall raise, and I do not even know that I shall necessarily raise the point of order, or whatever other procedure is adopted, but it is just by way of safeguarding the rights of myself and everyone concerned. I know the Senator well, and know he will protect us fully, even though momentarily no one may be on the floor who is directly concerned.

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

Mr. JAVITS. I yield.

Mr. HRUSKA. Has this to do with the limitation of time?

Mr. JAVITS. Yes, it has to do with the limitation of time only, and also, of course, that we do not have third reading, or past the point where we can pertinently raise the issue.

The issue, as the Senators know—and we might as well set it of record—relates to section 904 of the bill.

Mr. BYRD of West Virginia. Mr. President, I say in response to the able Senator from New York that I shall make no request regarding a limitation of time unless the Senator is on the floor, or until after I have had an opportunity to confer with him.

Mr. JAVITS. I thank the Senator. I assure the Senator there will be no dilatoriness on the matter. It is just a matter of giving everyone an opportunity, and I am confident it will be done within the day; there is no desire to delay the matter at all.

Mr. BYRD of West Virginia. Of course, if the Senator does make the point of order, I shall raise the question of germaneness.

Mr. JAVITS. I understand that. I have already ascertained the rule, and that it is necessary that Senators make their speeches and state their views before anything is done; therefore, in this particular instance, I did not wish a time limitation.

But I accept the assurance of the Senator that all interested Senators will be apprised, and assure him that the whole thing will not represent any material length of time, because we still must be free to do what we need to do in the interim.

Mr. BYRD of West Virginia. Mr. President, very well. I know that we can depend upon the assurances of the Senator that no great length of time will transpire as a result of the efforts that are being made to get other Senators together and have consultations.

I want to say to the Senator however, that as far as I am concerned, I am ready to vote on the bill. And I do not intend to provoke any long discussions or at least I do not intend to talk at length. I am ready to vote at any time.

If Senators have questions concerning any item in the bill, this would be a good time to ask them. And if Senators have amendments to press on any money item in the bill, this would be a good time to offer them.

Mr. JAVITS. I thank the Senator.

The PRESIDING OFFICER. The bill is open to amendment.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside so that the able Senator from Connecticut may bring up an amendment of the House to a Senate bill.

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

ESTABLISHMENT OF CABINET COMMITTEE ON OPPORTUNITIES FOR SPANISH-SPEAKING PEOPLE

Mr. RIBICOFF. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 740.

The PRESIDING OFFICER laid befor the Senate the amendment of the House of Representatives to the bill (S. 740) to establish the Cabinet Committee on Opportunities for Spanish-Speaking People, and for other purposes which were, on page 3, line 1, strike out "speaking;" and insert "speaking."; on page 3,

strike out lines 2 through 6, inclusive, and insert:

(c) The Chairman may invite the participation in the activities of the Committee of any executive department or agency not represented on the Committee, when matters of interest to such executive department or agency are under consideration.

On page 3, line 7, strike out "(c)" and insert "(d)";

On page 3, line 17, strike out "(d)" and insert "(e)."

On page 6, lines 21 and 22, strike out "(including traveltime)"

On page 7, after line 6, insert:

SEC. 9. Subchapter III of chapter 73 of title 5, United States Code, shall apply to the employees of the Committee and the employees of the Advisory Council.

On page 7, line 7, strike out "SEC. 9." and insert "SEC. 10."

On page 7, line 7, after "appropriated" insert "for fiscal years 1970 and 1971".

On page 7, line 9, after "heretofore" insert "and hereafter".

On page 7, line 13, strike out "SEC. 10." and insert "SEC. 11.".

On page 7, after line 17, insert:

SEC. 12. This Act shall expire five years after it becomes effective.

Mr. MONTOYA. Mr. President, the bill before us, S. 740, is essentially the same measure which this body passed unanimously on September 25, 1969. S. 740, you will recall, is a bill which I introduced on January 11, to establish the Cabinet Committee on Opportunities for Spanish-Speaking People. I was joined on this measure by 40 of our colleagues as cosponsors.

The purpose of this new Cabinet Committee, which my bill would establish, would be to assure that Federal programs are reaching all Spanish Americans, Mexican Americans, Puerto Rican Americans, Cuban Americans, and all other Spanish-speaking and Spanish-surnamed Americans, to provide the assistance they need, and to seek out new programs that might be necessary to handle programs that are unique to such persons.

Mr. President, I will not repeat here the reasons for the need to establish this Cabinet Committee. These reasons are well known by this body already.

The Committee on Government Operations has held extensive hearings on the problems of the Spanish-speaking American and has found a need for this legislation. As I have stated earlier, S. 740 was approved unanimously by this body this fall.

I am pleased to see that the House has seen fit to take up consideration of this bill and to pass it during this session. The House, however, has made a number of amendments, and it will be up to the Senate to either agree to the amendments or ask for a conference. Mr. President, I urge my colleagues, as principal sponsor of this measure, to accept the amendments made by the House, pass the bill, and send it to the White House for immediate signature.

Mr. President, in order to have the record straight on the amendments proposed by the House, I wish to inform the Members of this body that the Honorable CHET HOLIFIELD, acting chairman, House Subcommittee on Executive and Legislative Reorganization, which held hearings and recommended the amendments to this bill, consulted with me on these amendments prior to reporting the bill to the full committee. I believe that the amendments which have been proposed are amendments which will improve the bill, and I accepted them all wholeheartedly, with one exception. The one exception, Mr. President, is the amendment approved by the House adding a new section 12 providing that "this Act shall expire 5 years after the Program becomes effective." Mr. President, I expressed by displeasure to Congressman HOLIFIELD of this 5-year limitation to the existence of the committe because I do not feel that the problems which the committee must adress itself to can be solved in 5 years, or even 10 years. The problems confronting Spanish-speaking Americans have been centuries in the making and cannot be solved overnight.

I reluctantly agreed to this latter provision, however, with the understanding that the legislation authorizing the new Cabinet Committee would be reviewed at the end of the 5 years to determine the progress which the Cabinet Committee will have made and that the Cabinet Committee would most definitely be extended at that time. Mr. President, I ask unanimous consent to insert at this point in the RECORD a copy of my letter of December 1, to Congressman HOLIFIELD explaining my views on this particular amendment.

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

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., December 1, 1969.

Hon. CHET HOLIFIELD,
Acting Chairman, House Subcommittee on Executive and Legislative Reorganization, Washington, D.C.

DEAR CHET: This is to confirm our telephone conversation of this morning regarding proposed changes by the House Subcommittee on Executive and Legislative Reorganization to S. 740, a bill which I introduced and which has been passed by the Senate to establish the Cabinet Committee on Opportunities for Spanish-Speaking People.

As I understand it, Chet, the House Subcommittee recommended four changes in S. 740 as passed by the Senate when it reported the bill to the full Committee on November 26, 1969, as follows:

(1) *Page 3.*—strike out lines two through six and add a new subparagraph (c) authorizing the Chairman to invite the participation of other executive departments or agencies;

(2) *Page 6.*—on lines 21 and 22, strike out the phrase "(including traveltime)";

(3) *Page 7.*—on line eight, insert "for Fiscal Years 1970 and 1971" at the beginning of the line; and on line nine after the word "Heretofore" and before the word "made", insert the phrase "and hereafter"; and

(4) *Page 7.*—after line 17, insert a new section, Section 11, to read as follows:

Sec. 11. This Act shall expire five years after it becomes effective.

Chet, as I discussed with you, as author of S. 740, I have no objection to change one, two and three described above if the House Subcommittee feels the amendments are necessary. I do have strong reservation about proposed change number four, above, namely limiting the life of the Committee to only five years.

If a time limit must be placed on the life of the Committee, I would prefer to see a more realistic life span such as 10 years for example. However, in view of the objections which have been raised within the House Subcommittee to establishing the Committee initially beyond a five year time span, and in view of your own strong recommendation that this change be accepted by the Senate in order to have S. 740 passed by the House, I reluctantly agree to accept this provision.

I would like the record to show, however, that by this action, neither I nor the House Committee on Government Operations wish to leave even the slightest impression that the work of the new Cabinet Committee on Opportunities for Spanish-Speaking People can be accomplished in five years, nor that the life of the Cabinet Committee should not be continued beyond that time until the work which it needs to do is completed. When I introduced S. 740, I thought about placing a definite time limit on the existence of the Cabinet Committee. During my testimony on S. 740 before the Senate Government Operations Committee, I made reference to the fact that this new Cabinet Committee should not be in existence forever.

I, too, felt that the Cabinet Committee should be operating within some specific time frame. However, when one contemplates the length of time our Spanish-speaking citizens have suffered; their distrust of many of our Federal and local government agencies brought about by past insensitivity to their problems; their employment and housing problems; and their inequality in educational opportunities, we realize the enormity and difficulty of the task of the Cabinet Committee and the impossibility of placing a definite time limit on solving these problems.

To meet these problems, the new Cabinet Committee will have to work diligently but with patience. Their work can certainly not be accomplished in five years. I would be the first to wish that it could, for this would mean that in five years the Spanish-speaking people of this country would no longer be a disadvantaged group.

I believe that by authorizing appropriations for only two years as the House Subcommittee has proposed, that Congress will be assured of at least biannual reviews of the Cabinet Committee's accomplishments. This should ensure against any footdragging on the part of the Cabinet Committee in meeting their responsibilities and should make the need for a definite time limit a less urgent one.

With the above comments in mind, and because of the urgent need to enact this enabling legislation, I will support the changes being proposed by the House Subcommittee. I have also discussed this matter with Senator Abraham Ribicoff's Subcommittee on Executive Reorganization and have received assurances of the Subcommittee's support for these changes. Thus, if the House will approve S. 740 with the above changes, the Senate, I am confident, will accept the amendments without the need for a conference. This should ensure enactment of S. 740 during this Session of Congress.

On another amendment, I have been contacted by representatives of the Inter-Agency Committee on Mexican American Affairs, asking if I would have the House include language in S. 740 authorizing the new Cabinet Committee to accept donations of funds and goods. In checking with the Legislative Reference Service of the Library of Congress, I was informed that Federal agencies need specific legislative authority before being able to accept donations. Safeguards are usually provided to ensure there is no misuse of such donations. Should the House Government

Operations Committee agree to include such an amendment in S. 740, I would have no objection to it, and am confident that Senator Ribicoff would likewise approve it.

Chet, I wish to thank you and the other members of the Subcommittee and the full Committee for your every cooperation on this bill. I realize that you received the bill in your Committee only last week on re-referral from the House Foreign Affairs Committee. You have certainly worked expeditiously and diligently in reporting the measure out. For this, you have my every appreciation. I also wish to thank you for the opportunity to comment on the proposed changes by the House on this bill.

Kind regards.

Sincerely,

JOSEPH M. MONTOYA,
U.S. Senator.

Mr. MONTOYA. Mr. President. I mention the above as background because I feel it is imperative that the legislative history of S. 740 clearly indicate that it is not the intent of Congress that the committee should lapse at the end of 5 years. No one wishes any more than I that all the problems confronting Spanish-speaking Americans could be solved in the next 5-year period. If so, there would be no need to continue the Cabinet Committee, and it should lapse. However, the problems are too great and the solutions are not easy. It will take more than 5 years; it may well take more than a decade to resolve these problems. The Cabinet Committee should be held to account at the end of the presently authorized 5-year period to insure that they are effectively serving the purpose for which they were established, and the life of the Cabinet Committee must be extended.

Mr. President, with that, I urge my colleagues to adopt the amendment proposed by the House in order that we may be able to enact this legislation prior to the adjournment of this session of Congress. We have kept this Cabinet Committee in limbo for far too long. We must provide them with their authorization and their directive so that they may go about their work in earnest.

In closing, I wish to again reiterate the thought which I have expressed on so many occasions before that this Cabinet Committee should be the spokesman for the Spanish-speaking American to the administration and not the spokesman for the administration—whichever party the administration should represent—to the Spanish-speaking people.

The problems of the Spanish American are not political in nature, and they cannot be solved by playing politics. Instead, the problems can only be prolonged by such tactics. It is my fervent hope that the Cabinet Committee will be about its work in a diligent manner, solving the problems that need to be solved and doing so in a bipartisan basis.

I intend to provide them every measure of assistance I can in the Congress. And I also intend, as principal sponsor of the authorizing legislation, to maintain a continuing surveillance over the activities in order that together, with the assistance of others, we can attain our goal as promptly as possible and better conditions not only for all Spanish-speaking Americans, but for all Americans.

I would also wish to express my gratitude and appreciation to Senator ABRAHAM RIBICOFF, chairman of the Senate Subcommittee on Executive Reorganization of the Government Oeprations Committee, for his cooperation in scheduling early hearings on this bill and for assisting in its expeditious approval by the Senate. My thanks also go to Congressman CHET HOLIFIELD, who reported the bill out the week following the time it was referred to him and his subcommittee for action. He worked extremely hard to bring this measure before the House in short order. Without the assistance of Senator RIBICOFF and Congressman HOLIFIELD, we would not have the opportunity to vote on this bill today.

Mr. President, I urge the approval of the House amendments to S. 740.

Mr. RIBICOFF. Mr. President, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate resumed the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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.

Mr. BYRD of West Virginia. Mr. President, I just want to make it clear that I am ready to proceed, and that the quorum was not to accommodate me in any way. I just want to make it clear, if there is any misunderstanding.

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

Mr. BYRD of West Virginia. I yield to the Senator from New York

Mr. JAVITS. The Senator is absolutely correct. The quorum was for the purpose of giving notice to Senators who may desire to be heard upon this very important question. I take full responsibility for it.

One other point, Mr. President, on another subject: We had a debate here in respect of the appropriation for HUD, the Housing and Urban Development Administration, on the adequacy of urban renewal funds, and the bill was then under the management of the Senator from Rhode Island (Mr. PASTORE). We very deeply felt that the urban renewal funds provided were inadequate, not only as to the need but also as to the urgent requirement of plans which would be very seriously interfered with. The stock of housing in the country would be materially curtailed if the plans did not proceed.

In view of the very strong opinion of Senator PASTORE and our great confidence in him, those who felt as I did stayed our hand from any effort to increase the amount of the urban renewal funds, with the understanding that when a supplemental came along—the time of the supplemental not being expressly designated—we would have an opportunity to deal with the question again, based upon a specified set of facts as to the exact parameters of the requirement, within the strict limitations as I have stated.

This is the first supplemental that has come along since that time, and we have endeavored, with the Secretary of HUD, to get the kind of figures that could be used as a basic representation to the Senate for the purpose of seeking supplemental appropriation for urban renewal funds. The Secretary advises us that he will be unable to give us the kind of figures he wants to give us in terms of accuracy and predictability, and in terms of the kind of figures we want, until January.

I make this statement only to explain that this is an ongoing matter of action for me and the others interested, and that we will seek the earliest opportunity with relevance to the essential factual data to bring about an adequate appropriation for that purpose.

Mr. BYRD of West Virginia. Does the Senator wish to include in this bill moneys for the item?

Mr. JAVITS. I just explained that I——

Mr. BYRD of West Virginia. I am sorry. I was speaking with another Senator.

Mr. JAVITS. I just explained that we do not have the kind of figures that we promised Senator Pastore, who joined us in the request, we should have. But I did not want to let the first supplemental go by since that debate without accounting for why we were not moving now on this one, and without pointing out that we would move probably early in January or certainly in January, as soon as we had the necessary factual basis; because the kind of definition figures we want are rather strict, and the Secretary wants to be very sure of his ground before giving us the information.

I emphasize that this does not represent any initiatory action by him. It will be our action, but he will give us at our request—joined in by Senator PASTORE and other Senators—the basic factual data upon which we may proceed.

Mr. BYRD of West Virginia. Very well. I want the Senator to know that I am sympathetic toward the item; and at such time as he and other Senators have secured the information they are seeking, as chairman of the Subcommittee on Deficiencies and Supplementals, I will be glad to have a hearing and to be as helpful as I can.

Mr. JAVITS. I thank the Senator.

Mr. BYRD of West Virginia. I yield to the Senator from Arkansas.

THE NIGHTMARE OF THE DISTRICT OF COLUMBIA SCHOOLS

Mr. MCCLELLAN. Mr. President, on yesterday, when we had under consideration H.R. 13111, making appropriations for the Department of Labor and Health, Education, and Welfare, in opposing an

amendment offered by the distinguished minority leader, the Senator from Pennsylvania, I said, among other things, at page 39535 of the RECORD:

Today it is not a question of improving education. The effort is centered upon integration in education. Look at the schools in Washington, D.C., if we want an example.

As integration of schools was forced, many white people moved away. Dislocations and disruptions occurred. And today we have an intolerable condition in the Nation's Capital, an educational jungle where teachers' lives are not safe, where pupils are not safe, and where lawlessness and violence reign to such an extent that the doors of school buildings today are padlocked for protection and safety of those on the inside.

Mr. President, in today's Washington Daily News there is a front page article by Richard Starnes entitled, "The Nightmare of the District of Columbia Schools." The article conclusively supports and confirms the above statement that I made in my address to the Senate yesterday. It is not just a horrible situation that prevails here in the schools, it is alarming and distressing. This article demonstrates the need for immediate acton to provide safety for the school personnel in the District of Columbia.

What I said yesterday about school conditions was an exaggeration. Obviously it was an understatement of the terrible conditions that prevail. They are worse than I stated them to be.

Mr. President, I ask unanimous consent to have printed in the RECORD the article which was published today in the Washington Daily News entitled, "The Nightmare of the District of Columbia Schools."

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

THE NIGHTMARE OF DISTRICT OF COLUMBIA SCHOOLS

(By Richard Starnes)

Enter the dirty, tombstone-colored building and you walk into a nightmare world where an aura of diffuse terror falls into step beside you.

There is a sound in the air that bespeaks Kafka's madhouse, a subdued keening, a wordless language that murmurs violence, despair, savagery and dread. The sound is an overture to hysteria, an obbligato written for the destruction of a society.

There are wardens wherever you look, but it isn't a prison. There is the unmistakable stink of lunacy on the place, but it is not an asylum. Where you are is a public school. It might be any one of a hundred in Washington (or, perhaps, in any other American ghetto, circa 1969).

It may be unfair to single out one school, for its most awful crime is that it is fairly typical. This one happens to be Shaw Junior High, and it is a monument to an unprecedented epoch of murder, rape, extortion and fear that has all but destroyed the public school system in the nation's capital.

IN RIOT AREA

Shaw sits in the middle of Washington's "charcoal alley"—the central ghetto that was burned and pillaged in the riots of April 1968. Because it is so typical of the disaster that has overtaken the public schools here it is worth a closer look. But it is a look that should be taken within this perspective:

The District of Columbia school system, in the words of its acting superintendent, has been "seriously crippled" by vandalism and thefts, security of children has reached "a horrible point," classroom intruders have posed a "severe" threat to education.

At Cardozo High School, 13th and Clifton streets nw, two to three purse snatchings occur in the school cafeteria every day, despite the fact that a policeman is on duty during school hours. Last winter at Cardozo an assistant principal was shot and killed by youths who robbed the school bank.

At Hart Junior High, 601 Mississippi-av se, the score since school opened in September is two burglaries, one safe cracking, 20 assaults, an equal number of cases of extortion, more than a score of lockers looted, and an undetermined amount of teaching equipment stolen or vandalized.

An epidemic of robbery, beating and extortion has created a reign of terror for children attending public schools in the area of Bolling Air Force Base and the U.S. Naval Station in southeast Washington. Mrs. Gladys Ford, president of the Military Parents Association, told authorities that career service men were quitting the military rather than expose their children to the jungle atmosphere. "Our children are being robbed and beaten every day," she said.

On the first day of school a Paul Junior High teacher was knocked unconscious. It was the third such episode in less than a year, and teachers threatened a march on the Capitol to demand protection.

In the Anacostia (far southeast) area of the city one girl was put on tranquilizers after young thugs tore off her shirtwaist and bra during a robbery.

Early this week at Anacostia High School (scene of a shootout with .45s last year) a pupil was shot and critically wounded in a washroom.

A class at Monroe Elementary School (725 Columbia road nw) was held at gunpoint just after the start of the current school year and a teacher's purse was looted of the $2 it contained.

A teacher at McFarland Junior High School (Iowa-av and Webster-st nw) told a Congressional inquiry two months ago that he spent most of his time as a jailer, cop and disciplinarian. Three weeks after school started this fall he was beaten up by five drunken youths who invaded his classroom and began over-turning desks. A policeman advised him to ". . . get yourself a club" if it happened again.

Since much of the violence comes from dropouts and truants most school officials try to restrict access to the schools to pupils who are actually attending classes. This has led to the chaining and padlocking of all but one or two exits in a number of schools, a clear violation of the law that has alarmed Fire Department officials. Altho fire marshals have made representations to principals of the schools involved the practice has not stopped.

BLACKBOARD JUNGLE

A durable—almost heroic—first witness to this nightmare is Percy Ellis, principal of Shaw Junior High, a Negro who goes everywhere in his seedy old school at a dead run, who takes cheerless pride in telling it like it is, and who might make a fruitful source for some latter-day Gibbon recording the decline and fall of the American civilization. Mr. Ellis has a round, smooth face that mirrors tragedy, elation, moody reflection and ominous forboding with the quick fluency of a performer schooled in Chinese drama.

With the quick hands of a welterweight, Mr. Ellis intercepts a skinny black child who is sliding along a corridor.

"What are you doing with those rubber bands on your wrist?" he demands. "Take them off. Throw them in the waste basket."

With the expertise of an old cop he frisks the child, and then tells him to return to his home room. When the child is gone Mr. Ellis answers a question posed by a visitor naive in the ways of the blackboard jungle.

HALLWALKER

"Why did I take the rubber bands? Because I have two good eyes and I want to keep them. These hallwalkers use rubber bands as slingshots, and their ammunition is staples. He has not had any eyes put out yet, and I'd like to keep it that way."

Another question elicits the information that a "hallwalker" is a youth—truant or dropout—who invades the school but does not attend classes.

In Mr. Ellis' office a tray of untouched lunch, a wilted sandwich and a sagging piece of cherry pie, bears additional witness that the principal of a District of Columbia public school has no more time for lunch than the master of a burning passenger vessel would.

But all this is prologue. The real message of archetypal Shaw is the ominous shadow of the future that it casts.

"Something happened six months ago," Mr. Ellis tells his visitor. "It became different, much more difficult, almost unmanageable." Three veteran women teachers have come to the principal's office now—women like those for whom the word "dedicated" first was coined—and in deference to them Mr. Ellis takes rare recourse to euphemism. "Since school started I've been called s.o.b. and m.f. more times than in all my 21 years in the schools before. They stop you in the halls and want to fight you. And it is going to get worse. Something is happening."

VOLATILE

One of the teachers, bright, articulate and (curiously, like so many others in the front line of Washington's school system) a chain smoker, takes up the dreadful hard kernel of the story.

"There is something unusually volatile about Shaw," she muses. "So often we have been the first wave of whatever is going to happen. Ten years ago it was gangs, and every boy wore the uniform jacket of his gang or club. Then, long before it began to happen elsewhere, the gangs disappeared at Shaw. After that, say two years ago, we began having fires . . ." The sentence hangs unfinished in the air, while everyone in the room is reminded that 20-odd months ago the riot fires consumed a great deal of the ghetto area around Shaw. "And now . . ." Again she lets her listeners complete the sentence themselves.

Now Shaw is a place of aimless violence, where hallwalkers sow terror, where burly assistant principals stand guard at doors and stairways, where little children are drilled in the safest method of reacting to extortion.

EXHAUSTION

Like chain smoking, exhaustion is another hallmark of the people who are trying to keep Washington's public schools from slipping the last inch into the inferno. At 5 p.m. it is dark outside, and the lurking shadows in the hallways contain a malignant promise that is enough to raise the hair on a veteran of Vietnam, Watts and other waystations in our hard hat society. But Percy Ellis is still at it, explaining, preaching, like some despairing ancient mariner unwilling to miss an opportunty to tell a man from the other side what is happening here, where it is at.

"The (Teachers') union is responsible for a lot of this," he says. "This isn't a 9 to 5 job here. It takes dedication. Like those three great ladies who were here earlier. But we aren't getting that kind any more, we're getting a new breed. They won't take hall duty, which is the only thing that keeps us alive here. They won't offer that extra effort that is a minimum requirement here.

"We are trying to hold back disaster, and with them everything is a grievance. Two or three a week. Children in Shaw need self-respect, for example, and we know that a child's opinion of himself, his morale, is conditioned by his appearance. Until two or

three months ago we had a necktie rule here; it was difficult to enforce, yes, but it was a valuable thing. But they made a grievance out of it, and we got orders from the superintendent's office to stop it. Things have gotten worse since."

RACIAL IMBALANCE

Not everyone who was interviewed during a week-long survey of the beleaguered Washington schools agreed that the Washington Teachers Union (WTU) was a major factor in the coming collapse of the system. But most agreed with Mr. Ellis about a number of other elements in the gathering disaster.

From a number of different vantage points, everyone alludes to the fact that integration has been a failure in Washington. The schools here are between 93 and 94 per cent black. Even busing, which is done to a limited extent, cannot redress the imbalance. Some experts (among them the voluble Percy Ellis) vow that no improvement can be expected until whites are somehow encouraged to return to the city. Others insist the problem is not one of race, but of poverty, and point to an unemployment rate among ghetto youths that may be more than 25 per cent. Almost everyone agrees that one cause is a creaking, time-encrusted bureaucracy that is unable to deal with the explosive problems that confront it. While Congress, the city's perennial scapegoat, is not wholly blameless, a good case can be made that the bulk of the blame lies elsewhere.

Sen. William Proxmire, D-Wis., a member of the Appropriations Committee considering the school system's $185 million annual budget, recently offered figures to show that Washington was "right on top" in per capita expenditure per pupil. At $982 per year, according to Sen. Proxmire, the nation's capital compares favorably with Cleveland's $800, Boston's $885 and Atlanta's $772.

HISTORY OF NEGLECT

Benjamin J. Henley, the city's acting superintendent of schools (another worn-out chain smoker) is quick to admit the manifest ailments that afflict the schools, and cites "a long history of neglect" to explain them.

"We have urgent needs in employment, housing, education and health," he told a recent visitor to his top floor office in one of Washington's newest high rise buildings. "In the far southeast overcrowding is almost unbelievable. We need staff development—all of us need re-training."

Why the terribly physical toll on school buildings? Why more than $200,000 worth of broken windows in the schools every year?

"The schools represent the power structure," Mr. Henley replies slowly. "The schools are an agency to which people turned with hope, and it has not done what was hoped for. If we could handle the materials that are needed quickly enough, if we had a mechanism that really made teachers think that their feelings were being taken into account, if we could respond quickly to critical situations, morale could be helped measurably."

IMPROVE READING

Mr. Henley sighs ponderously and lights another cigaret. "If I could have one wish I would have every teacher given the skills needed to improve reading in our schools. We would reduce dropouts. We would convince the community that we are doing what we are supposed to be doing."

In spite of the bubbling of the volcano beneath him, Henley says he is convinced things are getting a little better. "Student unrest is lessening," he insists. "We've been thru two moratoriums this fall with no problems. We have had a championship football game without incident."

Not unexpectedly the Washington Teachers Union takes a somewhat different attitude toward the convulsion that has beset the school system. WTU President William Simons cautiously concedes "Yes, there is a problem. But nevertheless a learning program is going on for many children. The problem that does exist is a shortage of classroom facilities, too-large classes. The average is 35, it should be 25, and 20 for the very early grades."

(But again Shaw's tough-minded Percy Ellis: "Teacher-student ratios are meaningless. We have 1,300 enrolled in Shaw, and on an average day 20 per cent will be absent. Some classes might show as many as 45 on the books, but you visit the room and you'll find eight or 10 actually attending.")

DISCIPLINE

WTU defends its intervention in the great necktie dispute, calling a dress code "absolutely unnecessary." But it turns out that during contract negotiations for Washington's 8,000 teachers (of whom about half belong to WTU) the union opposed a dress code for teachers. "We could hardly oppose it for teachers and accept it for the children," a union spokesman said.

The next witness is the Proxmire committee. "Whatever the problems of the District school system," a recent committee paper said, "the committee suggests that they are perhaps not wholly related to the present level of resources being committed to it.

"The children of the District of Columbia are entitled to better educational advantages than they are receiving. The schools have both the personnel and financial means to mold a system of public education second to none."

And at the locked and guarded door of Shaw, a final word from Principal Ellis:

"Discipline has vanished from the homes and from the schools. It is in fact now impossible to fire or transfer a teacher. Nothing can be accomplished without discipline. Above all else we need discipline, discipline, discipline."

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.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 59) to authorize the Secretary of the Army to adjust the legislative jurisdiction exercised by the United States over lands within the Army National Guard Facility, Ethan Allen, and the U.S. Army Materiel Command Firing Range, Underhill, Vt.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 9334) to amend title 38 of the United States Code in order to improve and make more effective the Veterans' Administration program of sharing specialized medical resources.

The message further announced that the House had agreed to the amendments of the Senate to the bill (H.R. 11959) to amend chapters 31, 34, and 35 of title 38, United States Code, in order to increase the rates of vocational rehabilitation, educational assistance and special training allowance paid to eligible veterans and persons under such chapters, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15090) making appropriations for the Department of Defense for the fiscal year ending June 30, 1970, and for other purposes; and that the House receded from its disagreement to the amendments of the Senate numbered 8, 10, 11, 20, 22, 24, 26, 27, 29, 31, 33, 34, 36, 38, 40, 41, 43, and 44 to the bill and concurred therein.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 12535. An act to authorize the Secretary of the Army to release certain restrictions on a tract of land heretofore conveyed to the State of Texas in order that such land may be used for the city of El Paso North-South Freeway; and

H.R. 13716. An act to improve and clarify certain laws affecting the Coast Guard Reserve.

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred, as indicated:

H.R. 12535. An act to authorize the Secretary of the Army to release certain restrictions on a tract of land heretofore conveyed to the State of Texas in order that such land may be used for the city of El Paso North-South Freeway; to the Committee on Armed Services.

H.R. 13716. An act to improve and clarify certain laws affecting the Coast Guard Reserve; to the Committee on Commerce.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. BYRD of West Virginia. Mr. President, I would hope we could get on with our consideration of this bill. We have only Friday and Saturday remaining in this week. This is the last appropriation bill, and once this bill has been acted upon by the Senate all that will remain will be conference reports and noncontroversial measures which may be called up by unanimous consent.

I know all Senators want to get home; some Senators have reservations on planes. We all want to get home to see our families. There is an excellent chance that we can get out of here sine die Saturday night if we pass this bill today. If the bill goes longer than today, then the chance is lessened for our being able to get out of here this week. We will be coming back, I understand, on the 19th of January. Every additional day we can rest in December will give us more opportunity to be with our families and grandchildren and allow our staffs to be with their families, the hap-

pier everyone is going to be at Christmas time, and the more refreshed all of us will be when we come back on January 19.

I am ready to vote on the bill——

Mr. JAVITS. Mr. President, will the Senator from West Virginia yield, because we have a speaker ready?

Mr. BYRD of West Virginia. I yield the floor.

Mr. FONG. Mr. President, the revised Philadelphia plan established by the Department of Labor has provided a significant motivation to employer, union, and minority groups within a number of cities for the voluntary negotiation of an agreement by which minority individuals may be granted significant opportunity for employment within the construction industry. The discussions surrounding the negotiation of such voluntary plans as well as the implementation of those plans have provided a significant channel for civil rights tensions. It is believed that the elimination of the Philadelphia plan would reduce the incentives for such negotiations to the detriment of minority employment opportunity.

The experience in Philadelphia with the revised Philadelphia plan has been excellent. The Department of Health, Education, and Welfare has approved the award of 14 contracts pursuant to the Philadelphia plan and has held a significant number of prebid conferences. No significant contractor or union objection to the Philadelphia plan has been heard in prebid conferences or with respect to the award of any specific contract.

The present controversy between the Department of Labor, supported by the Attorney General, and the Comptroller General does not involve a dispute between Congress and the executive branch. Instead, the apparent controversy revolves around the interpretation of the intent of Congress in its enactment of the Civil Rights Act of 1964. The Comptroller General has interpreted that legislation in one way and the Attorney General in another manner. Thus, the matter involves only an interpretation of the intent of Congress and in no way can be interpreted as a conflict between the executive and congressional branches. Indeed, the Attorney General's opinion follows the wishes of Congress as expressed in the Civil Rights Act of 1964 as he interprets those wishes.

The conflicting interpretations of the Attorney General and the Comptroller General are most properly resolvable in the courts rather than before Congress. There exists a number of avenues for court review, for instance, a grantee of Federal funds may seek a declaratory judgment to determine whether the revised Philadelphia plan is legal. A contractor who does not receive payment because of a disallowance by the Comptroller General may sue the Federal Government in the Court of Claims for payment.

The Comptroller General has stated that the Philadelphia plan is illegal. He may be right. If he is correct, then we should support him. He is our representative—the congressional watchdog.

But there is also the opinion of the Attorney General and the opinion of the solicitor of the Labor Department and their opinions are contrary to the opinion of the Comptroller General. They may be right also in their interpretation as to what the intent of Congress is.

Thus, here we have a plan which the Comptroller General says is illegal, and the Attorney General and the solicitor of the Labor Department, on the other hand, say it is not illegal.

Mr. PEARSON. Mr. President, will the Senator from Hawaii yield?

Mr. FONG. I yield.

Mr. PEARSON. What mechanism, institution, or implementation of this plan gave rise to the circumstances by which the Comptroller General would issue any opinion as to the legality of the plan?

Mr. FONG. As I understand it, 14 contracts were let, pursuant to the Philadelphia plan, by the Department of Labor. The goal, as they say, is to reach a certain number of minority employees who would be employed, and the Comptroller stated that the plan was illegal.

Mr. PEARSON. Well, who requested the opinion of the Comptroller? I do not think he makes it a practice of issuing opinions.

Mr. FONG. That, I am not aware of.

The Senator from North Carolina (Mr. ERVIN) had a hearing on this matter. Probably he could inform the Senator as to how this matter came before the Comptroller General.

Mr. PEARSON. Actually, I am very much interested in what the Senator from Hawaii said, that there is really no conflict between Congress and the executive branch, since the Comptroller General and many Senators feel that it is.

I was concerned and interested to know by what means, at whose request, or under what circumstances, the legal department, the arm of Congress, issued an opinion.

Mr. FONG. I cannot answer that question.

Mr. PEARSON. What were the circumstances by which the Attorney General was called to issue his opinion?

Mr. ERVIN. Mr. President, complaints were made to the Comptroller General by the Association of General Contractors of America. Complaints were made by the General Building Contractors Association, Inc., of Philadelphia, Pa. Complaints were made by the Guild of Construction Trades, AFL–CIO.

Mr. PEARSON. May I inquire of the Senator from North Carolina by what procedures were these complaints filed with the Comptroller General and why were they filed with his office?

Mr. ERVIN. Because the United States Code, section 65 of title 31, places under the control of the Comptroller General the duty of seeing that all financial transactions of the Federal Government are consummated in accordance with laws, regulations, or other legal requirements. And also because section 64, title 31 of the United States Code provides that all balances of contracts shall be certified by the GAO from the settlement of all public accounts and provides that the certification of the GAO shall be final and conclusive upon the executive branch of the Government, and the Comptroller General did not want people to be entering into contracts which he considered to be illegal and put in a position where he would have to deny payments of public accounts.

Mr. PEARSON. To whom did the Comptroller General issue an opinion, to the Congress or those who filed the complaints?

Mr. ERVIN. He advised the Secretary of Labor about it. He sent a long letter, giving his opinion, to the Secretary of Labor, simply because he conceived that it was his public duty to see that no contracts were made by the Department of Labor or with the Department of Labor which violated an act of Congress.

Mr. PEARSON. May I assume, if the Senator will yield further, that the Secretary of Labor then asked the Attorney General of the United States to grant him his opinion in regard to these contracts?

Mr. ERVIN. The Attorney General wrote an opinion to the Secretary of Labor in which he states that if the Philadelphia plan is forbidden by the Civil Rights Act of 1964, title VII, it is invalid. That is what the Attorney General says. The Attorney General undertook to say that contractors who contract with the Government are not covered by the Civil Rights Act of 1964, title VII.

Subsection (b) of section 2000 E, states:

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26: *Provided*, That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers: *Provided further*, That it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex or national origin and the President shall utilize his existing authority to effectuate this policy.

The Attorney General states in his opinion, in the first place, that these contractors, the people who seek contracts with the Government, are not covered by the act, although the act provides that all contractors, all employers employing at least 25 men, in a business affecting interstate commerce, are covered. So that first position of the Attorney General is without validity.

Then the Comptroller General said that subsection (j) of section 2000(e)(2) of title 42, United States Code, showed that the Philadelphia plan is contrary to

the act of Congress. That is title VII of the Civil Rights Act of 1964 and reads:

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter 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.

The Attorney General's opinion is very peculiar on this point——

Mr. PEARSON. Mr. President, if the Senator will yield just a moment, I think he has really answered my question. I would just like to make this one point: that is—with the help of the Senator from North Carolina—that the means by which the opinions were rendered first by the Comptroller General and then by the Attorney General of the United States, it seems to me, indicate there is some conflict between Congress and the executive branch of the Government. I am not sure that is terribly important. Perhaps the fact that there is a conflict of opinion between lawyers—which is always the case—is not so important as it is to find some way to find jobs and economic opportunities for the minorities in this country.

Underneath all the real issues here, I think we have the conflicting issue between an arm of Congress and the executive branch of the U.S. Government.

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

Mr. ERVIN. I would like to make one more statement and then yield the floor.

Mr. JAVITS. Mr. President, will the Senator yield? The facts are wrong.

Mr. FONG. Mr. President, I have the floor.

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. FONG. I am very happy to yield to the Senator from New York.

Mr. JAVITS. The fact is that the Comptroller General did not rule at the request of the contractors. His own letter is the best evidence of that. His letter, addressed to the Secretary of Labor, dated August 5, 1969, reads as follows:

Questions have been submitted to our office by Members of Congress.

That is why he ruled. He was asked by Members of Congress, and so he ruled. So the Attorney General ruled when requested by the Secretary of Labor. It is just as simple as that.

Second, the statement was made that the Attorney General's opinion held that the contractors were not bound by the Civil Rights Act of 1964, but he held no such thing. I quote from the opinion:

Nothing in the Philadelphia Plan requires an employer to violate section 703(a) . . .

which is the kernel of the Civil Rights Act of 1964. The letter is plain and explicit. On my own time, I will try to elucidate this point. I did not want to let the record stand here with these statements unrefuted.

Mr. FONG. Mr. President, this matter embraces not only the opinions of the Attorney General and the Labor Department and the Comptroller General, but when one looks at the legalities involved, he will find the issue embraces the whole question of civil rights. There is no reason why this matter should be debated at this time, when all of us are ready to go home and to be with our families at Christmas. There is no reason why this matter could not be left over until January, when we come back, and take it up at that time. I cannot see any harm in deferring the matter until January, when we can have a full-fledged debate on this question.

The Labor Department has just issued a release relative to the rider which we have placed on the supplemental appropriations bill, which reads:

THE REVISED PHILADELPHIA PLAN

Last night the Senate Appropriations Committee tacked a rider on the Supplemental Appropriations Act which would end the Philadelphia Plan.

The Revised Philadelphia Plan constitutes the most effective, and indeed, the only effective means developed to date to deal with the nation's commitment to equal employment opportunity in the construction industry. The experience under the Plan has been excellent. Fourteen contracts containing the Plan's provisions have already been awarded and no significant objection has been raised in the locality to the award of these contracts.

The legality of the Department of Labor's Philadelphia Plan has been challenged by the Comptroller General despite a formal opinion of the Attorney General that the Plan is legal under the Civil Rights Act and a legitimate exercise of the Department's responsibility under Executive Order 11246.

The Senate Committee on Appropriations has added to a supplemental appropriations bill a Section 904 entitled "The Philadelphia Plan." Section 904 states that no fund appropriated by any act of Congress shall be available to finance any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute.

It is clear that this proposed legislation is directed specifically against the Department of Labor's Revised Philadelphia Plan, although it has far broader implications.

If the Senate of the United States enacts the proposed Section 904, the Department's Philadelphia Plan will be rendered totally ineffective. In addition, the Comptroller General has stated, despite contrary opinions by courts throughout the land, that the entire concept of affirmative action in the employment field is illegal.

Thus, Section 904, proposed as a rider to an appropriations bill, would, if enacted, destroy one of the most effective civil rights tools available to this Government and would set back the course of civil rights. The Senate of the United States could not possibly be contemplating any more disastrous piece of legislation at this time in our nation's history. The defeat of Section 904 is an absolute necessity.

The appropriation rider would end this program, which is just beginning to demonstrate its merits. Questions of the validity of this Plan should be settled not by an appropriation rider or by the opinion of the Comptroller General. They should be determined by the courts in the same way as other issues affecting the civil rights of our citizens.

I have received from the Solicitor of the Department of Labor a paper entitled "Effects of the Rider to the Supplemental Appropriation Act." It reads:

1. The rider would transfer effective administrative control over wage determinations under the Davis-Bacon Act, the Walsh-Healey Public Contracts Act and the Service Contract Act to the Comptroller General. If he determined that a determination was improperly made, no funds could be used to finance the contract that incorporated that wage determination.

2. The rider would oust the jurisdiction of Contract Boards of Appeals in many instances. Regardless of decisions of a Board in favor of the contractor, the agency would not be able to make payment if the Comptroller General held any term of the agreement in violation of Federal law.

3. The rider would oust the jurisdiction of the Court of Claims. The Comptroller General has never considered himself bound by the judgment of the Court of Claims. If the Court of Claims entered a judgment for a contractor, funds would not be available to pay that judgment if the Comptroller General did not agree with the decision of the court on the legality of the contract.

4. All agency rules and regulations on the implementation of Title VI of the Civil Rights Act could be enforced only if the Comptroller General agreed on their legality—regardless of decisions of the courts.

Mr. President, it can be seen that this rider to the supplemental appropriation bill has broad implications. I do not think we could give to it the attention it deserves at this time in our legislative progress, because we are almost on the eve of sine die adjournment.

If the Comptroller General is correct, and since he is an arm of Congress, we as Senators should support him. But he may not be correct. If the Attorney General is correct, then, if we adopt this rider, we would have done an injustice to the whole Civil Rights program under the Philadelphia plan.

I feel that we should wait; that this is not the time to debate this issue. It is a highly important issue and should be carefully debated. It deserves research on the part of all Members of the Senate.

This matter came before the committee only yesterday. I have not really had an opportunity to go deeply into it. I think it would be unwise for us at this time to try to enact the provisions of the rider in the appropriation bill now before the Senate. This is a far-reaching question. The spirit and effect of the Civil Rights Act would be lessened if the Philadelphia plan were to be adopted as a rider.

Mr. President, I ask unanimous consent to have printed in the RECORD the rider to the supplemental appropriation bill; document "A" of the U.S. Department of Labor; the paper entitled "Sequential Steps Indicating How the Philadelphia Plan Operates"; and document "B," the order to the heads of all agencies of the Department of Labor from Arthur Fletcher, Assistant Secretary for Wage and Labor Standards.

There being no objection, the items

were ordered to be printed in the RECORD, as follows:

SEC. 904. In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute.

[Document "A"]

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D.C., June 27, 1969.

MEMORANDUM

To: Heads of all agencies.

From: Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards.

Subject: Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction.

1. *Purpose*: The purpose of this Order is to implement the provisions of Executive Order 11246, and the rules and regulations issued pursuant thereto, requiring a program of equal employment opportunity by Federal contractors and subcontractors and Federally-assisted construction contractors and subcontractors.

2. *Applicability*: The requirements of this Order shall apply to all Federal and Federally-assisted construction contracts for projects the estimated total cost of which exceeds $500,000, in the Philadelphia area, including Bucks, Chester, Delaware, Montgomery and Philadelphia counties in Pennsylvania.

3. *Policy:* In order to promote the full realization of equal employment opportunity on Federally-assisted projects, it is the policy of the Office of Federal Contract Compliance that no contracts or subcontracts shall be awarded for Federal and Federally-assisted construction in the Philadelphia area on projects whose cost exceeds $500,000 unless the bidder submits an acceptable affirmative action program which shall include specific goals of minority manpower utilization, meeting the standards included in the invitation or other solicitation for bids, in trades utilizing the following classifications of employees:

Iron workers.
Plumbers, pipefitters.
Steamfitters.
Sheetmetal workers.
Electrical workers.
Roofers and water proofers.
Elevator construction workers.

4. *Findings:* Enforcement of the nondiscrimination and affirmative action requirements of Executive Order 11246 has posed special problems in the construction trades. Contractors and subcontractors must hire a new employee complement for each construction job and out of necessity or convenience they rely on the construction craft unions as their prime or sole source of their labor. Collective bargaining agreements and/or established custom between construction contractors and subcontractors and unions frequently provide for, or result in, exclusive hiring halls; even where the collective bargaining agreement contains no such hiring hall provisions or the custom is not rigid, as a practical matter, most people working in these classifications are referred to the jobs by the unions. Because of these hiring arrangements, referral by a union is a virtual necessity for obtaining employment in union construction projects, which constitute the bulk of commercial construction.

Because of the exclusionary practices of labor organizations, there traditionally has been only a small number of Negroes employed in these seven trades. These exclusionary practices include: (1) failure to admit Negroes into membership and into apprenticeship programs. At the end of 1967, less than one-half of one percent of the membership of the unions representing employees in these seven trades were Negro, although the population in the Philadelphia area during the past several decades included substantial numbers of Negroes. As of April 1965, the Commission on Human Relations in Philadelphia found that unions in five trades (plumbers, steamfitters, electrical workers, sheet metal workers and roofers) were "discriminatory" in their admission practices. In a report by the Philadelphia Local AFL–CIO Human Relations Committee made public in 1964, virtually no Negro apprentices were found in any of the building trades classes: [1] (2) failure of the unions to refer Negroes for employment, which has resulted in large measure from the priorities in referral granted to union members and to persons who had work experience under union contracts.

On November 30, 1967, the Philadelphia Federal Executive Board put into effect the Philadelphia Pre-Award Plan. The Federal Executive Board found that [2] the problem of compliance with the requirements of Executive Order 11246 was most apparent in Philadelphia in eight construction trades: electrical, sheetmetal, plumbing and pipefitting, steamfitting, roofing and waterproofing, structural iron work, elevator construction and operating engineers; and that local unions representing employees in these trades in the Philadelphia area had few minority group members and that few minority group persons had been accepted in apprenticeship programs. In order to assure equal employment opportunity on Federal and Federally-assisted construction in the Philadelphia area, the plan required that each apparent low bidder, to qualify for a construction contract or subcontract, must submit a written affirmative action program which would have the results of assuring that there will be minority group representation in these trades.

Since the Philadelphia Plan was put into effect, some progress has been made. Several groups of contractors and Local 543 of the International Union of Operating Engineers have developed an area program of affirmative action which has been approved by OFCC in lieu of other compliance procedures, but subject to periodic evaluation. The original Plan was suspended because of an Opinion by the Comptroller General that it violated the principles of competitive bidding.

Equal employment opportunity in these trades in the Philadelphia area is still far from a reality. The unions in these trades still have only about 1.6 percent minority group membership and they continue to engage in practices, including the granting of referral priorities to union members and to persons who have work experience under union contracts, which result in few Negroes being referred for employment. We find, therefore, that special measures are required to provide equal employment opportunity in these seven trades.

In view of the foregoing, and in order to implement the affirmative action obligations imposed by the equal employment opportunity clause in Executive Order 11246, and in order to assure that the requirements of this Order conform to the principles of competitive bidding, as construed by the Comptroller General of the United States, the Office of Federal Contract Compliance finds that it is necessary that this Order, requiring bidders to commit themselves to specific goals of minority manpower utilization, be issued.

5. *Acceptability of Affirmative Action Programs:* A bidder's affirmative action program will be acceptable if the specific goals set by the bidder meet the definite standards determined in accordance with Section 6 below. Such goals shall be applicable to each of the designated trades to be used in the performance of the contract whether or not the work is to be subcontracted. However, participation in a multi-employer program approved by OFCC shall be acceptable in lieu of a goal for the trade involved in such training program. In no case shall there by any negotiation over the provisions of the specific goals submitted by the bidder after the opening of bids and prior to the award of the contract.

6. *Specific Goals and Definite Standards:*

a. *General.* The OFCC Area Coordinator, in cooperation with the Federal contracting or administering agencies in the Philadelphia area, will determine the definite standards to be included in the invitation for bids or other solicitation used for every Federally-involved construction contract in the Philadelphia area, when the estimated total cost of the construction project exceeds $500,000. Such definite standards shall specify the range of minority manpower utilization expected for each of the designated trades to be used during the performance of the construction contract. To be eligible for the award of the contract, the bidder must, in the affirmative action program submitted with his bid, set specific goals of minority manpower utilization which meet the definite standard included in the invitation or other solicitation for bids unless the bidder participates in an affirmative action program approved by OFCC.

b. *Specific Goals.*

(1) The setting of goals by contractors to provide equal employment opportunity is required by Section 60–1.40 of the Regulations of this Office (41 CFR § 60–1.40). Further, such voluntary organization of businessmen as Plans for Progress have adopted this sound approach to equal opportunity just as they have used goals and targets for guiding their other business decisions. (See the Plans for Progress booklet Affirmative Action Guidelines on page 6.)

(2) The purpose of the contractor's commitment to specific goals is to meet the contractor's affirmative action obligations and is not intended and shall not be used to discriminate against any qualified applicant or employee.

c. *Factors Used in Determining Definite Standards.* A determination of the definite standard of the range of minority manpower utilization shall be made for each better-paid trade to be used in the performance of the contract. In determining the range of minority manpower utilization that should result from an effective affirmative action program, the factors to be considered will include, among others, the following:

(1) The current extent of minority group participation in the trade.

(2) The availability of minority group persons for employment in such trade.

(3) The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.

(4) The impact of the program upon the existing labor force.

7. *Invitation for Bids or Other Solicitations for Bids:* Each Federal agency shall include, or require the applicant to include, in the invitation for bids, or other solicitation used for a Federally-involved construction contract, when the estimated total cost of the

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[1] Marshall and Briggs, *Negro Participation in Apprenticeship Programs* (Dec. 1966), pg. 91.

[2] These findings were based on a detailed examination of available facts relating to building trades unions, area construction volume and demographic data.

construction project exceeds $500,000 a notice stating that to be eligible for award, each bidder will be required to submit an acceptable affirmative action program consisting of goals as to minority group participation for the designated trades to be used in the performance of the contract—whether or not the work is subcontracted. Such notice shall include the determination of the range of minority group utilization (described in Section 6 above) that should result from an effective affirmative action program based on an evaluation of the factors listed in Section 6c. The form of such notice shall be substantially similar to the one attached as an appendix to this Order. To be acceptable, the affirmative action program must contain goals which are at least within the range described in the above notice. Such goals must be provided for each designated trade to be used in the performance of the contract except that goals are not required with respect to trades covered by an OFCC approved multi-employer program.

8. *Post-Award Compliance:* a. Each agency shall review contractors' and subcontractors' employment practices during the performance of the contract. If the goals set forth in the affirmative action program are being met, the contractor or subcontractor will be presumed to be in compliance with the requirements of Executive Order 11246, as amended, unless it comes to the agency's attention that such contractor or subcontractor is not providing equal employment opportunity. In the event of failure to meet the goals, the contractor shall be given an opportunity to demonstrate that he made every good faith effort to meet his commitment. In any proceeding in which such good faith performance is in issue, the contractor's entire compliance posture shall be reviewed and evaluated in the process of considering the imposition of sanctions. Where the agency finds that the contractor or subcontractor has failed to comply with the requirements of Executive Order 11246, the implementing regulations and its obligations under its affirmative action program, the agency shall take such action and impose such sanctions as may be appropriate under the Executive Order and the regulations. Such noncompliance by the contractor or subcontractor shall be taken into consideration by Federal agencies in determining whether such contractor or subcontractor can comply with the requirements of Executive Order 11246 and is therefore a "responsible prospective contractor" within the meaning of the Federal procurement regulations.

b. It is no excuse that the union with which the contractor has a collective bargaining agreement failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964. It is the longstanding uniform policy of OFCC that contractors and subcontractors have a responsibility to provide equal employment opportunity if they want to participate in Federally-involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246, as amended, or the implementing rules, regulations and orders.

9. *Exemptions:*

a. Requests for exemptions from this Order must be made in writing, with justification, to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210, and shall be forwarded through and with the endorsement of the agency head.

b. The procedures set forth in the Order not apply to any contract when the head of the contracting or administering agency determines that such contract is essential to the national security and that its award without following such procedures is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within thirty days.

c. Nothing in this Order shall be interpreted to diminish the present contract compliance review and complaint programs.

10. *Authority*: The Order is issued pursuant to Executive Order 11246 (30 F.R. 12319, Sept. 28, 1965) Parts II and III; Executive Order 11375 (32 F.R. 14303, Oct. 17, 1967); and 41 CFR Chapter 60.

11. *Effective Date*: The provisions of this Order will be effective with respect to transactions for which the invitations for bids or other solicitations for bids are sent on or after July 18, 1969.

APPENDIX

(For inclusion in the Invitation or Other Solicitation for Bids for a Federally-Involved Construction Contract When the Estimated Total Cost of the Construction Project Exceeds $500,000.)

NOTICE OF REQUIREMENT FOR SUBMISSION OF AFFIRMATIVE ACTION PLAN TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. It has been determined that in the performance of this contract an acceptable affirmative action program for the trades specified below will result in minority manpower utilization within the ranges set forth next to each trade:

Identification of trade

Range of minority group employment

2. The bidder shall submit, in the form specified below, with his bid an affirmative action program setting forth his goals as to minority manpower utilization in the performance of the contract in the trades specified below, whether or not the work is subcontracted.

The bidder submits the following goals of minority manpower utilization to be achieved during the performance of the contract:

Identification of trade

Estimated total employment for the trade on contract

Number of minority group employees

(The bidder shall insert his goal of minority manpower utilization next to the name of each trade listed.)

3. The bidder also submits that whenever he subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he will obtain from such subcontractor an appropriate goal that will enable the bidder to achieve his goal for that trade. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

4. No bidder will be awarded a contract unless his affirmative action program contains goals falling within the range set forth in paragraph 1 above, provided, however, that participation by the bidder in multi-employer program approved by the Office of Federal Contract Compliance will be accepted as satisfying the requirements of this Notice in lieu of submission of goals with respect to the trades covered by such multi-employer program. In the event that such multi-employer program is applicable, the bidder need not set forth goals in paragraph 2 above for the trades covered by the program.

5. For the purpose of this Notice, the term minority means Negro, Oriental, American Indian and Spanish Surnamed American. Spanish Surnamed American includes all persons of Mexican, Puerto Rican, Cuban or Spanish origin or ancestry.

6. The purpose of the contractor's commitment to specific goals as to minority manpower utilization is to meet his affirmative action obligations under the equal opportunity clause of the contract. The commitment is not intended and shall not be used to discriminate against any qualified applicant or employee.

7. Nothing contained in this Notice shall relieve the contractor from compliance with the provisions of Executive Order 11246 and the equal opportunity clause of the contract with respect to matters not covered in this Notice, such as equal opportunity in employment in trades not specified in this Notice.

8. The bidder agrees to keep such records and to file such reports relating to the provisions of this Order as shall be required by the contracting or administering agency.

[From the U.S. Department of Labor, Wage and Labor Standards Administration, Washington, D.C., December 1969]

SEQUENTIAL STEPS INDICATING HOW THE PHILADELPHIA PLAN OPERATES

INTRODUCTION

This paper portrays the actual administration of the Philadelphia Plan by the Office of Federal Contract Compliance (hereinafter referred to as OFCC) and by those Federal agencies having Federal and Federally-assisted construction projects in the five county Philadelphia area. It does not purport to contain an explanation of the carefully devised procedure under which ranges of minority manpower utilization are established. A detailed explanation of the method by which the ranges were devised for the Philadelphia area is set forth in OFCC Memorandum dated June 27, 1969, and OFCC Order dated September 23, 1969 (copies of which are annexed hereto, marked "A" and "B," respectively, and incorporated herein).

Further, this paper does not purport to answer such legal questions as have been raised concerning the validity of the ranges. A complete explanation of the legal basis for the ranges is contained in the Opinion of the Attorney General dated September 22, 1969, and Legal Memoranda prepared by the Solicitor of Labor.

STEPS IN ADMINISTRATION OF THE PHILADELPHIA PLAN

Step 1: The Philadelphia Plan became applicable, as set forth in Section 10 of OFCC Order of September 23, 1969, with respect to transactions for which the invitations for bids or other solicitations for bids were sent on or after September 29, 1969. Prior to this date, OFCC Memorandum of June 27, 1969, and OFCC Order of September 23, 1969, were disseminated to those Federal agencies which it was anticipated would be involved in the administration of the Philadelphia Plan. (A list of these agencies is contained in the document, annexed hereto marked "C," and incorporated herein.)

Step 2: Those Federal agencies, listed in document "C" referred to above, are required to notify applicants, contractors and subcontractors of the content and the operation of the Philadelphia Plan. All such agencies are responsible for monitoring the progress of the Plan, from the initial stages of a project through to its completion, receiving reports from contractors, determining whether proper records are being kept, and obtaining compliance. In discharging this responsibility, OFCC is responsible for general policy direction of the agencies' efforts

and for eliminating any possibility of duplication of effort.

Step 3: Every Federal agency responsible for administration of the Philadelphia Plan includes and requires all applicants for Federal assistance, as defined by Executive Order 11246, to include copies of OFCC Memorandum of June 27, 1969, and OFCC Order of September 23, 1969, in each invitation or other such solicitation for bids. All project advertisements include a statement that the project is subject to the Philadelphia Plan and that the contractor and subcontractors must be Equal Opportunity Employers as required by Executive Order 11246 and regulations promulgated thereunder.

Step 4: Normally, pre-bid conferences are held to discuss technical and other aspects of a particular project. At each such conference, those in attendance are given a detailed explanation of how the Plan operates and are afforded an opportunity to ask any questions they might have concerning the Plan. Every bidder can receive specific guidance as to how to prepare and submit his goals for each of the designated trades.

Step 5: In preparing and submitting his goals, a contractor uses the format contained in the Appendix to OFCC Order of September 23, 1969. (This Appendix is a part of document "B.") After reviewing his own labor force needs and those of prospective subcontractors, the bidder chooses and inserts his goals of minority manpower utilization next to the name of each trade listed for those years during which it is contemplated he will perform any work or engage in any activity under the contract. The goals, which are the result of the contractor's own determination of his ability to employ minority persons in the trades listed in the Philadelphia Plan, in this form are then submitted by the contractor and are included as part of his bid.

If a portion of the project is to be subcontracted, the contractor must include appropriate goals in each subcontract and these goals become the goals of his subcontractor. However, the prime contractor is not accountable for the failure of his subcontractor to make every good-faith effort to meet his goals. A subcontractor is accountable for his own effort to comply with the requirements of the Plan. Therefore, any such goals should be selected by a contractor only after consultation with all known subcontractors.

Step 6: All bids and goals submitted are reviewed by the administering agency. To be eligible for the award of the contract, the bidder must select goals for each trade and for every year which he is involved on the project falling within the ranges set forth in the Order of September 23, 1969. The lowest responsive and responsible bidder who submits goals within the established ranges is awarded the contract by the administering agency. In no instance are there any negotiations over the provisions of the specific goals submitted by a bidder after the opening of the bids and prior to the award of a contract. At any post-award conference and at other times after the award of the contract, the Federal agency administering the project is available for consultation and to assist the contractor in meeting his commitment. Additional assistance will be provided, where needed, in regard to training, recruitment, career and work counseling, community relations and in such other areas as may be necessary.

Step 7: Every contractor and subcontractor is required to keep a record of his employment practices. This record must be available upon inspection of the project by the responsible Federal agency. Any such record should include those documents necessary to establish compliance with the terms of the Philadelphia Plan. Where a contractor or subcontractor has not achieved his chosen goals, such record should include documentation of those steps taken in a good faith effort to meet his commitment.

Step 8: Each agency is to review contractor's and subcontractor's employment practices at various intervals during the performance of a contract. A report of each review is to be made to OFCC by the responsible Federal agency. If all goals are being met, the contractor or subcontractor is presumed to be in compliance with the terms of the Philadelphia Plan and the Executive Order. If a contractor or subcontractor fails to meet the goals, he will be given the opportunity to demonstrate that he made every good-faith effort to meet his commitment.

Step 9: In the event that a contractor or subcontractor has not met his commitment, he shall be so informed in writing by the responsible Federal agency. A conference shall be scheduled at which the contractor or subcontractor will be given an initial opportunity to demonstrate that he has made a good-faith effort. If after the meeting the agency is of the opinion that the contractor or subcontractor did not make every good-faith effort to fulfill his commitment, he will be given a reasonable time to take corrective action.

(OFCC Order of September 23, 1969, in Section 5, sets forth specific criteria for determing good faith and provides guidance to a contractor or subcontractor as to some of those activities which would constitute a minimum level of effort.)

Step 10: Before the sanctions of cancellation, termination, suspension or debarment are imposed against any contractor or subcontractor, he will be given the further opportunity to request a formal hearing. All such hearings will be conducted in accordance with the requirements of Executive Order 11246 and regulations promulgated thereunder. In each case the Director of OFCC, or the appropriate agency head, shall appoint a hearing examiner who shall hear all the facts and report his findings to the agency head for a decision or to the Director of OFCC for a final determination.

Only after these steps, including a formal hearing (where requested) and a determination by the Director of OFCC of inadequate good-faith efforts in meeting the requirements of the Philadelphia Plan, will sanctions be imposed by the Federal Government.

[Document "B"]

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D.C., September 23, 1969.

ORDER

To: Heads of all agencies.
From: Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards.
John L. Wilks, Director, Office of Federal Contract Compliance.
Subject: Establishment of Ranges for the Implementation of the Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction.

1. *Purpose:* The purpose of this Order is to implement Section 6 of the Order issued on June 27, 1969 by Assistant Secretary of Labor Arthur A. Fletcher to the Heads of Agencies outlining a "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction." Section 6 of the June 27 Order provides for the determination of definite standards in terms of ranges of minority manpower utilization. This Order also affirms and in certain respects amends the Order of June 27.

2. *Background:* The June 27 Order requires a bidder on Federal or Federally-assisted construction in the Philadelphia area on projects whose cost exceeds $500,000 to submit an acceptable affirmative action program which shall include specific goals of minority manpower utilization within the ranges to be established by the Department of Labor, in cooperation with the Federal contracting and administering agencies in the Philadelphia Area, within the following 7 listed classifications:

Iron workers, plumbers, pipefitters, steamfitters, sheetmetal workers, electrical workers, roofers and water proofers, elevator construction workers.

Since that time the Department has determined that minority craftsmen may be adequately represented in the classification and title "roofers and water proofers". For this reason, such classification is hereby temporarily excepted from the provisions of the "Revised Philadelphia Plan," subject to further examination of that trade.

Pursuant to a notice of hearing issued on August 16, 1969, representatives of the Department of Labor conducted a public hearing in Philadelphia on August 26, 27, and 28, 1969 for the purpose of obtaining information and data relevant to the establishment of ranges for the purpose of effectuating the above-referred to June 27, 1969 Order. Section 6 of such Order provides that the following factors, among others, will be used in establishing these ranges:

(a) The current extent of minority group participation in the trade.

(b) The availability of minority group persons for employment in such trade.

(c) The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.

(d) The impact of the program upon the existing labor force.

Having reviewed the record of that hearing and additional relevant data gathered and compiled by the Department of Labor, the following findings and Order are made as contemplated by the Order of June 27, 1969.

3. *Findings (a) Minority Participation in the Specified Trades*—The over-all construction industry in the five county Philadelphia area has a current minority representation of employees of 30%. Comparable skilled trades, excluding laborers, have a minority representation of approximately 12%. The construction trades in the Philadelphia area have grown and developed under similar conditions concerning manpower availability and under identical economic and cultural circumstances. Despite that fact, there are few minorities in the above-designated six trades. The evidence adduced at the public hearing indicates that the minority participation in such trades is approximately 1%. In the June 27 Order, it was found that such a low rate of participation is due to the traditional exclusionary practices of these unions in admission to membership and apprenticeship programs and failure to refer minorities to jobs in these trades. The most reliable data available relates to minority participation in membership in the unions representing employees in the six trades. That data reveals the following:

(1) *Iron workers:* The total union membership in this craft in the Philadelphia area in 1969 is 850, 12 of whom (1.4%) are minority group representatives.

(2) *Steamfitters:* Total union membership in the Philadelphia area in 1969 stands at 2,308, 13 of whom (.65%) are minority group representatives.

(3) *Sheetmetal workers:* Total union membership in the Philadelphia area in 1969 stands at 1,688, 17 of whom (1%) are minority group representatives.

(4) *Electricians:* Total union membership in the Philadelphia area in 1969 stands at 2,274, 40 of whom (1.76%) are minority group representatives.

(5) *Elevator construction workers:* Total union membership in the Philadelphia area in 1969 stands at 562, 3 of whom (.54%) are minority group representatives.

(6) *Plumbers and pipefitters:* Total union membership in the Philadelphia area in 1969

stands at 2,335, 12 of whom (.51%) are minority group representatives.

Based upon these figures it is found and determined that the present minority participation in the six named trades is far below that which should have reasonably resulted from participation in the past without regard to race, color and national origin and, further, that such participation is too insignificant to have any meaningful bearing upon the ranges estabilshed by this Order.

(b) *Availability of minority group persons for employment:* The nonwhite unemployment rate in the Philadelphia area is approximately twice that for the labor force as a whole and the total number of nonwhite persons unemployed is approximately 21,000. There is also a substantial number of persons in the nonwhite labor force who are underemployed. Testimony adduced at the hearing indicates that there are between 1,200 and 1,400 minority craftsmen presently available for employment in the construction trades who have been trained and/or had previous work experience in the trades. In addition it was revealed at the hearing that there is a pool of 7,500 minority persons in the Laborers Union who are working side by side with journeymen in the performance of their crafts in the construction industry. Many of these persons are working as helpers to the journeymen in the designated trades. Also, testimony at the hearings established that between 5,000 and 8,000 prospective minority craftsmen would be prepared to accept training in the construction crafts within a year's time if they would be assured that jobs were available to them upon completion of such training.

Surveys conducted by agencies of the U.S. Department of Labor have provided additional information relative to the availability of minority group persons for employment in the designated trades.

Based upon the number of minority group persons employed in the designated trades for all industries (construction and non-construction) and those minority group persons who are unemployed but qualified for employment in the designated trades, a survey by the Manpower Administration indicated that minority group persons are now in the area labor market as follows:

Identification of trades and number available:	
Ironworkers	302
Plumbers, pipefitters and steamfitters	797
Sheetmetal workers	250
Electrical workers	745

A survey by the Office of Federal Contract Compliance indicated that the following number of minority persons are working in the designated trades and those who will be trained by 1970 by major Philadelphia recruitment and training agencies and those working in related occupations in non-construction industries who would be qualified for employment in the designated trades with some orientation or minimal training:

Identification of trades and number available:	
Ironworkers	75
Plumbers, pipefitters	500
Steamfitters	300
Sheetmetal workers	375
Electrical workers	525
Elevator constructors	43

Based upon this information it is found that a substantial number of minority persons are presently available for productive employment.

(c) *The need for training:* Testimony at the public hearing revealed that there is a need for training programs for willing minority group persons at various levels of skill. Such training must necessarily range from pre-apprenticeship training programs through programs providing incidental training for skilled craftsmen who are near the brink of full journeyman status.[1] As discussed above, between 5,000 and 8,000 minority group persons are in a position to be recruited for such training within a year's time.

Testimony at the public hearings revealed the existence of several training programs which have operated successfully to train a number of craftsmen many of whom are now prepared to enter the trades in the construction industry. In order to further assure the availability of necessary training programs, the Manpower Administration of this Department has committed substantial funds for the development of additional apprenticeship outreach programs and journeyman training programs in the Philadelphia area. It plans to double the present apprenticeship outreach program with the Negro Union Leadership Council in Philadelphia. Presently, this program is funded for $78,000 to train seventy persons. An additional $80,000 is being set aside to expand this program. In addition, immediate exploration of the feasibility of a journeyman-training program for approximately 180 trainees will be undertaken. Both these programs will be directed specifically to the designated trades.[2]

(d) *The impact of the program upon the existing labor force:* A national survey of the Bureau of Labor Statistics indicates that the present annual attrition rate of construction trade membership due to retirement is 2.5% per year based upon a total working life of 44 years per employee in each of the above-designated trades.

Based on national actuarial rates for the construction industry published by the National Safety Council, the average disability occurrence rate resulting from death or injury is 1% per year. A conservative estimate of the average rate at which employees leave construction crafts for all reasons other than death, disability and retirement is 4% per year.

Therefore, each construction craft should have approximately 7.5% new job openings each year without any growth in the craft. The annual growth in the number of employees in each craft designated under this "Revised Philadelphia Plan" has been and is projected to be as follows:

(1) *Iron workers:* The average annual growth rate since 1963 has been approximately 10%. It is projected that an average annual growth rate in employment will be 3.69% in the near future.[3]

(2) *Plumbers and pipefitters:* The average annual growth rate since 1963 has been approximately 7.38%. It is projected that an average annual growth rate in employment will be 2.9% in the near future.

(3) *Steamfitters:* The average annual growth rate since 1963 has been approximately 2.63% and is projected to be approximately 2.5% for each of the next four years.

(4) *Sheetmetal workers:* The average annual growth rate since 1963 has been approximately 2.06% and is projected to be approximately 2.0% for each of the next four years.

(5) *Electricians:* The average annual growth rate since 1963 has been approximately 4.98% It is projected that an average annual growth rate in employment will be 2.2% in the near future.

(6) *Elevator Construction Workers.* The average annual growth rate since 1963 has been approximately 2.41% and is projected to be approximately 2.1% for each of the next four years.

Adding the rate of jobs becoming vacant due to attrition to the rate of new jobs due to growth, the total rate of new jobs projected for each craft is as follows:

Percentage of annual vacancy rate

Identification of trade:	
Ironworkers	11.2
Plumbers and pipefitters	10.4
Steamfitters	10
Sheetmetal workers	9.5
Electrical workers	9.7
Elevator construction workers	9.6

Therefore, it is found and determined that a contractor could commit to minority hiring up to the annual rate of job vacancies for each trade without adverse impact upon the existing labor force.

(e) *Timetable:* In an effort to provide practical ranges which can be met by employers in hiring productive trained minority craftsmen, this Order should be developed to cover an extended period of time.

The average length of Federally-involved construction projects in the Area is between 2 and 4 years. Testimony at the hearing indicated that a 4 year duration for the "Plan" is proper.

Therefore, it is found and determined that in order for this Order to effect equal employment to the fullest extent, the standards of minority manpower utilization should be determined for the next four years.

(f) *Conclusion of findings:* It is found that present minority participation in the designated trades is far below that which should have reasonably resulted from participation in the past without regard to race, color, or national origin and, further, that such participation is too insignificant to have any meaningful bearing upon the ranges established by this Order.

It is found that a significant number of minority group persons is presently available for employment as journeymen, apprentices, or other trainees.

It is found that there is a need for training programs for willing minority group persons at various levels of skill. There exist several training programs in the Philadelphia area which have operated successfully to train craftsmen prepared to enter the construction industry and, in addition, the Manpower Administration of this Department has committed substantial funds for the development of other apprenticeship outreach programs and journeyman training programs in the Philadelphia area.

Finally, it is found that a contractor could commit himself to hiring minority group persons up to the annual rate of job vacancies for each trade without adverse impact upon the existing labor force in the designated trades.

Based upon these findings, a range shall be established by this Order which shall require contractors to establish employment goals between a low range figure which could result in approximately 20% of the workforce in each designated trade being minority craftsmen at the end of the fourth year covered by this Order.[4]

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[1] Testimony adduced at the hearings indicates that the traditional duration of training to develop competent workmen in the crafts may be longer than necessary to successfully perform substantial amounts of craft level work.

[2] Memorandum from Arnold R. Weber, Assistant Secretary for Manpower to Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards, dated September 18, 1969.

[3] Projections of the annual growth rate in employment in the designated trades is based on a study by the Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Employment Security, entitled *1960 Census and 1970, 1975 Projected Total Employment.*

[4] Assuming the same proportion of minorities are employed on private construction projects as Federally-involved projects, the lower range should result in 2,000 minority craftsmen being employed in the construction industry in the Philadelphia area by the end of the fourth year.

In addition, trained and trainable minority persons are or shall be available in numbers sufficient to fill the number of jobs covered by these ranges, there being 1200 to 1400 minority persons who have had training and 5000 to 8000 prepared to accept training within a year.

Such minority representation can be accomplished without adversely affecting the present work force. Based upon the projected Annual Vacancy Rate, the lower range figure may be met by filling vacancies and new jobs approximately on the basis of one minority craftsman for each non-minority craftsman. [5]

4. *Order:* Therefore, after full consideration and in light of the foregoing, be it *ordered:* That the Order of June 27, 1969 entitled "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction" is hereby implemented, affirmed, and in certain respects amended, this Order to constitute a supplement thereto as required and contemplated by said Order of June 27, 1969.

Further ordered: That the following ranges are hereby established as the standards for minority manpower utilization for each of the designated trades in the Philadelphia area for the next four years:

Range of minority group employment until Dec. 31, 1970

[Percent]

Identification of trade:	
Ironworkers	[1] 5–9
Plumbers and pipefitters	5–8
Steamfitters	5–8
Sheetmetal workers	4–8
Electrical workers	4–8
Elevator construction workers	4–8

Range of minority group employment for the calendar year 1971 [2]

[Percent]

Identification of trade:	
Ironworkers	11–15
Plumbers and pipefitters	10–14
Steamfitters	11–15
Sheetmetal workers	9–13
Electrical workers	9–13
Elevator construction workers	9–13

[1] The percentage figures have been rounded.

[2] After December 31, 1970 the standards set forth herein shall be reviewed to determine whether the projections on which these ranges are based adequately reflect the construction labor market situation at that time. Reductions or other significant fluctuations in federally involved construction shall be specifically reviewed from time-to-time as to their effect upon the practicality of the standards. In no event, however, shall the standards be increased for contracts after bids have been received.

Range of minority group employment for the calendar year 1972

[Percent]

Identification of trade:	
Ironworkers	16–20
Plumbers and pipefitters	15–19
Steamfitters	15–19
Sheetmetal workers	14–18
Electrical workers	14–18
Elevator construction workers	14–18

[5] The one for one ratio in hiring has been judicially recognized as a reasonable, if not mandatory, requirement to remedy past exclusionary practices. *Vogler* v. *McCarty, Inc.*, 294 F. Supp. 368 (E.D. La. 1967).

Range of minority group employment for the calendar year 1973

[Percent]

Identification of trade:	
Ironworkers	22–26
Plumbers and pipefitters	20–24
Steamfitters	20–24
Sheetmetal workers	19–23
Electrical workers	19–23
Elevator construction workers	19–23

The above ranges are expressed in terms of man hours to be worked on the project by minority personnel and must be substantially uniform throughout the entire length of the project for each of the designated trades.

Further ordered: That the form attached hereto as an Appendix is hereby made a part of this Order and in accordance with the findings specified above, amends the Appendix of the Order of June 27, 1969.

Each Federal agency shall include, or require the applicant to include, this form, or one substantially similar, in the invitation for bids or other solicitations used for a Federally-involved construction contract where the estimated total cost of the construction project exceeds $500,000.

5. *Criteria for measuring good faith:* Section 8 of the June 27 Order provides that a contractor will be given an opportunity to demonstrate that he has made every good faith effort to meet his goal of minority manpower utilization in the event he fails to meet such goal. If the contractor has failed to meet his goal, a determination of "good faith" will be based upon his efforts to broaden his recruitment base through at least the following activities:

(a) The OFCC Area Coordinator will maintain a list of community organizations which have agreed to assist any contractor in achieving his goal of minority manpower utilization by referring minority workers for employment in the specified trades. A contractor who has not met his goals may exhibit evidence that he has notified such community organizations of opportunities for employment with him on the project for which he submitted such goals as well as evidence of their response.

(b) Any contractor who has not met his goal may show that he has maintained a file in which he has recorded the name and address of each minority worker referred to him and specifically what action was taken with respect to each such referred worker. If such worker was not sent to the union hiring hall for referral or if such worker was not employed by the contractor, the contractor's file should document this and the reasons therefor.

(c) A contractor should promptly notify the OFCC Area Coordinator in order for him to take appropriate action whenever the union with whom the contractor has a collective bargaining agreement has not referred to the contractor a minority worker sent by the contractor or the contractor has other information that the union referral process has impeded him in his efforts to meet his goal.

(d) The contractor should be able to demonstrate that he has participated in and availed himself of training programs in the area, especially those funded by this Department referred to in Section 3(c) of this Order, designed to provide trained craftsmen in the specified trades.

6. *Subcontractors:* Whenever a prime contractor subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he shall include his goals in such subcontract and those goals shall become the goals of his subcontractor who shall be bound by them and by this Order to the full extent as if he were the prime contractor. The prime contractor shall not be accountable for the failure of his subcontractor to meet such goals or to make every good faith effort to meet them. However, the prime contractor shall give notice to the Area Coordinator of the Office of Federal Contract Compliance of the Department of Labor of any refusal or failure of any subcontractor to fulfill his obligations under this Order. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

7. *Exemptions:* a. Requests for exemptions from this Order must be made in writing, with justification to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210, and shall be forwarded through and with the endorsement of the agency head.

b. The procedures set forth in the Order shall not apply to any contract when the head of the contracting or administering agency determines that such contract is essential to the national security and that its award without following such procedures is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within thirty days.

c. Nothing in this Order shall be interpreted to diminish the present contract compliance review and complaint programs.

8. *Effect of this order:* In the case of any inconsistency between this Order and the June 27, 1969 Order prescribing a "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction", this Order shall prevail.

9. *Authority:* This Order is issued pursuant to Executive Order 11246 (30 F.R. 12319, September 28, 1965) Parts II and III; Executive Order 11375 (32 F. R. 14303, Oct. 17, 1967); and 41 CFR Chapter 60.

10. *Effective date:* The provisions of this Order will be effective with respect to transactions for which the invitations for bids or other solicitations for bids are sent on or after *September 29, 1969.*

APPENDIX 1

(For inclusion in the Invitation or Other Solicitation for Bids for a Federally-Involved Construction Contract When the Estimated Total Cost of the Construction Project Exceeds $500,000.)

NOTICE OF REQUIREMENT FOR SUBMISSION OF AFFIRMATIVE ACTION PLAN TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. It has been determined that in the performance of this contract an acceptable affirmative action program for the trades specified below will result in minority manpower utilization within the ranges set forth next to each trade:

Range of minority group employment until December 31, 1970

[Percent]

Identification of trade:	
Ironworkers	5–9
Plumbers and pipefitters	5–8
Steamfitters	5–8
Sheetmetal workers	4–8
Electrical workers	4–8
Elevator construction workers	4–8

Range of minority group employment for the calendar year 1971

[Percent]

Identification of trade:	
Ironworkers	11–15
Plumbers and pipefitters	10–14
Steamfitters	11–15
Sheetmetal workers	9–13
Electrical workers	9–13
Elevator construction workers	9–13

APPENDIX 2

Range of minority group employment for the calendar year 1972

[Percent]

Identification of trade:	
Ironworkers	16–20
Plumbers and pipefitters	15–19
Steamfitters	15–19
Sheetmetal workers	14–18
Electrical workers	14–18
Elevator construction workers	14–18

Range of minority group employment for the calendar year 1973

[Percent]

Identification of trade:	
Ironworkers	22–26
Plumbers and pipefitters	20–24
Steamfitters	20–24
Sheetmetal workers	19–23
Electrical workers	19–23
Elevator construction workers	19–23

2. The bidder shall submit, in the form specified below, with his bid an affirmative action program setting forth his goals as to minority manpower utilization in the performance of the contract in the trades specified below, whether or not the work is subcontracted.

The bidder submits the following goals of minority manpower utilization to be achieved during the performance of the contract:

Identification of trade	Estimated total employment for the trade on the contract until Dec. 31, 1970	Number of minority group employees until Dec. 31, 1970
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

APPENDIX 3

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1971	Number of minority group employees for the calendar year 1971
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1972	Number of minority group employees for the calendar year 1972
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1973	Number of minority group employees for the calendar year 1973
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

(The bidder shall insert his goal of minority manpower utilization next to the name of each trade listed for those years during which it is contemplated that he shall perform any work or engage in any activity under the contract.)

3. The bidder also submits that whenever he subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he shall include his goal in such subcontract and those goals shall become the goals of his subcontractor who shall be bound by them to the full extent as if he were the prime contractor. The prime contractor shall not be accountable for the failure of his subcontractors to meet such goals or to make every good faith effort to meet them. However, the prime contractor shall give notice to the Area Coordinator of the Office of Federal Contract Compliance of the Department of Labor of any refusal or failure of any subcontractor to fulfill his obligations under this Order. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

4. No bidder will be awarded a contract unless his affirmative action program contains goals falling within the range set forth in paragraph 1 above, provided, however, that participation by the bidder in multi-employer programs approved by the Office of Federal Contract Compliance will be accepted as satisfying the requirements of this Notice in lieu of submission of goals with respect to the trades covered by such multi-employer program. In the event that such multi-employer program is applicable, the bidder need not set forth goals in paragraph 2 above for the trades covered by the program.

5. For the purpose of this Notice, the term minority means Negro, Oriental, American Indian and Spanish Surnamed American. Spanish Surnamed American includes all persons of Mexican, Puerto Rican, Cuban or Spanish origin or ancestry.

6. The purpose of the contractor's commitment to specific goals as to minority manpower utilization is to meet his affirmative action obligations under the equal opportunity clause of the contract. This commitment is not intended and shall not be used to discriminate against any qualified applicant or employee. Whenever it comes to the bidder's attention that the goals are being used in a discriminatory manner, he must report it to the Area Coordinator of the Office of Federal Contract Compliance of the U.S. Department of Labor in order that appropriate sanction proceedings may be instituted.

7. Nothing contained in this Notice shall relieve the contractor from compliance with the provisions of Executive Order 11246 and the Equal Opportunity Clause of the contract with respect to matters not covered in this Notice, such as equal opportunity in employment in trades not specified in this Notice.

8. The bidder agrees to keep such records and to file such reports relating to the provisions of this Order as shall be required by the contracting or administering agency.

Mr. JAVITS. Mr. President, I am about to suggest the absence of a quorum, only for the purposes of notifying Senators again that we are engaged in this debate so that an ample opportunity may be afforded, if any is further required, to permit them to participate.

I shall then, if the Chair will recognize me, proceed to discuss the matter myself, for a very few minutes.

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

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

Mr. JAVITS. Mr. President, this is a very serious question which we have before the Senate, because it not only involves a very profound question of policy on the part of the United States in the field of discrimination in employment opportunities, which would be serious enough without anything else, but it involves a very serious question of conflict between two Government agencies, and yet a third serious question of constitutional law.

As if any more questions were needed, Mr. President, it goes again to the issue which we encountered in the foreign aid bill, and which we encountered yesterday with the HEW bill. That is the extent to which the Appropriations Committee should legislate for all committees.

Mr. President, there is absolutely no question that this is legislation on an appropriation bill. So that Senators may be advised—and I would deeply appreciate it if the attachés would advise them—as I see the procedure, it will be as follows:

In due course I, or some other Senator, will make a point of order that this is legislation on an appropriation bill. When such a point of order is made, it is my understanding that before the Chair rules, the manager of the bill will raise the issue of germaneness; that is, that it is germane to the bill for various other reasons, which are supposedly contained in the bill.

That question, as I understand it, is not decided by the Chair, but by the Senate. The question will then be put to the Senate in the following terms: "Is it the sense of the Senate that the amendment incorporated in section 904 is germane to this measure?"

A vote of yea will sustain the germaneness. Therefore, it will remain part of the bill unless otherwise stricken by an amendment or a motion to strike.

A vote of nay will affirm that it is not germane, and it will therefore be stricken from the bill because it does not fall under the rules.

It is therefore, because of this rather summary situation, Mr. President, that the debate on this particular proposition must be made before that point is reached, as once the debate has been had, no further debate is possible.

Mr. President, the Philadelphia plan, or the revised Philadelphia plan that has been the subject of considerable debate and discussion by me and others, I really think becomes in an interesting way the lesser rather than the greater part of the debate.

It has been quite thoroughly explored in many ways. The greater part of the debate, I think, now occurs on the unbelievable scope of this particular

amendment insofar as its effect on the law is concerned, and even in its effect upon the administrative hierarchy of the U.S. Government and the absolute power—the power to even defy courts—which is vested in the Comptroller General of the United States by this provision. And, in a sense, it is made even more unwise, and perhaps even unfair, because it is incorporated in a supplemental appropriation bill.

Mr. President, we all know that there is no line-item veto in the President. He has to take it or leave it. And it is very unusual for the President to veto an appropriation bill. So, there is an additional factor added, notwithstanding the fact that this is permanent legislation. I beg the Senate to understand that this is permanent law. It is as stringent as I have described, and incidentally this is not my opinion, but it is the opinion of the Attorney General of the United States, quite apart from the Philadelphia plan. I will read the opinion as to the effect on many things, not just on the Philadelphia plan, but also on his Department and on the Comptroller General. If we put this into effect and make it law, the Comptroller General is hereby given authority to defy the courts.

I have pointed out that it is permanent law. It reads as follows, page 15, lines 10 to 12:

No part of the funds appropriated or otherwise made available by this or any other Act . . .

Mr. President, that is pretty broad stuff. And, in my judgment, it raises grave questions as to whether it is retrospective or prospective or both.

Mr. President, I do not see how anyone will decide that except the Comptroller General who, by virtue of this paragraph, is not bound by the courts. It provides: "which the Comptroller General of the United States holds."

That is the key word, "to be in contravention of any Federal statute."

So he holds it to be in contravention of any Federal statute, and he, in fact, controls the purse strings of the United States. Then he, the top man in this country—and perhaps the 7 days in May have arrived—of all people is the real ruler of the country, the Comptroller General of the United States.

It is almost inconceivable that a measure of such size and scope should come to us in a supplemental appropriation bill as permament legislation with the breadth and the impact that this has. And what is perhaps a little more inconceivable—and I think the Senator from Hawaii (Mr. FONG) was right about it—is that it should come at this time in the session when one look at the Chamber, which ought to be packed and ringing with debate whether we are right or wrong, tells us the whole story about the seriousness of what is proposed.

It is apparent to the onlooker that there is a lack of interest in the matter.

I pointed out that this was not my opinion, but that it was the opinion of the Attorney General of the United States.

The Attorney General wrote to the minority leader today. This has just burst upon us. As the Senator from Hawaii said, it just came up yesterday in an effort to kill the Philadelphia plan, which is the real purpose of the provision—we all know that. But they would be killing a lot of other things with the same shot.

This would be Napoleon Bonaparte with grapeshot clearing the whole street and not just the Philadelphia plan.

Mr. President, I ask unanimous consent that the letter from the Attorney General be printed at this point in the RECORD. I will be reading from it, and I do not want people to say that I read only certain parts of it.

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

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., December 18, 1969.

Hon. HUGH SCOTT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SCOTT: I am writing to express my concern with respect to the provisions of Section 904 of H.R. 15209, the Supplemental Appropriation Bill, 1970, presently under consideration in the Senate.

Section 904 provides:

"In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute."

The Comptroller General, under present law is authorized to settle and adjust all claims by or against the Government of the United States, 31 U.S.C. 71, and to settle the accounts of accountable officers of the Government, 31 U.S.C. 72, 74. In the performance of this function he has, historically, been required to determine the legality of expenditures and the availability of appropriations to make such expenditures.

His determinations of law are not, however, binding on affected private parties or the courts, *Miguel* v. *McCarl,* 291 U.S. 442, 454–55 (1934).

The provisions of Section 904, if I understand them correctly, would alter present law in at least two respects. First, they would prohibit, or could be construed to prohibit, any Federal payment to be made on any contract entered into or containing any provision in violation of Federal law. The prohibition would operate without regard to the nature or gravity of the violation, responsibility of the contractor, or any other equitable consideration. This would impose a harsher rule on those who contract with the Government than at present. Now, not every illegality or irregularity invalidates a contract, and even where the contract itself may be invalidated, a contractor in appropriate circumstances will be entitled to be paid the value of his services. *New York Mail and Newspaper Transportation Co.* v. *United States,* 154 F. Supp. 271 (Ct. Cl. 1957), *cert. denied,* 355 U.S. 904 (1957); *Crocker* v. *United States,* 240 U.S. 74 (1916). Furthermore, this harsh rule would be applied not only to those who contract directly with the Federal Government, but to those who deal with Federal grantees.

Section 904 alters existing law in another significant respect. It provides that the Comptroller General's determination as to the legality of any contract is binding whether or not such determination is later upheld by the courts. As I read the Section it would be fruitless for a contractor to sue in the Court of Claims on a contract held by the Comptroller General to be illegal, since even if the court agreed with the plaintiff's view of the law, this Section would prevent payment being made to satisfy a judgment in his favor.

I am, of course, not indifferent to the effect which this provision would have on the functions of this Department in advising the President and the officers of the Executive Branch on questions of law arising in the course of their duties. 28 U.S.C. 511, 512. In executing the laws, the Executive Branch must of necessity interpret them. Such interpretations may, on occasion, conflict with the view held by the Congress; but in such case our system provides as ready correctives new legislation or resort to the courts. Because of the limited time available, I have limited myself to what seem to me to be these serious practical objections. I am bound to say, however, that the authority to be vested in the Comptroller General under Section 904 would, in my view, so disturb the existing allocation of power and responsibility among the several branches of the Federal Government as to raise serious questions as to its constitutionality.

I therefore urge that Section 904 be deleted from the bill.

Sincerely,

JOHN M. MITCHELL,
Attorney General.

Mr. JAVITS. Mr. President, the Attorney General says.

The provisions of Section 904, if I understand them correctly, would alter present law in at least two respects. First, they would prohibit, or could be construed to prohibit, any Federal payment to be made on any contract entered into or containing any provision in violation of Federal law. The prohibition would operate without regard to the nature or gravity of the violation, responsibility of the contractor, or any other equitable consideration. This would impose a harsher rule on those who contract with the Government than at present. Now, not every illegality or irregularity invalidates a contract, and even where the contract itself may be invalidated, a contractor in appropriate circumstances will be entitled to be paid the value of his services.

The Attorney General then cites some cases and a U.S. Supreme Court case.

Mr. President, I continue to read:

Furthermore, this harsh rule would be applied not only to those who contract directly with the Federal Government, but to those who deal with Federal grantees.

Section 904 alters existing law in another significant respect. It provides that the Comptroller General's determination as to the legality of any contract is binding whether or not such determination is later upheld by the courts. As I read the Section it would be fruitless for a contractor to sue in the Court of Claims on a contract held by the Comptroller General to be illegal, since even if the court agreed with the plaintiff's view of the law, this Section would prevent payment being made to satisfy a judgment in his favor.

Mind you, Mr. President, a supplemental appropriations bill in the last days of the session, a measure from the Appropriations Committee contains permanent law giving this kind of power.

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

Mr. JAVITS. I yield.

Mr. PEARSON. Mr. President, would the letter of the Attorney General or the opinion of the Attorney General offer some foundation for the Senator's assertion of the broad concept that under

the language of the bill the Comptroller General would be the final and last word, even above the opinion of the court? I do not really think that is the meaning of the language.

It says there that the Comptroller General must make a judgment upon the payment of funds as to whether the contracts are illegal in reference to a given statute and that statute of law as it is interpreted by the court.

So he looks not at just the statute that he measures it by, but he also looks at it as it is interpreted by the opinion of any court in the land.

Mr. JAVITS. Mr. President, I wish I could agree with the Senator. However, let us remember that the jurisdiction of the courts is within the Judiciary Act of 1789, which establishes the jurisdiction of the lower Federal courts.

There is only one constitutional court, and that is the Supreme Court of the United States. Therefore, we have passed laws time and again which deprive the courts of jurisdiction and make a decision on an administrative problem final.

With the fundamental equity power of the court with relation to some kind of crookedness or fraud, or something of that sort, it seems to me that with the absolute unqualified statement here contained, "which the Comptroller General holds" and that is the key word, "to be in contravention of any Federal statute", I do not see that a court would have jurisdiction to challenge it. He could say to 16 courts who seek to mandate him to do something, "Congress told me that if I hold it, that is it."

It seems to me that that is a power which certainly one Senator could prevent. I should think that I would be violating my oath of office if I did not fight this tooth and nail, and I hope that a majority of the Senate would feel the same way before surrendering such power to one official of the United States, the Comptroller General, dignified and important and consequential as he may be.

As I have said, I am buttressed in my feeling that this is not qualified by the fact that the Attorney General feels the same way. Also, the Attorney General says, as his third reason for grave concern in opposition to this section:

> I am bound to say, however, that the authority to be vested in the Comptroller General under Section 904 would, in my view, so disturb the existing allocation of power and responsibility among the several branches of the Federal Government as to raise serious questions as to its constitutionality.

He then points out, and I should like to read it to the Senate, the power of his own office:

> I am, of course, not indifferent to the effect which this provision would have on the functions of this Department in advising the President and the officers of the Executive Branch on questions of law arising in the course of their duties. 28 U.S.C. 511, 512. In executing the laws, the Executive Branch must of necessity interpret them. Such interpretations may, on occasion, conflict with the view held by the Congress; but in such case our system provides as ready correctives new legislation or resort to the courts. Because of the limited time available, I have limited myself to what seems to me to be these serious practical objections.

Then he goes on with the phrase I read before:

> I am bound to say, however, that the authority to be vested in the Comptroller General under Section 904 would, in my view, so disturb the existing allocation of power and responsibility among the several branches of the Federal Government as to raise serious questions as to its constitutionality.

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

Mr. JAVITS. I yield.

Mr. PEARSON. Without regard to whether the legal opinion of the Comptroller General is correct or whether the opinion of the Attorney General of the United States is correct, there does seem to be a dispute between the two. Is that accurate?

Mr. JAVITS. That is correct.

Mr. PEARSON. And that constitutes a conflict, aside from the very important issue of civil rights, a conflict of opinion between the executive branch of the Government and the congressional branch of the Government of the United States.

Mr. JAVITS. I would not quite go that far, for this reason: It constitutes a conflict between the Attorney General and the Comptroller General. I would not say Congress, because Congress is going to have a chance to speak on this right now.

The Comptroller General is an arm of Congress, but this bill submits the issue to Congress. Section 904 seizes us of the question. It is we now, not the Comptroller General, who are going to pit ourselves against the Attorney General. That is a very important point. We are going to decide today, in the Senate, and in the other body, on the conference report, if this carries through conference, that we are going to take on this issue and we will have decided.

The men who drew section 904 were no fools, because giving the Comptroller General this absolute authority is the way Congress can decide the issue. If the President signs this bill, then the Comptroller General becomes our agent, not generally in fiscal matters, but he becomes our agent to kill the Philadelphia plan or to kill anything else he does not like—we give him that power—when he holds that it is in contravention to a Federal statute, no matter what the Attorney General holds and, I think, no matter what the courts hold. We give him that power.

So you have Congress; you do not have just the Attorney General. It is Congress. We are now seized of it, and we are going to act, yea or nay, in a relatively short time.

Mr. PEARSON. I ask the Senator from New York if the same argument cannot be made on the other side. If the Comptroller General, an arm of Congress, makes a judgment determination that the payment of funds is illegal, in his opinion, but at any time the Attorney General of the United States, an officer of the executive branch of Government, determines otherwise, then an arm of Congress is just negated; his opinion is of no use whatever.

Mr. JAVITS. Not at all, because it is very well known and it is hornbook law that whatever the Attorney General does, he is only the legal adviser, the lawyer. His client is the United States, and the United States can be sued, at least in certain cases.

Mr. PEARSON. The executive department of the United States.

Mr. JAVITS. Exactly. The executive department of the United States can be sued in court in most cases, and the decisions of the courts are binding.

Again, it must be remembered that even in that, we can nullify what the courts do if we do not appropriate the money to pay a judgment. So we still have the ultimate residual power as a coordinate branch.

Mr. PEARSON. Which we have exercised by establishing an agency, the Comptroller General's office, an arm of Congress, giving him certain powers, and among those is the determination of whether the pay-out of funds is in fact proper and legal in every respect.

Mr. JAVITS. Exactly. But here we give him a mandate of absolute power.

In other words, if we are going to depend upon the normal power of the Comptroller General to be an arm of Congress and deal with questions of legality and illegality, rather a twilight zone of a governmental authority—who prevails, the Attorney General or the Comptroller General?—then there is nothing I could do about it, nothing I would want to do about it, because this is one of the normal struggles within the executive and congressional departments with which we are all familiar. Somehow or other, they resolve themselves.

The fact is that, notwithstanding the Comptroller General's ruling so far, under the Philadelphia plan they have already made 14 contracts with contractors who are expending a good deal of money, who I assume are over 21, and who feel that, somehow or other, they will get paid some way and that the views of these respective agencies will be reconciled. But we are not letting it alone. If we were letting it alone, there is nothing I could do about it or anybody else could do about it.

We have had these crises in our country before. But we are acting now. We are not just leaving it to the Comptroller General. We are saying affirmatively to the Comptroller General: "We now tell you that your opinion is to be paramount. We are deciding that question; and if you hold—only you hold—that it is in contravention of a Federal statute, that is supreme; you don't pay."

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

Mr. JAVITS. Let me finish my thought.

That is an extra, new, added fortification of the authority which under this constitutional system would really pit Congress—not the officials, but Congress—against the executive branch. Aside from the fact that I think it is completely unwise in terms of this plan, we are now arguing only the question of governmental organization and governmental power. Should Congress place this tremendous authority in this or any other act? That is what this section re-

lates to. It has been pointed out by the Senator from Hawaii (Mr. FONG) that this does not apply only to the Philadelphia plan. It applies to a whole series of other matters which are completely and directly affected, and I will go over those again, because I think it is very important.

Should Congress give this kind of grant of absolute authority, overriding everybody's else's authority, to the Comptroller General? I think it is extremely unwise, and I argue very strong against it.

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

Mr. JAVITS. I yield.

Mr. PEARSON. The question is not only whether or not we are going to give this enormous power to the Comptroller General to control everything. The question is twofold: Do we give this enormous power to the Attorney General of the United States, an officer of the executive department, to exercise it not only within the executive department but also the congressional branch?

Mr. JAVITS. No. I cannot go along with that, because the Attorney General has no power comparable to what we would be giving the Comptroller General if we pass this. The Attorney General is a lawyer——

Mr. PEARSON. The Attorney General would have that power if we defeated this.

Mr. JAVITS. He would not. The Attorney General has only the authority to advise the agencies of the Federal Government. But any agency is amenable to suit in the Court of Claims. Many are amenable to suits in the district courts and various other ways; whereas, what we are doing here, I have pointed out, by the ambit of this provision, is to immunize a particular official for any kind of supervisory judgment except our own, if we withdraw it.

Mr. PEARSON. If the Senator will yield one more time I will not interrupt him again. However, the Senator did comment that this was a norm. If the Senator will refer to page 19 of the report he will find it is stated:

> The Comptroller General has exercised the delegated congressional power over the obligation and expenditure of appropriated funds for almost 50 years without serious challenge from the Attorney General of the United States or any other officer of the Executive Branch.

This is something quite new; this is something quite important. I am sorry this came up in relation to a civil rights matter. I think that clouds the matter and makes the debate we are having today a rather technical one, a procedural one, and not worthy really of the attention we are giving it; but our laws and not procedures are the foundation of the rights of the parties.

Mr. JAVITS. I think the Senator is right about procedures. The procedure we established by this amendment is such as to give him a grant of power which, if he had it, he would not exercise, but we give it to him and practically order him to exercise it, giving him complete autonomy in everything else.

I would like to point out the effects of such authority. I shall read from a memorandum which has been prepared on this subject.

EFFECTS OF THE RIDER TO THE SUPPLEMENTAL APPROPRIATIONS ACT

1. The rider would transfer effective administrative control over wage determinations under the Davis-Bacon Act, the Walsh-Healey Public Contracts Act and the Service Contract Act to the Comptroller General. If he determined that a determination was improperly made, no funds could be used to finance the contract that incorporated that wage determination.

2. The rider would oust the jurisdiction of Contract Boards of Appeal in many instances. Regardless of decisions of a Board in favor of the contractor, the agency would not be able to make payment if the Comptroller General held any term of the agreement in violation of Federal law.

3. The rider would oust the jurisdiction of the Court of Claims. The Comptroller General has never considered himself bound by the judgment of the Court of Claims. If the Court of Claims entered a judgment for a contractor, funds would not be available to pay that judgment if the Comptroller General did not agree with the decision of the court on the legality of the contract.

4. All agency rules and regulations on the implementation of Title VI of the Civil Rights Act could be enforced only if the Comptroller General agreed on their legality—regardless of decisions of the courts.

In short, all that really amounts to is that by adopting this rider you so lock in this absolute authority which, I may say, the Comptroller may have or may not have. With respect to the statement that this has been done for almost 50 years without serious challenge, naturally one might say, "This has been a system which worked." The system has worked and I want it to continue to work; but I say by this rider they are interrupting the rhythm of the system and the way it works, and you are throwing a new factor in which will very much bedevil this system. Just because you are shooting at one figure on a broad street you are mowing down everything on the street.

Mr. PEARSON. The Senator makes the point that the wording of the bill, particularly the last line, refers to "any contract or agreement" which the Comptroller General of the United States holds to be in contravention of any Federal statute. He makes the argument that the opinion of the Comptroller General in relation to a statute gives him such enormous power he would not be subject to a decision or the judgment of the court.

I take it that it is because of the word "statute." The Senator does not see it in that light. I wonder if the Senator would have objection if we changed "Federal statute" to "Federal law," which would be the statute properly interpreted by all courts having jurisdiction.

Mr. JAVITS. As long as you give the Comptroller General the absolute power, and if you change Federal statute to Federal law you would be giving him more power—I am not aware now, standing on my feet, how the courts define the phrase "Federal law." However, all you would be doing would be expanding it beyond the statute to whatever determination is included in Federal law, whether it is a decision, or anything else.

I have dealt with the generic question or power, which is a peripheral question, but very important from the blunderbuss way in which it is drawn, and its universal application now and in the future will make it permanent law in the appropriation bill just because the idea is to nullify the Philadelphia plan. I would much rather that it would say the Philadelphia plan is a nullity. Then, if we cannot present the stronger case we lose, or if we do present the stronger case we win. However, I wish to address myself next to what has been done here; the erection of this enormous piece of lethal machinery to knock off the Philadelphia plan.

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

Mr. JAVITS. I shall yield to the Senator from Nebraska who wishes to argue this phase. I will argue the Philadelphia plan, its merits and whether it is constitutional, but before that I thought it proper at the threshold to question why this 155 millimeter howitzer is used to knock off a small target, the Philadelphia plan. I am sure we will find some other way to do what needs to be done. The Nation is not going to sink if the Philadelphia plan is knocked out. But this makes an enormous piece of law to deal with a relatively reasonable question upon which men can differ. The Attorney General and the Comptroller General differ on it.

Before I yield, I wish to say this is one case where the President came out foursquare. He is backing the Attorney General and he wants the Philadelphia plan to stand, and he made that unequivocally clear today. I did want to say that, since it is very important.

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

Mr. JAVITS. I yield.

Mr. PEARSON. I have raised the questions which I have raised, not in relation to the Philadelphia plan; I think there are many issues here. The conflict of different branches of Government is a fundamental issue. I do not want my comments to indicate any lack of enthusiasm for any plan, whether it is the Philadelphia plan or not.

Mr. JAVITS. I thank the Senator. I knew that to be so.

Mr. HRUSKA. Mr. President, it is with some interest that I followed the colloquy being conducted between Senator JAVITS and Senator PEARSON. There is some question raised as to the efficacy of this amendment, section 904, and its purpose. It has been referred to by Senator JAVITS as a blunderbuss destroying several laws and practices when the real target is a single program. The question is raised, "Why use a howitzer to zero in on such a relatively small, although highly important, Philadelphia plan?"

Mr. President, I submit it is not only the Philadelphia plan that is involved. We are faced with a situation of much greater scope and a question of much greater urgency. Here we confront a situation in which the Comptroller General has undertaken to say that the expenditure of public money pursuant to any contract entered into under the Philadelphia plan is illegal and shall not be paid out; and we have a member of the executive, the Attorney General, saying

it is legal and the Department of Labor should go ahead with it.

We face squarely the question of deciding whether the actions of the Secretary of Labor, based on the advice of the Attorney General, will prevail, or whether it will be the Comptroller General's opinion which will prevail. I submit that the Comptroller must prevail.

It was said a long time ago in debate on passage of the Budget and Accounting Act of 1921:

> If he, the Comptroller, is allowed to have his decisions modified or changed by the will of an executive, then we might as well abolish the office.

Where will the original decision be made with reference to whether congressional intent and congressional provisions will mean one thing or mean another? Congress says, "That power will reside in the Comptroller General, who is an arm of the Congress, not in the Attorney General, not in any appointee of the President, not in any other Secretary of the Cabinet, but someone outside the executive department." That is very well written into the law. Those who see in section 904 a major change in our constitutional form of government, are not taking into consideration existing law. Nor do they look at the exact language of section 904, which states in pertinent part:

> In view of and in confirmation of the authority vested in the Comptroller General of the United States by the Budget and Accounting Act of 1921 as amended, . . .

Consider the language contained in section 904, and the language contained in title 31 of the United States Code, section 44, which I cite in pertinent part:

> Balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government.

Then we turn to section 74 of the same title which starts out:

> Balances certified by the GAO upon the settlment of public accounts shall be final and conclusive upon the executive branch . . .

This is the law. All that section 904 is designed to do is reaffirm congressional support for the authority already invested in the Comptroller General under this act when his power over appropriations and expenditures is challenged.

The Federal statute is contravened by the contract agreement in question. That is what is involved in this matter. In practical terms, the questions is whether Congress will lose its appropriating power by appropriating $2 million, $19 million, $21 million, $69 million, or even $1 billion, and send it downtown and, regardless of the opinion of the Comptroller General, regardless of what the plain legislative intent and the plain language of the law, if the Secretary decides to reallocate an appropriation contrary to congressional intent, this action will totally nullify our power to appropriate.

This same issue was before the Congress in the early part of this century. In 1921, the Budget and Accounting Act was passed. The post of Comptroller General of the Congress of the United States was created. As was wisely observed by former President Cleveland:

> If the Comptroller General does not agree with what I believe the law to be, and if I do not want to agree with what I believe the law to be in regard to this appropriation, I can always get a new Comptroller General.

As a result the Comptroller was made independent of the executive.

It was a very handy arrangement for the President and the Executive Department to have the Comptroller in their power but not for the body that holds the appropriating processes pursuant to the Constitution. That is the real issue here.

The purpose of section 904 is to reaffirm our intent and say it is still the law of the land. That is its purpose. I hope that the Congress will affirm it and will approve it.

Mr. JAVITS. Mr. President, I think the Senator has made, very eloquently, the best argument for striking the provision, if we take the Comptroller General to have the power he says he has. I am a lawyer, and I never advise my clients to confirm something they have. Why rock the boat? Maybe Congress will turn it down. Does that mean the Comptroller General will lose the power the Senator claims he has? In addition, it it said that this is the way in which the Congress has been run. On the contrary, since the days of Attorney General Moody in 1921, when he ruled on this very question that the Senator is referring to, the legal opinion held at that time, "I am unable to agree to the proposition that the act of 1894," which is the predecessor of the one the Senator is referring to, "establishes a rule which is universal without exception under all circumstances," and so forth. It is quite a comprehensive opinion.

The fact is, at the very best, this question has been in the twilight zone for both. They have inevitably gotten together to settle it. That is why I argue against the provision now, because what we are trying to do by this provision in the supplemental bill, in the closing days of the session, without hearings, or evidence, which is extrapolated because somebody wants to kill off the Philadelphia plan, we are making a broad scale effort to use the Senator's word "confirmation" of the absolute authority in the Comptroller General. I just do not think that is a provident way to legislate. I will deal with the substantive question of the Philadelphia plan later.

When the Senator speaks about the fact that we would be surrendering—whatever that might mean—our authority over appropriations, we must remember that in addition to the Comptroller General, there are the courts, and the fact that the President of the United States does not have to spend a single dollar to appropriate. Let us remember that. He does not have to spend a single dollar we appropriate. He can impound it and he has done that time and time again. That is pretty tough control. The only thing that can be done about it is to impeach him or defeat him at the next election. But that is the way our Government works. We have never, in this Government, sought to give absolute power, as is given in this amendment. We have always been willing to leave things a little slack.

Mr. HRUSKA. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I do not yield yet.

I do not think that this is provident legislation in terms of a Congress of the United States, because what the Senator is saying to the Comptroller General is, "Now we can confirm that you are right and the other fellow is wrong, and what you hold is the end of the matter, no matter what any court says or anyone else—and that is it."

I just do not think that that is the way in which relative balancing of the powers and authorities of the three branches of government can be run wisely.

Let that Comptroller General be a little worried about his authority. Let that Attorney General be a little worried about his authority, too. We have always felt that everyone should be amenable to the courts. I cannot say it is universal because all of a sudden and quickly, I have been preparing for this argument while we have been having quorum calls. That is as much notice as we have had. No matter how vigilant we are, this thing burst upon the world yesterday.

I believe that the argument of the Senator from Hawaii (Mr. FONG) is the best of any. Why bring this thing into the supplemental appropriation bill in the last days of a session even if you are right and I am wrong. But I am a pretty fair lawyer and so are many others here. There is at least some serious question here as to whether we are giving or are vesting our Comptroller General with power—absolute power, which could be disruptive to the Government. I think it is improvident, whatever there may be in the Philadelphia plan.

I think this is really the very best argument one can make on this provision. Often one has to vividly bring before his colleagues the implications of something. I really doubt that the men who wrote this provision intended that it should be as broad, sweeping, and all-encompassing as it is; but it is.

We had a situation very much like it the other day, on the Defense appropriation bill, when we were considering a provision, and Senators were arguing, "Well, do not worry about what it says. The Department will understand when they read the legislative history." This was not satisfactory to many of us and we said, "If you mean something, say it."

That is the situation with respect to this matter. The fact is that this provision, by its terms, as far as we can read the terms, vests considerable authority in one official of the Congress, without which authority he has lived very satisfactorily for 50 years.

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

Mr. JAVITS. I yield.

Mr. PASTORE. I merely want to say that there is a little more to it than what the Senator has said. Perhaps he said it when I was not present in the Chamber. I am one of the Senators who opposed this amendment in the committee, first of all, for the reason given by the distinguished Senator from Hawaii. We are dealing with a very sensi-

tive issue. It is not a legalistic issue. It involves a great deal more than that, and we understand it does.

There is no question at all about the fact that the Comptroller General is the arm of the Congress and responsible to the Congress and that he speaks for the Congress. Under the law of 1921 he has certain definite responsibilities, and we want to protect that law as much as we can. But we have to look at this issue, intricate as it is, with a little more depth than I am afraid we can do in one afternoon or several days. It needs to be gone into very thoroughly.

What we are confronted with is the fact that this Nation suffers with a difficult situation, a very distressing one, which erupted in Philadelphia not too long ago. Because the administration has the responsibility of doing something about it before it erupts all over the country, it initiated a plan it thought would solve the problem for the time being.

It is true that, under the civil rights law, the quota system could not be used, for the simple reason that a quota was barred. So they used the approach of a goal—unless we construe it to be a quota. Here is where the Attorney General and the Comptroller General disagree, and I think reasonable men can disagree.

The fact remains that the administration, in trying to bring about a solution of this tremendous problem, initiated the so-called Philadelphia plan.

In the process of arguing as to who should have jurisdiction, whether it should be the Comptroller General or the Attorney General, we are disrupting that program, which I think is essential for the stabilization of the situation, which has become a quite irritable one and a serious one in the Nation.

I quite agree with the Senator from New York. I believe the action of the committee—and I said so at the time—was a little too precipitate. This matter was pending before the Judiciary Committee, and nothing happened. It was called to my attention only 2 or 3 days ago. I have mixed feelings about it. I certainly want the Comptroller General to have the authority he has. I certainly do not want to deny the Congress any of the responsibilities it must have under constitutional law. At the same time we are confronted with the problem of equal opportunity of employment. That is a very important question.

Congress initiated the Davis-Bacon Act to equalize wages throughout the country because of differentials in certain areas of the country. We did it in the public interest. Perhaps in the public interest we will need not only the Philadelphia plan, but the New York plan, the Boston plan, and we may even need the Miami Beach plan. I do not know. I really do not know. But the fact remains that what we are doing today, in essence, is rejecting the administration plan to meet a very tragic situation that erupted in Philadelphia. I think we ought not to forget that.

There is nothing in the language before us that mentions the word "Philadelphia," but, by indirection, it throws out the Philadelphia plan. This question ought to be gone into in quite some depth. It has been pending for 2 or 3 months, or perhaps 3 or 4 months, whatever the case may be. Certainly there have been only limited hearings on it. All I know is that a lawyer from the Comptroller General's office came and said, "This is the interpretation I give it." Attorney General Mitchell gave it another interpretation.

Here we are caught in between. We are caught between disagreement of two agencies as to whether or not the law is being properly construed.

In the process, what are we doing? For all practical purposes, we are rejecting the Philadelphia plan. I say to the Senate this afternoon, this will not be the end of it. Certainly, this will not be the end of it. We had better proceed with fairness, caution, and coolness.

I think the better part of judgment would be to wait until we came back in January, go into this question in detail and depth, and clear up the question of who is the proper authority.

Mr. JAVITS. Mr. President, I love my colleague from Rhode Island. If I needed any confirmation of it, it has been illustrated now. What he says makes sense, and I am grateful to him for having given me a minute's rest.

Mr. PASTORE. That is why I did it.

Mr. JAVITS. And for the intercession of his very sage and very wise comments.

May I say to him in fairness that there have been a couple of days of hearings. The Senator from North Carolina (Mr. ERVIN) had hearings in the Subcommittee on Separation of Powers. As a matter of fact, I testified expressly on the Philadelphia plan. Without any question, that is the place where this matter should be gone into, deliberated, dealt with, and reported in legislation.

Mr. PASTORE. Can the Senator tell me why the committee did not reach a conclusion, after holding hearings?

Mr. JAVITS. I think that is the way it should be done. I do not think the Senator held enough hearings to his satisfaction, or perhaps the committee has been too busy, but hearings were held. I myself was a witness. There were quite a few other witnesses, from industry, and elsewhere. That is the proper forum in which that particular question should be decided. It is a legal question.

Mr. PASTORE. Senators know that today, on the very principle involved here, we overrode the manager of the foreign aid appropriation bill because we said the Appropriations Committee had no business getting itself mixed up in the changing of the basic law. Did we not say that in essence?

Mr. JAVITS. Exactly.

Mr. PASTORE. And that point was sustained by the Senate. Now we are doing just the opposite.

Mr. JAVITS. I am very grateful to my colleague from Rhode Island.

Mr. President, to accommodate the Senator from Colorado—I have only completed half of my argument on the ambit of the provisions, rather than the merits of the Philadelphia plan and its constitutionality—I yield the floor to allow the Senator from Colorado, if the Chair will recognize him, to address himself to this subject.

Mr. HRUSKA. Mr. President, will the Senator yield.

Mr. JAVITS. I yield.

Mr. HRUSKA. Reference was made by the Senator from New York to Attorney General Moody's opinion. He referred to it as an opinion rendered in 1921. More accurately, it is the written memorandum by Attorney General Moody in 1904, under the old act. That is the year and the memorandum to which reference was made. I think the RECORD ought to be clear.

Mr. JAVITS. Let us put it in the RECORD.

Mr. HRUSKA. What the law was in 1904 was radically changed by the Budget and Accounting Act of 1921. If the Senator wants to check into it, I have the memorandum before me.

Mr. JAVITS. I will put the whole thing in the RECORD. I think the Senator is absolutely right. As I explained to the Senator—and I think it is one of the biggest arguments in this debate—and as the Senator from Rhode Island (Mr. PASTORE) has said, those of us who were not apprised of what was going on literally had to stand on our feet and prepare. The Senator knows I am not underdiligent when it comes to work, but it was physically impossible to do what should have been done in this case.

Mr. HRUSKA. I am glad to have the Senator lead into that question, because I should like to comment on it very briefly. I shall expand further later.

Those questions were raised in the Appropriation Committee. "Why right now?" and "Why in an appropriation bill?"

The fact is that not only the Philadelphia plan is involved. A similar series of contracts is being negotiated, and very likely will soon be in effect, in Boston and in some seven, eight, or nine additional cities.

Mr. President, that presents quite a problem. Being aware of that problem, and having the question before us as to where this authority resides, if the Congress sits here doing nothing, and those contracts are entered into, then the question will be raised, when the time comes to debate the legality of those plans, "Did not the Congress acquiesce in a practice along that line? Is the Government not estopped from objecting?" The Congress knew what was going on and yet they raised no objection. Here these contractors are, putting bricks and stone together, and signing rate contracts and everything.

In view of these considerations, I think that this bill is a legitimate vehicle for saying this is the time and place to confront this issue.

With that, I join the Senator from New York in saying the Senator from Colorado ought to be allowed to speak and get back to his conference on another appropriation bill.

Mr. JAVITS. I have one myself.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the able Senator from Colorado be permitted to yield for a unanimous-consent request and a bit of legislative action at the re-

quest of the Senator from California (Mr. CRANSTON) without losing his right to the floor. It will only take a minute or two.

Mr. ALLOTT. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside.

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

VETERANS EDUCATIONAL AMENDMENTS OF 1969

Mr. CRANSTON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 11959.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives, announcing it had agreed to the amendments of the Senate to the bill (H.R. 11959) to amend chapters 31, 34, and 35 of title 38, United States Code, in order to increase the rates of vocational rehabilitation, educational assistance, and special training allowance paid to eligible veterans and persons under such chapters, with amendments, in which it requested the concurrence of the Senate.

Mr. YARBOROUGH. Mr. President, on October 23, 1969, the Senate passed its version of H.R. 11959, the Veterans Education and Training Assistance Amendments Act of 1969, and sent it to the House for action. For nearly 2 months this important bill which directly affects the lives of thousands of our veterans has been in the House without action being taken on it. Now as this session of Congress is in its final hours, the House has passed a bill which does not include many of the important provisions of the Senate version of this bill. Specifically, this bill which the House passed today does not include the important 46-percent increase in education and training allowances for veterans participating in the cold war GI bill education and training programs. This 46-percent increase was proposed by me in my bill, S. 338. The purpose for this increase was to bring cold war GI bill benefits in line with those paid to veterans under the Korean GI bill. The Senate adopted S. 338 and made it title I of H.R. 11959. This bill has received the enthusiastic support of every major veterans organization in America as well as countless numbers of veterans who are using these important benefits.

I firmly believe that this increase of 46 percent in allowances is necessary to increase participation in GI bill programs and to assure the veterans of Vietnam and the cold war era to full economic equality with veterans of the Korean conflict.

In addition to these important increases in education and training allowances, the Senate version of H.R. 11959 also contained the following new programs:

First, a new farm cooperative program, similar to the one provided for under the Korean conflict GI bill which was originally introduced by me as S. 1998.

Second, a new flight program which would authorize low interest loans of up to $1,000 to veterans wishing to obtain a private pilot's license;

Third, a new education and training program designed to prepare high school and elementary school dropouts for advanced training and higher education; and

Fourth, a new veterans outreach program designed to advise veterans of their rights and assist them in obtaining them.

These programs which were incorporated into the Senate version of H.R. 11959 were the result of long and thoughtful study by the Subcommittee on Veterans Affairs under its distinguished chairman, Senator CRANSTON, and the full Labor and Public Welfare Committee. The subcommittee held hearing on these important measures on June 24, 25, 26, August 8, and August 12. The testimony presented at these hearings clearly demonstrated the need for these new programs. This bill obtained wide bipartisan support as evidenced by its approval by the Senate by a vote of 77 to 0.

The House, unfortunately, has not seen fit to recognize the need for the 46-percent increase and the new programs contained in the Senate version of H.R. 11959. Instead of accepting the Senate version of H.R. 11959, the House today passed a bill which is woefully inadequate to meet the needs of our veterans. More specifically the House bill: First, rejects the important 46-percent increase in education and training allowances and substitutes an approximate 30-percent increase. This would amount to only a $5 increase over its 27-percent increase in the original House bill; second, excludes completely: the farm cooperative program, the new flight program, the new veterans outreach program, and the new prep program for educationally disadvantaged veterans.

I cannot see how the new House bill can be acceptable to the Senate or the veterans who are depending on Congress to enact this important legislation.

Therefore, I urge the Senate to reject the House version of H.R. 11959 and I call on the House to meet in conference with the Senate immediately so that an acceptable bill can be worked out before the end of this academic semester.

Mr. CRANSTON. I move that the Senate disagree to the amendments of the House to the amendments of the Senate, request a conference with the House, 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. CRANSTON, Mr. YARBOROUGH, Mr. RANDOLPH, Mr. KENNEDY, Mr. MONDALE, Mr. HUGHES, Mr. SCHWEIKER, Mr. JAVITS, Mr. DOMINICK, Mr. SAXBE, and Mr. SMITH of Illinois, conferees on the part of the Senate.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 13111) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1970, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. FLOOD, Mr. NATCHER, Mr. SMITH of Iowa, Mr. HULL, Mr. CASEY, Mr. MAHON, Mr. MICHEL, Mr. SHRIVER, Mrs. REID of Illinois, and Mr. BOW, were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PASSMAN, Mr. ROONEY of New York, Mrs. HANSEN of Washington, Mr. COHELAN, Mr. LONG of Maryland, Mr. MCFALL, Mr. MAHON, Mr. SHRIVER, Mr. CONTE, Mrs. REID of Illinois, Mr. RIEGLE, and Mr. BOW were appointed managers on the part of the House at the conference.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the bill (H.R. 8449) to amend the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, and it was signed by the Acting President pro tempore.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate resumed the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. ALLOTT. Mr. President, I thank the Senator from Nebraska and the Senator from New York for yielding to me. The only reason for the request is that we are involved in the transportation bill conference at the moment, and there are certain matters there requiring my presence at this time.

Mr. President, it is unfortunate that this particular question should come up in connection with a discussion of the so-called Philadelphia plan. Personally I support what the President is trying to achieve through the implementation of this plan. I have supported civil rights measures for 15 years in the Senate and for 4 years as Lieutenant Governor of my State. I did it before that as district attorney, and I shall continue to attempt to develop the civil rights aspect of our life as far as I can.

The question here is not—and I want to make this clear—the correctness of the Philadelphia plan. The question is whether we are going to permit the derogation and diminishment of the powers of the Comptroller General as an independent arm of Congress. As I say, it is unfortunate, that the particular area which would be immediately affected is one which, even at this moment, I feel so very strongly about.

First of all, this issue has developed because, in substance, the Attorney General has said to the Comptroller General, "Even though you do not think that obligations made in connection with the Philadelphia plan are in accord with the 1964 Civil Rights Act, I do."

I ask unanimous consent that the pertinent portion of the Civil Rights Act be printed in the RECORD at this point.

There being no objection, the portion of the statute was ordered to be printed in the RECORD, 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 * * *.

Mr. ALLOTT. This part of the law is known as the prohibition against "quotas," and it was this provision which was the catalyst which brought up the present controversy. The issue has developed over the simple question of the use of the word "quotas."

The Attorney General contends that what they have set up is not quotas, but targets or goals, and they use as their parameters 19 to 23 percent. Now if a man employs 100 employees, and he fixes the number between 19 and 23, he can call it a target or a goal, but I do not think anyone can say that it is not a quota. It may not be stated as a specific quota or as a specific number, but the facts are that you are dealing with quotas and goals. So this is how the situation arises.

I have not heard all of the speeches because of my other responsibilities of the moment; but a statement has been made here to the effect that what we are doing is setting up the Comptroller General as a sort of supergod in the matter of the Government.

Nothing can be further from the truth. Any ruling of the Comptroller General may be appealed. It can be taken to the courts. The word of the Comptroller General is binding only upon the executive branch of the Government, not on anyone outside of it.

But unfortunately, the Comptroller General cannot go to court himself. He is not given that power by statute; and strictly speaking, within the context of the 1921 statute, I do not think he could employ counsel to defend himself if, by some legal machination, he became involved in a law suit.

Thus the Comptroller General is not a supergod in Government. He is the arm of Congress, and that is all he is; and thank God we have such an arm in the Government. If we did not have that arm, we in Congress would be subject to the will and whim of the executive branch.

A hundred times on this floor this year I have heard Senators complain bitterly about the arrogation of power by various people in the executive branch. It is an old story, because it has occurred in previous administrations, both Republican and Democratic. But, Mr. President, if a constituent of ours enters into a contract or bids on a contract with an agency of the Government, and we think that somehow he has been unfairly treated in the letting of those bids, we can appeal to the Comptroller General to review the legalities of the bidding for and the letting of any such contract.

If we go to the department itself, we run into the very advocates who created the misdeed about which we are complaining. So, we have this independent arm of the Government here for this purpose. And what a grand job it has done over the years.

Mr. President, I think there are many questions about which I could wax as oratorical, hopefully, as the Senator from New York. I could speak with all of the emotion with which he speaks on civil rights questions. However, I wonder, even with the Philadelphia plan, how we could enforce a quota or a target when a man is unable to procure the workers through the unions which supply them. Does he then become liable for breach of contract for failing to fulfill his contract? I doubt it.

If the Attorney General can overrule the decision of the Comptroller General in this case—and I want to divorce it from the emotional issue—he can overrule the decision of the Comptroller General in any case which is referred to him. So, we are not just talking about one case here. We are talking about the whole field of Government activity.

That is a price that we in Congress cannot afford to pay—to take the authority we have given to the Comptroller General and give it to the Attorney General or any other branch of the Government.

And there is one great difference between this and the other branch of the Government. We cannot do away with the Attorney General. If he rules adversely on a proposition which is submitted to him, we cannot get rid of him. He just about has to be a completely dishonest man—which we have not had, thank God—in order to get rid of him.

There is one thing, however, that Congress can do. And that is that if the Comptroller General becomes irresponsible and unresponsive to the law of this land and unresponsive to the common honesty and ethics which we want in our Government, we can always change the law which created his office and diminish his powers, or we can replace the Comptroller General.

So, there is one great difference in this situation and in dealing with the Attorney General's office. And I must say that despite the Attorney General's ruling in this matter, I have the greatest respect for him. However, I do not agree with him in this case. I think his lawyers and legal counsel have overstepped themselves in an attempt to extend a statute beyond what we ever intended.

I have already pointed out that the Comptroller General cannot sue or be sued. And if he makes a mistake, or if he makes an error, the people who are aggrieved always have had recourse to the courts. However, we cannot always influence an Attorney General and convince him of our side of the question.

Mr. President, I want to close these very brief remarks by referring to two sections of the statute, and I shall ask unanimous consent that they be printed in the RECORD, although the distinguished Senator from Nebraska has already had them printed in the RECORD at another point.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD section 44 of title 31 and section 74 of title 31 of the United States Code.

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

§ 44. Certain powers and duties transferred to General Accounting Office; conclusiveness of balances certified by Comptroller General.

All powers and duties which on June 30, 1921, were conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with this chapter and sections 71, 471, 581, 581a of this title, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government. The revision by the Comptroller General of settlements made by the six auditors shall be discontinued, except as to settlements made before July 1, 1921. (June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24.)

§ 74. Certified balances of public accounts; conclusiveness; suspension of items; preservation of adjusted accounts; decision upon questions involving payments.

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, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller General of the United States, may, within a year, obtain a revision of the said account by the Comptroller General of the United States, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government. Nothing in this chapter shall prevent the General Accounting Office from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement.

The General Accounting Office shall preserve all accounts which have been finally adjusted, together with all vouchers, certificates, and related papers, until disposed of as provided by law.

Disbursing officers, or the head of any executive department, or other establishment not under any of the executive departments, may apply for and the Comptroller General shall 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 said disbursement (July 31, 1894, ch. 174, § 8, 28 Stat. 207; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24; Oct. 25, 1951, ch. 562, § 3 (1), 65 Stat. 639.)

Mr. ALLOTT. In these, particularly in section 74, it says in essence, that the 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, except that with respect to any persons whose accounts may have been settled, the head of the Executive Department or the Board or Commission, may obtain a revision of the said account. The language is contained in the law.

Now, we have not by this section, nor by the action of the Appropriations Committee, enlarged the powers of the Comptroller General. However, because we have been presented unwillingly with this direct challenge to the arm of Congress, we have no choice but to accept that challenge and say he is our arm and we expect to uphold him.

The Senator from Nebraska has already pointed out the necessity for action now.

The necessity for immediate action is that before Congress can act upon this, there will be 10, 20, or maybe 100 contracts entered into. And how do we recall those contracts? How do we put 100 or 10 or 50 people in litigation all over the country because Congress refuses to deal with this question affirmatively and forcefully at this time?

This is our protection. This is our arm, and God forbid, Mr. President, that we in the Senate will ever deprive him of the power we have given him until that day comes, and I do not think it ever will, when somehow he oversteps the authority in this act and jeopardizes the confidence of Congress in the Comptroller General.

I do not know how many Comptroller Generals have served since I have been a Senator. I have had occasion to disagree with their decisions. But I have always had the assurance that even though I could not get a Secretary on the phone, even though I could not talk to the counsel for a department in the executive branch, I always had the resource left to sit down in my office and say, "Mr. Comptroller General, these facts have come to my attention, and I refer them to you for a decision."

Every Comptroller General within my knowledge has utilized the power given to him by Congress with the greatest of discretion and the greatest of regard for the powers which Congress has invested in him.

Mr. President, I point out in conclusion to my fellow Senators that if we start down this path today by refusing to complete this particular section in the law, we are leaving the door wide open for the Attorney General to reverse the decisions of the Comptroller General or to modify the decisions of the Comptroller General any time he wishes.

And when that time has occurred and Congress has opened that door, we will no longer have an independent arm of the Government. We will have instead an agency which is the slave and the workman and at the order of the executive branch of the Government.

I thank the Senator for yielding to me.

Mr. JAVITS. Mr. President, I have a conference going on on the poverty bill.

Mr. ALLOTT. I have a conference going on in which the Senator is very much interested in some of the items, I am sure.

Mr. JAVITS. I noticed with the greatest of interest that when the Comptroller General wrote to the committee telling them about this imbroglio of the Philadelphia plan—and, by the way, it does revolve around the Philadelphia plan; does it not?

Mr. ALLOTT. Yes. The Philadelphia plan was only the catalytic agency for this.

Mr. JAVITS. That is what he says in his letter.

He did not ask for this broad grant of power. He sent the Senator a suggested provision in which he said he just confined it to the Philadelphia plan. I will hand it to the Senator.

That would have posed the straight issue of civil rights, without all the complications introduced by the very sweeping language of the committee.

I wonder if the Senator could enlighten us. Why did not the committee, if they were going to do anything about this, just go ahead with his provision? That is what he asked for. He did not want any broad, sweeping authority like the one contained in this supplemental.

Mr. ALLOTT. I know the Senator is a very brilliant New York lawyer and I am just a country lawyer——

Mr. JAVITS. That is a sure way to try to decapitate the Senator from New York. [Laughter.]

Mr. ALLOTT. I just want to say that, in my opinion, the language contained in this bill—and I want this legislative record to be clear—does not expand the authority of the Comptroller General one iota. The Senator will note that it begins with the words "In view of and in confirmation of the authority invested in the Comptroller General by the act of 1921."

Mr. JAVITS. May I say to my colleague that more liberty has been lost on that argument than on any other single argument of which I know—that it did not expand the authority, notwithstanding the words which say that whatever the Comptroller General holds is the supreme law of the land. I am sorry, but I cannot agree, and I hope very much the Senate is not ensnared by the same idea.

Mr. ALLOTT. Let us just look at it. We do not expand his authority outside the areas which he has now, which is to pass on bills which come to the Federal Government to finance, either directly or through any Federal aid or grant, any contract or agreement. If he makes an error, those contracts or agreements are still subject to the courts.

Two things are written in there: He is restricted to the areas of accounting and payment, and he is restricted to the general powers laid out in the Budget and Accounting Act of 1921.

Mr. JAVITS. I do not want to detain the Senator, but I cannot agree with him. The Comptroller General has held time and again that he is not even bound by the Court of Claims, and we confer that authority in him by the clause the Senator did not read, "which the Comptroller General of the United States holds to be in contravention of any Federal statute."

I wish I could agree with the Senator, but I cannot. I point out again, as a critically important item of evidence, that the Comptroller General, himself, did not ask for any such authority. All he asked for was a pinpointed resolution about the Philadelphia plan.

Mr. ALLOTT. That is entirely correct. I know that the Senator is very devious—not in a bad sense, but because he is a very clever man—and of course the concept of this argument is to get us off on issues other than the power of the Comptroller General.

My purpose is to say that we are beginning the denigration and the deterioration of the independent arm of Congress, and that is the whole point of my discussion.

I thank the Senator for yielding.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS obtained the floor.

Mr. McGEE. Mr. President, will the Senator yield to me briefly?

Mr. JAVITS. I yield to the Senator from Wyoming without losing my right to the floor.

FEDERAL SALARY ACT OF 1969

Mr. McGEE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 13000.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 13000) to implement the Federal employee pay comparability system, to establish a Federal Employee Salary Commission and a Board of Arbitration, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. McGEE. I move that the Senate insist upon its amendments and agree to the request of the House for a conference, 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. McGEE, Mr. YARBOROUGH, Mr. RANDOLPH, Mr. FONG, and Mr. BOGGS conferees on the part of the Senate.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. McCLELLAN. Mr. President, the Department of Labor, on June 27, 1969,

issued the revised Philadelphia plan, so-called because it was to be applied initially to the Philadelphia area and subsequently to other areas of the Nation.

The plan provides that there shall be included in invitations for bids on both Federal and federally assisted construction projects in the Philadelphia area:

First, specific ranges of minority group employees in each of six basic skilled construction trades;

Second, designation by the bidder of the specific number of minority group employees, within such ranges, that he will employ in each of the skilled trades on the job; and

Third, failure to "make every good faith effort" to attain the minority group employment "goals" he has specified in his bid, may result in the imposition of sanctions including the termination of his contract.

More specifically, the plan requires that by 1973, employment from among minority groups would be 22 to 26 percent for ironworkers; 20 to 24 percent for plumbers, pipefitters, and steamfitters; and 19 to 23 percent for sheetmetal, electrical, and elevator construction workers. The plan also provides that these percentages would rise each year.

Despite the fact that the Comptroller General, on August 5, 1969, issued a decision finding that the Philadelphia plan contravened the 1964 Civil Rights Act and that he would be required to so hold in passing upon the legality of expenditures of appropriated funds under contracts made subject to the plan, the Secretary of Labor is continuing to apply and enforce it.

Mr. President, the Comptroller General's ruling is consistent with a fundamental principle of constitutional law, that neither the President nor a department head at the President's direction or with his approval, has the authority to act at variance with valid statutory provisions. The Supreme Court, throughout the history of this Nation, has consistently struck down Executive orders which contravene the provisions of a valid statute enacted by the Congress. (See for example *Kendall* v. *U.S.*, 12 Peters 524; *U.S.* v. *Symonds*, 120 U.S. 46; *Little* v. *Barreme*, 2 Cranch 170). As Justice Frankfurter stated in the Steel seizure cases (343 U.S. 579, 585):

> Where Congress has acted the President is bound by the enactment.

And Justice Holmes declared in *Myers* v. *United States* (272 U.S. 52, 177):

> The duty of the President to see that the laws be faithfully executed is a duty that does not go beyond the laws or require him to do more than Congress sees fit to leave within his power.

When the Congress enacted the Civil Rights Act of 1964, and therein promulgated our national policy on equal employment opportunity, it became the constitutional responsibility and obligation of the executive branch of our Government to carry out that policy in accord with the intent of Congress as expressed in the statute. In its enunciation of that policy Congress made clear, both in the statutory language and in the legislative history, that the law was not to be interpreted as requiring the introduction of quota or other representative or preferential hiring requirements into the employment process. Indeed, it was generally conceded by the sponsors and floor managers of the legislation that any such preferential employment requirements were inherently discriminatory; that they would constitute discrimination in reverse and would be violative of the 1964 Civil Rights Act.

Mr. President, I do not believe that anyone can read the language of the Civil Rights Act of 1964, or its legislative history, without coming to the irrevocable conclusion that it makes unlawful the establishment of quota or other preferential employment requirements with respect to minority groups—or majority groups for that matter.

The language of section 703(j) of title VII—the Equal Employment Opportunity title of the act—is so clear that one does not have to be a lawyer to understand it. It provides in pertinent 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, color, religion, sex, 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, 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.

Clearly, as the Comptroller General pointed out to the Secretary of Labor, section 703(j) establishes the prohibition against requiring any employer to hire or employ a specified proportion, number, or percentage of his employees from certain racial or national origin groups. Thus did the Congress declare that the introduction into the employment process of quota or other preferential hiring requirements based on race, color, religion, sex, or national origin, is unlawful and prohibited.

The legislative history of the 1964 Civil Rights Act is replete with statements by the sponsors and floor managers of that legislation explaining that title VII is intended to prohibit the use of race or national origin as a basis for hiring. For example, in the CONGRESSIONAL RECORD, volume 110, part 5, page 6549, former Senator Hubert Humphrey explained title VII as follows:

> Contrary to the allegations of some opponents of this title, 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 to achieve a certain racial balance.
>
> That bugaboo has been brought up a dozen times; but it is nonexistent. In fact the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualification, not race or religion.

In an interpretative memorandum of title VII submitted jointly by Senators JOSEPH CLARK and CLIFFORD CASE, floor managers of that legislation in the Senate, it is stated:

> It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited by section 704 are those which are based on any of the five forbidden criteria: race, color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title.
>
> 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. It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against.
>
> There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance.
>
> Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a non-discriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes for future vacancies, or once Negroes are hired, to give them special seniority rights at the expense of white workers hired earlier.

In the CONGRESSIONAL RECORD, volume 110, part 6, page 7218, the following answers were offered to the objections raised during debate on the provisions of title VII, by Senator CLARK:

> Objection: Under the bill, employers will no longer be able to hire or promote on the basis of merit and performance.
>
> Answer: Nothing in the bill will interfere with merit hiring or merit promotion. The bill simply eliminates consideration of color from the decision to hire or promote.
>
> Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.
>
> Answer: Quotas are themselves discriminatory.

Mr. President, it should also be noted that title VI of the Civil Rights Act of 1964, entitled "Nondiscrimination in Federally Assisted Programs" is applicable to precisely the same employers and the same federally assisted programs to which the Philadlphia plan is being applied. Not only does that plan contravene the congressional policy expressed in title VI with respect to nondiscrimination in employment practices,

it also directly violates the congressional mandate addressed to all executive departments and agencies, which is set forth in section 604 of title VI. That section expressly provides:

> Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization, except where a primary objective of the Federal financial assistance is to provide employment.

It is hardly necessary to add that the promulgation and implementation of the revised Philadelphia plan in the face of section 604 of title VI, constitutes, in effect, a nullification of that title, and its enactment by the Congress becomes nothing more than a gesture in futility.

Title VII, because it, too, applies to the same employers who are covered by the Philadelphia plan, is likewise reduced to a nullity wherever that plan is put into effect.

Furthermore, because those employers would necessarily have to give consideration to race, color, and national origin in order to meet their commitments respecting minority hiring requirements of the Philadelphia plan, they would, because of that fact, be in violation of the Civil Rights Act, which obligates them to hire and employ without regard to the individual's race, color, religion, sex, or national origin.

Mr. President, it will be a sorry day for this Nation, if the executive department can so far usurp the legislative powers of the Congress, that it can supplant and nullify laws that Congress has enacted, by executive orders, rules, regulations, and other impositions and requirements.

The Secretary of Labor has stated that the Comptroller General, in ruling that the Philadelphia plan is invalid, has ignored Executive Order 11246 as an independent source of law. Such a statement represents an apparent failure on the Secretary's part, to recognize the fact that under our Constitution all legislative power is vested in the Congress.

Mr. President, the Supreme Court, in upholding the Congress' power to legislate, has repeatedly emphasized the fact that the President's function in the legislative process, is limited to recommending legislation he thinks wise and the vetoing of legislation he considers bad. And the Court has been equally emphatic in pointing out that the President's constitutional duty to faithfully execute the laws, begins and ends with the laws that Congress has enacted—see, for example, *Youngstown Steel* v. *Sawyer, supra.*

Mr. President, the Civil Rights Act of 1964 was the legislative product of lengthy and intensive deliberation and legislative compromise by the Members of both Houses of Congress. Executive Order 11246, issued by President Johnson in 1965 and cited as the authority for the Philadelphia plan is the product of unilateral Executive judgment and decision. The Executive order and the Philadelphia plan do not constitute an implementation of the Civil Rights Act or the congressional intent which was enunciated therein. The plan's requirement that certain Government contractors meet prescribed racial employment quotas is simply an example of the overreaching exercise of Executive power. Clearly, the Executive is attempting to achieve objectives beyond those intended by the Congress, by means expressly prohibited by the statute.

It is one thing for the President to issue an executive order which properly implements a law enacted by the Congress and accords with the congressional policy therein enunciated. It is quite a different thing for the President or any head of an executive department or agency to issue an order which contravenes an enactment of Congress, and conflicts with the congressional policy set forth.

The Labor Department has sought to justify the Philadelphia plan by trying to distinguish between quotas, goals, and ranges, but neither these exercises in semantics nor anything short of a law duly enacted by Congress—which I am sure will not be forthcoming—can justify the Philadelphia plan.

Mr. BROOKE. Mr. President, the so-called Philadelphia plan was designed to implement the intent of Executive Order 11246, promulgated by President Johnson on September 24, 1965. Under this order, all Federal Government contracts and Federally-assisted construction contracts were required to contain specific language obligating the contractor and his subcontractors not to discriminate in employment because of race, color, religion, sex, or national origin.

This is no new concept in American jurisprudence. Evidence of this intent is clear in the Constitution, which talks not only about the general principles of justice, the blessings of liberty, and the general welfare, but which also speaks specifically of freedom of religion, due process of law, equal protection, and the privileges and immunities of all citizens. It is clear in the various Civil Rights Acts passed since 1957, which provide protection specifically against discrimination in accommodations, voting, and employment. It is embodied in the National Labor Relations Act which forbids discrimination by labor unions and employers, and in the regulations issued by the Department of Labor pertaining to applicants, trainees and apprentices. The Government of the United States does not condone discrimination on the basis of external factors unrelated to individual capabilities.

Since 1965, however, we have learned that simple prohibition of discrimination is not enough. Overt acts of discrimination not only are becoming less common; they were never the heart of the problem to begin with.

The real problem of discrimination in America is what the Civil Rights Commission has referred to as "systematic discrimination," but what I prefer to call "systemic" or "intrinsic" discrimination. Discrimination against minorities, particularly in the employment field, is built into the very structure of American society. Three black children in four in America attend an essentially segregated school from the day they enter kindergarten. Negro children, on an average, complete little more than 10 years of school, as compared to 11.5 for white children. Their schools are for the most part of poorer quality—they are older and lack the facilities enjoyed by students in predominantly white institutions. Funds for job training equipment, for laboratory facilities, for typewriters and teaching aids, simply are not available in many of the schools attended by blacks. A Negro student is more likely than his white counterpart to find his formal education irrelevant to his surroundings. It goes without saying that it does not, in far too many cases, prepare him to compete for jobs or for higher educational opportunities. These circumstances are changing, to be sure, but for the vast majority of nonwhite youngsters in America they are still a tragic fact of life.

Once a black child has left school, he is two and a half times more likely to be unemployed, even in jobs requiring the most basic skills. The latest statistics issued by the Department of Labor, in fact, indicate that unemployment among black males under 21 years of age ranges between 30 and 45 percent in most of our largest cities. And because of this lack of preparation for society, the unemployed person is often more likely to turn to crime, to serve in prison, to become a drag upon his community.

Even those blacks who survive the system, however, find obstacles placed in their way which do not confront most other Americans. If a minority applicant seeks employment in construction or trucking or other similar occupations, he will find that employment is often based upon union recommendation. The union passes the word to its members that an employer is looking for men; those members are predominantly white, and the social patterns are such that they will pass the word along to predominantly white friends. Thus employment opportunities in the trades have been systemically closed to minority persons.

The same is true, to a great extent, in the so-called white collar jobs. Until very recently, most companies recruited on the larger college campuses. Few thought to visit the more than 100 Negro colleges scattered throughout the United States—the colleges where more than half of the Negro college graduates still receive their training. Here again, there is no question of deliberate discrimination, but a pattern of discrimination is an intrinsic part of the system.

There are other barriers as well. There is no reason, for instance, why a laborer on certain construction jobs must have a high school education. It is desirable, of course. It is assumed that in order to work effectively with others a man should have some of the basic understanding which can be gained through years of formal schooling. But it is not essential, and it is particularly not essential when it closes employment opportunity to large numbers of young blacks who left school for reasons totally unrelated to understanding of others or to their work capabilities. Compensatory programs can and should be provided either through work or through other organizations, but as a general rule, job qualifications which are not substantially

related to job responsibilities unfairly penalize minority persons.

The policy of assigning minority employees to "traditional" jobs or departments is also an informal, systemic barrier to full opportunity in employment. This has been true throughout our society: Negroes have been clerks and custodians but not salesmen and executives, nurses aides but not nurses, teachers in black schools but not in white ones, security guards but never supervisors. These conditions are slowly changing, but even now a past history of discrimination on the part of some employers deters many qualified minority persons from applying for positions.

These are the kinds of situations which the Philadelphia plan and now the Boston plan as well are designed to overcome. Prohibition of discrimination is not enough; positive action is necessary.

In considering what kind of positive action might be employed without hurting present employees or dealing with them unfairly, the drafters of the plan have devised a simple yet effective formula. Present employees will not be affected at all by the plan; their jobs will be as secure as they have always been. The plan does, however, seek to establish a formula for hiring minority members on future jobs. It has been determined by the Department of Labor that each construction craft should have approximately 7.5 percent new job openings annually due to death, disability, retirement, and loss of workers for any other reason. Operating solely on the basis of these anticipated new job openings, the Office of Federal Contract Compliance, working in conjunction with the Federal contracting agency, will devise a set of criteria for minority employment for each contract. These standards will be clearly spelled out in the bids and each contractor who desires to bid on the Government contract in question will be obligated to include in his proposal a statement of his goals for attaining these standards. Once the contract is awarded, checks will be conducted to determine whether the employer is in fact living up to his obligation.

I favor this approach for two basic reasons. First, because, as I have stated above, I believe that positive efforts to eliminate discrimination are essential. But second, I appreciate the fact that there is no question of the Federal Government dictating to the States, the cities, or the local contractors. There are, in fact, no Federal standards involved. There is simply a statement of Federal intent, embodied in Executive Order 11246, with the mechanics to be worked out on the local level, taking into account local factors such as: the current extent of minority group participation in the particular trade; the availability of minority group persons for employment in such trade; the need for training programs in the area; and the impact of the program upon the existing labor force. Even then, after all these criteria have been taken into account, the contractor and subcontractors are still allowed leeway in meeting the minority employment targets, and need only demonstrate that they have made a good faith effort to do so.

Mr. President, nothing could be fairer, more equitable, or ultimately more beneficial for all concerned. The spirit of the law has for too long been ignored in the field of equal employment opportunity. I welcome the promulgation of the Philadelphia plan. The people of Boston have welcomed the promulgation of a similar plan in that community. I applaud the administration's unequivocal support for these efforts, and I hope to see plans worked out to achieve similar results in other communities all across our country. Only through such means can we truly make America a land of opportunity for all our people.

Mr. JAVITS. Mr. President, I shall not detain the Senate more than 10 minutes.

I believe we have discussed adequately what I consider to be and what others consider to be an improvident grant of authority to the Comptroller General, or at least locking in his authority in this way, in an absolute way, in every conceivable appropriation act, present and future, in a supplemental bill in the last days of the session. That alone is sufficient reason to reject the provision.

Mr. President. I wish to address myself to the Philadelphia plan, as such. I did not wish to contradict the Senator from Colorado (Mr. ALLOTT) because he is anxious to get away. Nevertheless, the central reason that the amendment is before us is the Philadelphia plan.

I call attention to the letter of the Comptroller General to the committee dated December 2, 1969, addressed to the Senator from West Virginia (Mr. BYRD).

Mr. President, the letter states:

> I want to bring a matter to your attention which I think is of the utmost importance to the Congress and the General Accounting Office. This involves the Philadelphia Plan promulgated by the Department of Labor to increase the number of minority group workers in certain construction trades.

The letter goes on to say what he wants the Appropriations Committee to do. He submits to the Appropriations Committee a pinpoint provision, nothing like this broad locking in of absolute authority which is contained in section 904. It is a pinpointed provision directed toward the Philadelphia plan and it seeks to declare illegal or improper any plan like the Philadelphia plan. That is the central core.

Mr. President, I respectfully submit this is the central purpose of the amendment before us and the only conceivable reason I can see that it was drawn on the broad basis it was drawn, as to the whole broad power of the Attorney General is that it was only done so because the drafters did not want to make it a civil rights issue if they could avoid it. They wanted to make it an issue of the quarrel between the Attorney General and the Comptroller General. But this is the essence of what it is getting at, and this is what the Comptroller General asked for.

That leads me to the merits of the Philadelphia plan. The Philadelphia plan was drawn only by way of implementing an Executive order. This applies only to Government contractors.

The Civil Rights Act of 1964 deals with questions of discrimination in employment on the question of race and sex, but this matter applies only to contractors. The Philadelphia plan implemented an Executive order of the President which sought to bring about some affirmative action by Government contractors which would bring about a greater measure of equality of opportunity in respect of employment, certainly a very legitimate effort by the United States.

In that respect, I should like to quote from the Executive order indicating what we mean by saying an affirmative effort. The Executive order says:

> The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

Now this is the pertinent sentence:

> The contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, or national origin. Such action includes but is not limited to the future employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoffs in terms of rates of pay and other forms of compensation.

It was in implementation of that concept that the Philadelphia plan provided that part of the competitive bidding—this is a very important point—in respect to this whole matter—part of the competitive bidding on any Government contract in the Philadelphia area, on the part of seven specified crafts, where there had been a serious record of discrimination in employment, on the ground primarily of color, that part of the competition should be a goal which the individual bidding contractor set for himself as to the number of minority people he could bring into employment on that particular job in performing that particular contract, and that that was competitive bidding. And then Government, in deciding what contractor they would award the contracts to, would take that factor into consideration as an element of the award.

Now if the contractor was absolutely bound to that goal—and certain norms were specified by the Department of Labor, and certain parameters were considered they would have in that particular community—if the contractor were absolutely bound by that as an obligation, then we might construe it as a quota—an indirect quota. But that is not the case. The only thing the contractor has to show by way of performance is good faith—that he tried to perform. They give him various guidelines as to what good faith means, which are practicable and entirely within the outlines of union-management activities.

If the Government makes a charge against a contractor in that regard, that he has not used good faith, he does not thereupon assume the burden of proof. The burden of proof remains with the Government. The only issue is good faith—not that he performed—but good faith in trying to perform. The only thing shifted is the burden of going for-

ward; that is, he has to come forward to show what he did about good faith, but final proof that he did not do what he was supposed to do, which was good faith, still remains with the Government.

It seems to me, and to the Attorney General, and to the President of the United States, to the Secretary of Labor, and to many authorities throughout the country, that that was nothing more than a reasonable implementation of the affirmative effort aspects of the original Executive order which dealt with this whole question.

Now as to the argument of the Senator from Colorado (Mr. ALLOTT), how could a contractor meet a goal if, let us say a union cracked down and said that it would not take in any Negroes, or if they had to take in nonunion men, they would go out on strike, that is part of what is meant by the good faith aspect, if he does his best to show that he has performed his obligation. If he is frustrated he still gets his money for the contract. It seems to me that that is the turning point, the fulcrum to demonstrate that this was a matter of goals, that it was a matter of affirmative effort within the establishment of reasonable requirements, that it did not represent a quota for which the contractor should be penalized for reasons beyond control, or to which he was bound as a contractor. It is the good faith aspect.

This has rarely been emphasized by the opponents of the Philadelphia plan.

What is the virtue of the plan? In other words, why promulgate it at all? The endeavor was to require a contractor to utilize his resourcefulness in his relationships with labor, and the fact that they control a certain amount of employment and could take the initiative in order to improve what was a bad situation in many local unions, regarding the letting in of Negroes and other minorities into a union so that they could get jobs, with many consequences which have been detailed in testimony, and so forth.

Now I am deeply convinced, and many others in the country are convinced, that this plan was creative, and ran counter to no law. That it was a creative effort to do something which needed so urgently to be done—and which had been frustrating in terms of the feeling, theretofore, that, well, the union would not let them in, that unions were hard to move, that they moved slowly when they did move at all. There are some notable exceptions, such as the exception in the New York area, under the gifted leadership of Harry Van Arsdale and Pete Brennan, two outstanding labor leaders with enlightened minds. So it was an effort to "get off the dime" in that regard. It was a creative effort.

I respectfully submit, considering the pressure and difficulties under which we labor in respect to equal employment in the country, that the Philadelphia plan was not only lawful, but desirable and that the Congress should not, by this indirect action of an enormous and arbitrary vesting of authority in the Comptroller General, abort it.

That is exactly what we would be doing, Mr. President, in my judgment. I think that is the essence of the argument. As I say, I testified before the subcommittee of which the Senator from North Carolina (Mr. ERVIN) is the chairman. We had a very tough go on the thing. The Senator from North Carolina is not a man to let one go without searching questions and presentations of points of view, which will undoubtedly happen again and again.

The matter should be vested in the proper legislative committee and it seems to me that is where it should be decided. If we get any suggestions from them for legislation, that is the way the issue should be handled on the basis of that kind of record and not by indirection in the last days of Congress on a supplemental appropriation bill, which is exactly what is being attempted.

Again I say, let us not get diverted by the issue of the power or lack of power of the Comptroller General. The fact is, if he has the power claimed for him, he has it, and he does not need this particular provision. The purpose of the provision is to abort the Philadelphia plan. I think, therefore, for two reasons—one, that there is danger of a much broader vesting of authority than anyone really wants, including Congress and, two, the aborting of a desirable effort, which looks promising in the building construction field, that Congress should turn down the provision.

When I began, I said that the procedure I would use would involve the making of a point of order which the Senator from West Virginia (Mr. BYRD) would then challenge on the ground that the provision was germane, with a vote on that.

I am afraid that that is confusing and Senators will not know whether to vote yea or nay or anything like that.

Therefore, I shall propose at the proper moment, when everyone else has had his say, to move to table the provision—we all understand that—with the understanding that it will be a matter of deferring action on it, so that it does not occur in this bill, with the realization that it will come before us at an appropriate time, and in an appropriate way.

The PRESIDING OFFICER. The Senator may not move to table, but a motion to strike out would be in order.

Mr. JAVITS. I understand it has been agreed to as original text. All right. In that case, I will stick to the original design and make the point of order against the amendment. But, before I do that, I should like to yield the floor so that any other Senator who wishes to speak, may do so.

Mr. President, apparently no Senator wishes to be heard on the subject, and I therefore now make a point of order against section 904 on the ground that it is legislation on an appropriation bill.

Mr. BYRD of West Virginia. Mr. President, section 901, which was proposed by the Bureau of the Budget and which was included in the bill by the House committee and approved by the House of Representatives, is a general provision which amends restrictions or provisions in all of the appropriation bills which have previously been approved by the Congress for fiscal year 1970.

Public Law 91–114, approved November 10, 1969, increased the maximum travel allowances of Government employees traveling on official business within the continental United States from $16 to $25 per day and from $30 to $40 per day when travel is performed under certain unusual circumstances.

Inasmuch as the section which was approved by the House amends restrictions contained in all of the appropriation acts, it is in order in the Senate for a general provision restricting the funds in all of the appropriation acts to be included in this bill.

Section 904, which the committee has proposed, is in order in this bill since the House has already opened the door on restrictions and limitations relating to all of the other appropriation bills. Therefore, Mr. President, I raise the question of germaneness.

The PRESIDING OFFICER. Under rule XVI, paragraph 4, the Chair is required to submit the question to the Senate to be determined without debate.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. A "yea" vote on this ruling will be a vote to retain the provision in the bill; a "nay" vote will be a vote to strike it from the bill as nongermane. Is that correct?

The PRESIDING OFFICER. The Chair will first put the question. The question is: Is it the judgment of the Senate that the section is germane to the bill?

Mr. JAVITS. I now repeat my inquiry.

The PRESIDING OFFICER. A "yea" vote would hold the section to be germane, and it would stay in the bill. A "nay" vote would hold it to be not germane to the bill.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I now 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. JAVITS. Mr. President, if the manager of the bill is willing, I am willing to call off the quorum call and go ahead and vote.

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.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. So that Senators may be clear on the matter of voting, will a vote of "yea" be a vote to retain section 904 in the bill, and a vote of "nay" be a vote to strike section 904 from the bill?

The PRESIDING OFFICER. The Senator is correct. The question is, Is it the judgment of the Senate that section 904 is germane to the bill?

Mr. BYRD of West Virginia. Mr. President, I ask that the Senate be in order, and that the well be cleared of Senators and staff members.

The PRESIDING OFFICER. The Senate will be in order. Senators and staff members will take their seats.

On this question, the yeas have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARTKE (when his name was called). Mr. President, on this vote I have a pair with the Senator from South Carolina (Mr. HOLLINGS). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. RIBICOFF (when his name was called). Mr. President, on this vote I have a pair with the Senator from Georgia (Mr. RUSSELL). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

The rollcall was concluded.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Georgia (Mr. RUSSELL), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from Illinois (Mr. PERCY). If present and voting, the Senator from Texas would vote "yea," and the Senator from Illinois would vote "nay."

The result was announced—yeas 52, nays 37, as follows:

[No. 259 Leg.]

YEAS—52

Aiken	Ervin	Pearson
Allen	Fannin	Prouty
Allott	Fulbright	Proxmire
Baker	Goldwater	Randolph
Bennett	Gore	Saxbe
Bible	Gurney	Smith, Maine
Burdick	Hansen	Sparkman
Byrd, Va.	Holland	Spong
Byrd, W. Va.	Hruska	Stennis
Cannon	Jordan, N.C.	Stevens
Cook	Jordan, Idaho	Talmadge
Cotton	Long	Thurmond
Curtis	Magnuson	Williams, Del.
Dodd	Mansfield	Yarborough
Dole	McClellan	Young, N. Dak.
Dominick	Metcalf	Young, Ohio
Eastland	Miller	
Ellender	Murphy	

NAYS—37

Bayh	Hart	Moss
Bellmon	Hatfield	Muskie
Boggs	Hughes	Nelson
Brooke	Jackson	Packwood
Case	Javits	Pastore
Church	Kennedy	Pell
Cranston	Mathias	Schweiker
Eagleton	McCarthy	Scott
Fong	McGee	Smith, Ill.
Goodell	McGovern	Tydings
Gravel	McIntyre	Williams, N.J.
Griffin	Mondale	
Harris	Montoya	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Hartke, against.
Ribicoff, against.

NOT VOTING—9

Anderson	Inouye	Russell
Cooper	Mundt	Symington
Hollings	Percy	Tower

The PRESIDING OFFICER. So in the judgment of the Senate the amendment is germane.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. EAGLETON in the chair). The Senate will be in order.

Mr. BYRD of West Virginia. Mr. President, during the course of his remarks the Senator from New York has emphasized that if section 904 is adopted, the power of the Comptroller General will then preclude any appeal to the courts by a party who feels he is adversely affected by an opinion issued by the Comptroller General. I do not agree with the conclusion of the Senator from New York, because opinions of the Comptroller General are only binding on the executive branch.

Nevertheless, I have an amendment at the desk. I call it up now and ask that it be stated. It is an amendment which will make it indubitably clear that section 904 will in no way preclude any review of any action taken by the Comptroller General.

The amendment merely reaffirms the situation with regard to judicial review which has existed for almost 50 years. The amendment is not necessary, in reality, except to reassure Senators that the Comptroller General will not have authority to override Federal courts.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 15, end of line 15, insert: "*Provided*, That this section shall not be construed as affecting or limiting in any way the jurisdiction or the scope of judicial review of any Federal court in connection with the Budget and Accounting Act of 1921, as amended, or any other Federal law."

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the language in the bill may be modified to include the language which has just been read by the clerk.

Mr. GRIFFIN. Mr. President, reserving the right to object, did the Senator say that the language in the bill be modified?

Mr. BYRD of West Virginia. The Senator is correct.

Mr. GRIFFIN. That would be tantamount to adopting the language.

Mr. BYRD of West Virginia. Not exactly, because if the language were to be so modified, it could still be stricken on a motion to that effect.

Mr. GRIFFIN. It would be tantamount to the adoption of the amendment the Senator sent to the desk. Is that correct?

Mr. BYRD of West Virginia. I am asking to modify the language in the bill. That is all I am asking to do. I can move to do it.

Mr. GRIFFIN. That is quite a request. I object.

Mr. JAVITS. Mr. President, if the Senator would yield, there is no point in asking unanimous consent to do it unless the Senator really asks unanimous consent for its adoption.

The Senator from Michigan, after all, would have the right to propose a substitute or an amendment to the amendment or any other way he wanted to deal with it.

Mr. BYRD of West Virginia. Mr. President, I offer this as an amendment to the language in the bill, and I move its adoption.

Mr. JAVITS. Mr. President, will the Senator yield for a question?

Mr. BYRD of West Virginia. I yield.

Mr. JAVITS. I would hope that the Senator, in the course of his discourse, would enlighten us as to the existing power, if any, of the courts to review decisions of the Comptroller General; because the language of his amendment is based upon an existing power, as it says, to limit, and so forth. So that I think we would have to know the underlying basis for the Senator's amendment.

Mr. BYRD of West Virginia. I just stated, Mr. President, the underlying basis for my amendment. Section 904 of the bill does not give authority to the Comptroller General to override any Federal Court. Decisions of the Comptroller General are not binding on the courts. Any money judgment rendered by a court is payable from an indefinite appropriation made for that purpose or from an appropriation made by Congress if over $100,000. Section 904 does not change the situation one iota insofar as the courts are concerned.

There have been numerous cases over the years in which the Comptroller General has found a payment illegal but a court has held otherwise. When this has happened, payment has been made. That is the way it should be.

It is wrong to say that the Comptroller General would ignore a judicial ruling. If a judicial decision is rendered, the Comptroller General will follow that decision.

The Budget and Accounting Act says that opinions of the Comptroller General are final and conclusive on the executive branch. It does not say one word about the judicial branch. But because of the concern that was stated by the Senator from New York when he spoke earlier in the afternoon—concern which I think is unwarranted—to the effect that the power of the Comptroller General under the committee language would preclude any appeal to the courts by a party who feels he is adversely injured by any opinion issued by the Comptroller General, I have offered to add language to the bill to provide as follows: I maintain that this amendment is not needed, but I am offering this amendment to reassure the Senator from New York and other Senators on the point. My amendment to the committee language would read as follows:

Provided, That this section shall not be construed as affecting or limiting in any way the jurisdiction or the scope of judicial review of any Federal court in connection with the Budget and Accounting Act of 1921, as amended, or any other Federal law.

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

Mr. BYRD of West Virginia. I yield.

Mr. HRUSKA. The question has arisen whether section 904 as written will in any way change the existing statute with reference to appellate procedures, appellate review, when the Comptroller General makes a decision. We thought we had it quite clearly put into section 904—that is, the Senator from Colorado was particularly instrumental—in the first few words of section 904—namely, "In view of and in confirmation of the present authority of the Comptroller General, the following shall be the law."

It was thought that that would nail it down quite certainly. There is some question about it. It seems to me that the additional language which the Senator seeks now to insert into the bill will dispel that beyond any doubt whatever, and that whatever appellate review characteristics now attach to the law will be retained in their full text and in their full intent.

Is that not correct?

Mr. BYRD of West Virginia. The Senator is absolutely correct.

Mr. GRIFFIN. Mr. President, I send to the desk an amendment to the amendment of the Senator from West Virginia and ask that it be stated.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk read as follows:

At the end of the amendment offered by Mr. BYRD add the following paragraph:

"If such holding of the Comptroller General is contrary to a formal opinion of the Attorney General, the holding of the Comptroller General shall, at the suit of the Attorney General, be reviewable in accordance with 5 U.S.C. 701–706, and in such event the court shall stay the decision of the Comptroller General pending final judicial determination of the issue."

Mr. GRIFFIN. Mr. President, the amendment offered by the distinguished Senator from West Virginia may or may not be meaningful. There is a good deal of disagreement among lawyers as to what power the courts now have to review holdings by the Comptroller General. It is clear, however, that if section 904 were left as the committee has written it, Congress would be saying that a holding by the Comptroller General would be in effect the law of the land.

I think it is very important to note that this language in a supplemental appropriation bill is very broad. It says:

No part of the funds appropriated or otherwise made available by this or any other act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute.

Ordinarily, we look to the courts to be the final arbiter as to what is or is not in contravention of a Federal statute. But here, Congress itself purports to give to the Comptroller General the final and binding authority to hold as to whether or not a Federal statute has been contravened.

Mr. President, this is a very dangerous and far-reaching provision—aside from the merits or demerits of the so-called Philadelphia plan. I would hope that the Senate realizes that the language of section 904 is not limited by any means to the Philadelphia plan. It reaches far beyond, seeking to give the Comptroller General, in effect, nonreviewable judicial powers.

The amendment of the Senator from West Virginia is of uncertain meaning. He would be more acceptable if we amend it to make it clear that in a situation where the Attorney General of the United States disagrees with the Comptroller General, that conflict could be resolved by the courts. That is all my amendment does.

Is not that the way that a dispute in such a situation should be resolved? Is that not what the courts are for?

If the Byrd amendment, as modified, was accepted, then section 904—even though in my humble opinion it should not be a part of an appropriation bill—it would be acceptable.

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

Mr. GRIFFIN. I yield.

Mr. HOLLAND. Would not the words that the Senator suggests to add change the original meaning and the present meaning of the 1921 act, which specifically holds in two different places that the decision of the General Accounting Office, or the Comptroller General, is final and conclusive insofar as the executive department is concerned? The Attorney General is part of the executive department.

I am quite willing to concede that there have been many suits, and I hope there always will be a door open for any litigant not a part of the executive department who feels that he has been injured by a decision of the General Accounting Office. But the purpose of the 1921 bill was to assure Congress of control, so far as the executive department was concerned, in the spending of money made available by Congress.

The matter that the Senator has suggested would take away entirely the final and conclusive and binding effect, it seems to me, of the decision of the Comptroller General which is provided for so clearly by the 1921 act.

I ask the Senator if that would not be the result of the words he seeks to add.

Mr. GRIFFIN. It seems to me that the Senator from Florida is making the case that the amendment of the Senator from West Virginia, has little or no meaning; that there is no judicial review in the situation which the Senator from Florida has described.

Mr. HOLLAND. Mr. President, that is my understanding of the meaning of the 1921 act.

Mr. GRIFFIN. My amendment simply seeks to provide some method for additional judicial review in a situation in which the Attorney General disagrees with the Comptroller General.

Mr. HOLLAND. The point I am making is that the 1921 Act very clearly makes the decision of the legislative branch, as represented by the Comptroller General, final on the question of the propriety of the disbursement as between Congress and the executive department. It does not go further than that at all. It does permit, of course, access to the courts by any aggrieved party. That access has been had dozens of times, if not hundreds of times. I hope the courts are open to such cases. But the purpose of the bill was to give Congress the assurance that their agent would have the final say between Congress and the executive department on the propriety of the particular expenditure.

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

Mr. GRIFFIN. I yield.

Mr. HRUSKA. Mr. President, I wish to ask the Senator from Florida this question. Is it not further true that the purpose of the amendment of the Senator from West Virginia is to assure that those appellate procedures now existent in the bill and existent since 1921 will be preserved and maintained?

Mr. HOLLAND. That is the purpose. I think it is not necessary for him to add those words. I think it is provided already by the committee provision. But I understand the Senator from West Virginia was simply trying to assure the Senator from New York, who has doubts on this matter—although he is the former Attorney General of the State of New York and he should have known of the fact—that many cases have been brought by parties who claimed they were aggrieved by the decision of the General Accounting Office.

Those cases sometimes upheld the General Accounting Office and sometimes they ruled otherwise. There has never been any deprivation of the right of private parties to go to court where the General Accounting Office makes a rule. But the purpose of the act of 1921, as I understand it, was to hold that the General Accounting Office, or the Comptroller General, when he made a decision as to the propriety of a particular expenditure under an appropriation and the terms of that appropriation as made by the Congress, was final so far as an executive department was concerned. It was an effort to preserve balance between the executive department on the one hand and the legislative department on the other hand, which has full control of the power of appropriating. It was to follow through to be sure that money was being expended in the way it was appropriated. At least, that was and still is my understanding.

Mr. HRUSKA. Is it not true that present appellate procedures would be supplanted by the amendment of the Senator from Michigan since it creates new procedures which have not been tested? This amendment would introduce an uncertain factor into the bill rather than the certainty present as the result of the 1921 act.

Mr. HOLLAND. Of course, the Senator is correct. This would introduce new legislation into the 1921 act.

Mr. HRUSKA. The Senator is correct.

Mr. HOLLAND. Whereas, the provision coming from the committee is simply to call attention to the fact that this is the law and to have the executive department think again. Let us remember that the author of the executive agreement was the former President Johnson. I do not think any of us would say he was unwilling to use power if he had the power. I do not think any of us would feel

his Attorney General would not have been willing to uphold his decision to use the power, I say that respectfully.

But this effort to use this power has not come until we have a new administration and a new Attorney General who is new to government and who has not realized yet the purpose of the 1921 act is to continue and preserve the balance of power by having the arm of the legislative branch to be the final, conclusive voice as to the propriety of an expenditure, which can only be made under an appropriation made by Congress.

Mr. GRIFFIN. Mr. President, on the desks of many Senators there is a copy of a letter from the Attorney General.

Mr. President, I ask unanimous consent that the full text of the letter be printed at the end of my remarks.

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

(See exhibit 1.)

Mr. GRIFFIN. Mr. President, in his letter dated today, Attorney General John Mitchell states in part:

The provisions of Section 904, if I understand them correctly, would alter present law in at least two respects. First, they would prohibit, or could be construed to prohibit, any Federal payment to be made on any contract entered into or containing any provision in violation of Federal law. The prohibition would operate without regard to the nature or gravity of the violation, responsibility of the contractor, or any other equitable consideration. This would impose a harsher rule on those who contract with the Government than at present. Now, not every illegality or irregularity invalidates a contract, and even where the contract itself may be invalidated, a contractor in appropriate circumstances will be entitled to be paid the value of his services. *New York Mail and Newspaper Transportation Co.* v. *United States*, 154 F. Supp. 271 (Ct. Cl. 1957), *cert. denied*, 355 U.S. 904 (1957); *Crocker* v. *United States*, 240 U.S. 74 (1916). Furthermore, this harsh rule would be applied not only to those who contract directly with the Federal Government, but to those who deal with Federal grantees.

And the Attorney General continues:

Section 904 alters existing law in another significant respect. It provides that the Comptroller General's determination as to the legality of any contract is binding whether or not such determination is later upheld by the courts. As I read the Section it would be fruitless for a contractor to sue in the Court of Claims on a contract held by the Comptroller General to be illegal, since even if the court agreed with the plaintiff's view of the law, this Section would prevent payment being made to satisfy a judgment in his favor.

EXHIBIT 1

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., December 18, 1969.

Hon. HUGH SCOTT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SCOTT: I am writing to express my concern with respect to the provisions of Section 904 of H.R. 15209, the Supplemental Appropriation Bill, 1970, presently under consideration in the Senate.

Section 904 provides:

"In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute."

The Comptroller General, under present law is authorized to settle and adjust all claims by or against the Government of the United States, 31 U.S.C. 71, and to settle the accounts of accountable officers of the Government, 31 U.S.C. 72, 74. In the performance of this function he has, historically, been required to determine the legality of expenditures and the availability of appropriations to make such expenditures. His determinations of law are not, however, binding on affected private parties or the courts, *Miguel* v. *McCarl*, 291 U.S. 442, 454–55 (1934).

The provisions of Section 904, if I understand them correctly, would alter present law in at least two respects. First, they would prohibit, or could be construed to prohibit, any Federal payment to be made on any contract entered into or containing any provision in violation of Federal law. The prohibition would operate without regard to the nature or gravity of the violation, responsibility of the contractor, or any other equitable consideration. This would impose a harsher rule on those who contract with the Government than at present. Now, not every illegality or irregularity invalidates a contract, and even where the contract itself may be invalidated, a contractor in appropriate circumstances will be entitled to be paid the value of his services. *New York Mail and Newspaper Transportation Co.* v. *United States*, 154 F. Supp. 271 (Ct. Cl. 1957), *cert. denied*, 355 U.S. 904 (1957); *Crocker* v. *United States*, 240 U.S. 74 (1916). Furthermore, this harsh rule would be applied not only to those who contract directly with the Federal Government, but to those who deal with Federal grantees.

Section 904 alters existing law in another significant respect. It provides that the Comptroller General's determination as to the legality of any contract is binding whether or not such determination is later upheld by the courts. As I read the Section it would be fruitless for a contractor to sue in the Court of Claims on a contract held by the Comptroller General to be illegal, since even if the court agreed with the plaintiff's view of the law, this Section would prevent payment being made to satisfy a judgment in his favor.

I am, of course, not indifferent to the effect which this provision would have on the functions of this Department in advising the President and the officers of the Executive Branch on questions of law arising in the course of their duties. 28 U.S.C. 511, 512. In executing the laws, the Executive Branch must of necessity interpret them. Such interpretations may, on occasion, conflict with the view held by the Congress; but in such case our system provides as ready corrective new legislation or resort to the courts. Because of the limited time available, I have limited myself to what seem to me to be these serious practical objections. I am bound to say, however, that the authority to be vested in the Comptroller General under Section 904 would, in my view, so disturb the existing allocation of power and responsibility among the several branches of the Federal Government as to raise serious questions as to its constitutionality.

I therefore urge that Section 904 be deleted from the bill.

Sincerely,

JOHN M. MITCHELL,
Attorney General.

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

Mr. GRIFFIN. I yield to the Senator from New York.

Mr. JAVITS. Mr President, I think we are now again demonstrating what a terrible mistake it is to legislate so serious a matter in this atmosphere. I wish to explain why.

The power of the Comptroller is contained in the Budget and Accounting Act and it reads as follows:

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.

I shall read that again, because I think it is very important:

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.

One could say a certified balance, nonetheless, ran afoul of some Federal law. It is very possible. The whole thing could be secret. The contractor may go into court and say that the balance may be final on the executive department but not on him. That is obvious. No one has had a chance to read the case law. Let us assume it is done. So that is where it stands now. Let us assume the contractor can go in and challenge it. It is binding on the executive department. But now we are giving him this power.

Page 15, line 14 reads:

Any contractor or agreement which the Comptroller General of the United States holds—

That is a tough word—

to be in contravention of any Federal statute.

I say that is not just binding on the executive department but everybody: The contractor, the executive department, the judicial department, and everybody concerned. In other words, you are really making fundamental changes in a broad and sweeping provision of law the authority which the Comptroller General has now. He has no authority to hold anything according to the strict interpretation of the contract. Maybe that enters into his decision when he refuses to certify. But here, if we give him that power, he can defy anyone. If he holds it to be in contravention, that binds everyone, the contractor, as well as the executive department.

Now, my friends, this is a critically important difference. It is very important. A few sweeping changes can be made. I do not even argue against it. I just say, do not do it now here in this context. If you have already decided one of the questions in this section, at least throw an express protection to one of the coequal sections for the Attorney General to challenge it.

Mr. BAKER. Mr. President, I rise to put a question or two as to the legal consequences of the second amendment, as to what the amendment of the Senator from West Virginia and the Senator from Michigan provide. But before that, I should like to express a personal opinion, that I do not believe the sponsors of the bill have said that either one of the amendments adds or detracts one whit from the effectiveness of section 904. I would ask particularly with reference to the amendment in the nature of a substitute, as I understand it, as offered by the distinguished Senator from Michigan.

Mr GRIFFIN. My amendment is to the amendment of the Senator from West Virginia. Thus, his language would be retained with the additional language of my amendment.

Mr. BAKER. Very good. The amendment to the amendment of the distinguished Senator from Michigan provides that if a holding of the Comptroller General as contemplated by section 904, is contrary to the opinion of the Attorney General and because there is precedent that there would be a contrary opinion by two agencies, then, in that event, then this is reviewable according to the provisions of title 5, section 705 of the United States Code.

My question is: Have we not limited rather than expanded the course of judicial review by both amendments?

Mr. GRIFFIN. I think my answer to that question was already given that it is not a substitute but an amendment to the amendment of the Senator from West Virginia. The Senator from West Virginia, by his language, preserves whatever judicial review now exists—whatever that may be.

However, in the event there is a conflict between the holding of the Comptroller General and the Attorney General, my amendment makes it clear that a right of review exists in that situation.

Mr. BAKER. The amendment to the amendment, as proposed by the Senator from Michigan, provides that "if the holding of the Comptroller General is contrary to the opinion of the Attorney General." Might I ask if the effect would be equally applicable in different circumstances, especially if the holding of the Attorney General were contrary to a later filed opinion by the Comptroller General; namely, the opposite situation of that literally described in the amendment?

Mr. GRIFFIN. Well, as I understand it, so long as the Attorney General's opinion conflicts with an opinon of the Comptroller General, it would be reviewable under my amendment.

Mr. BAKER. Would it not be a broader guarantee of the right to appeal if we did not include these two conditions precedent, that there be a dispute between the Comptroller General and the Attorney General, so that we are limited to this section of the code rather than to the section of the code which guarantees due process?

Mr. GRIFFIN. I think the Senator might have a good point if I had offered it as a substitute. But as it is not a substitute, we are not taking away anything that now exists but are only adding an additional opportunity for review.

Mr. BAKER. If I could make this additional point, and then I would be happy to conclude this colloquy with my thanks to the Senator from Michigan. I have no desire to oppose either the amendment to the amendment, but I reiterate that I frankly think they add or detract little if anything from the substance and effect of section 904.

However, I would ask if it might not be appropriate to consider modifying the language of the amendment to the amendment so that the right of review is not limited to title 5, section 701, so that a dispute between the Comptroller General and the Attorney General is not condition precedent to the right of review.

Mr. GRIFFIN. Certainly such a modification would broaden the amendment, but accepting such a modification would be a decision for the Senate.

If I might just make one further point before yielding to the Senator from West Virginia (Mr. BYRD) and the Senator from Nebraska (Mr. HRUSKA), the able Senator from New York (Mr. JAVITS) put his finger on the point that in my opinion, is unanswerable. The language of section 904 is so broad as to make the Comptroller General's holdings determinative not only as to the executive branch but as to private parties as well.

Although there is a right of review for private parties, what is the scope of that right. The language of section 904, if enacted, would be the Congress last word on the subject.

If a contract or agreement was held by the Comptroller General of the United States to be in contravention of any Federal statute, the only question before a court under the language of section 904 would be simply what was the holding of the Comptroller General of the United States? If he held that a contract or agreement was in contravention of Federal statute, the court might very well say, "We have reviewed the facts of this case and find that the Comptroller General held that it was in contravention. As his ruling is final, the appeal is denied."

Mr. HRUSKA and Mr. BYRD of West Virginia addressed the Chair.

Mr. GRIFFIN. I do not know which Senator to yield to first. But I shall yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, what the Senator from Michigan has just said is pure sophistry, and I should like to describe it in that way, because the amendments were clarified in conference especially as to review and what the authority was that was vested in the Comptroller General. These things are, therefore, now legislated. There is nothing in the amendment, nor in the law, which puts the Comptroller General over the decision of any court, from the act of 1921 and followed ever since then. It has served its purpose well. It is not the holding of the Comptroller General which is binding upon the courts. It is the holding of the Attorney General that is binding upon the executive department, until the court gets hold of it through a private litigant, which is the only way Congress can assure itself of having its power eroded away by the executive department.

Now then, the Senator from Michigan, as I understood the amendment, said that his amendment does not change anything from what now prevails. If that is the extent of the description he would like to hold onto, I would respectfully call his attention to this fact: That the Comptroller General has to be represented by the Attorney General. That is the only way he can get into court. The amendment of the Senator from Michigan poses this very interesting spectacle. Here would be one holding of the Attorney General, and on the same subject a totally 180-degree angle difference by the Comptroller General.

So what would we have? We would have the suit referred to a Federal district court for review, and the one who would represent the Government in that case would be the Attorney General, and the one who would represent the Comptroller General in that suit would be the Attorney General, and I think the only thing that would be the ultimate would be to make him the judge, too, so we could have all the proceedings in that one room and justice would be done. What a travesty.

The point of the argument is that not only is it ludicrous, but it is a great and tremendous change from what we have had.

It should be clear that section 904 does not give authority to the Comptroller General to override any such act. In fact, the amendment to the amendment of the Senator from West Virginia puts on track all over again that the 1921 Budget and Acounting Act remains intact and complete, as it has been since 1921; and it has a pretty good record.

Mr. GRIFFIN. Mr. President, it is my understand that this amendment was drafted in the office of the Attorney General. I am pleased to be advocating his case for he is a good lawyer. This amendment—or a similar amendment—is an absolutely necessary addition to the legislation now before the Senate.

I yield to the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I merely wanted to ask the able Senator the question as to who, in his opinion, would represent the Comptroller General if such a situation arose as described in the amendment to the amendment. The able Senator from Nebraska answered the question, because Congress has authorized only the Department of Justice and a few other agencies to handle legislation involving the United States. The Comptroller General has not been granted this authority. As a result, in any case involving one of the Comptroller General's decisions, in any case in which one of the decisions goes to court, the Comptroller General must be represented by the Attorney General. Obviously, where there is a difference between the Comptroller General and the Attorney General, certainly the view of the Comptroller General would not be advocated by the Attorney General.

So I ask the question, Who would represent the Comptroller General in the event of a suit by the Attorney General?

Mr. GRIFFIN. The Senator from West Virginia raises substantially the same question as the Senator from Nebraska. It is not unique to have differences of opinion arise among or between branches of our Government. Although it is true that the Attorney General usually represents agencies of the Government and indeed in some cases, the Congress, or the committees of Congress, this is not necessarily the case.

It is my understanding that the Comptroller General is primarily an arm

of the legislative branch, and, as such, is separate and distinct from the executive branch. In such a situation, it is not necessary that in every situation the Attorney General represent him where a conflict exists between the Comptroller and a branch of the Government.

It would be entirely appropriate for the Congress, confronted with such a case, to provide representation for the Comptroller General. Congress could take whatever action was necessary to assure proper representation of what is essentially an arm of the Legislature.

That would be the way it should be done—and the way it would be done if this amendment were adopted.

Mr. ERVIN. Mr. President, I would like to ask the Senator from Michigan a question.

Mr. GRIFFIN. I am glad to yield.

Mr. ERVIN. Does the Senator from Michigan agree with the Senator from North Carolina that the Comptroller General is an agent of the Congress?

Mr. GRIFFIN. That is my understanding.

Mr. ERVIN. So if the amendment of the Senator from Michigan were adopted, it would be, in effect, the Attorney General suing the Congress of the United States for the purpose of making an agent of the Congress do differently?

Mr. GRIFFIN. In such a case, the question would be the meaning of the particular statutes passed by the Congress. It is not unusual that such decisions pertaining to the meaning of legislation would ultimately be made by the courts.

After all, the courts are established to determine the meaning of the acts of Congress and to resolve conflicts.

Mr. ERVIN. Will the Senator yield further?

Mr. GRIFFIN. I yield.

Mr. ERVIN. If a ruling of the Comptroller General were contrary to the congressional content, the orderly remedy would be for somebody to introduce a bill in the House or a bill in the Senate to change the law on which the Comptroller General made his ruling, rather than give the Attorney General power to bring a lawsuit against the Comptroller General, who is required to pass on the legality of every Federal expenditure, in every case where the Comptroller General is either authorized by the Attorney General or forbidden by the Attorney General. It would be unseemly for one branch of the Government to be suing the other all the time.

Mr. GRIFFIN. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. BYRD of West Virginia. Mr. President, I ask this question before the yeas and nays are called. If the amendment to the amendment offered by the able Senator from Michigan (Mr. GRIFFIN) is voted down, the vote would then recur on my amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the amendment offered by the Senator from Michigan to the amendment of the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I move to lay on the table the amendment to the amendment offered by the able Senator from Michigan.

Mr. WILLIAMS of Delaware. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Michigan to the amendment of the Senator from West Virginia. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HARTKE (when his name was called). Mr. President, on this vote I have a pair with the Senator from South Carolina (Mr. HOLLINGS). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

The rollcall was concluded.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON) and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Oregon (Mr. PACKWOOD) is detained on official business.

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from Illinois (Mr. PERCY). If present and voting, the Senator from Texas would vote "yea" and the Senator from Illinois would vote "nay."

The result was announced—yeas 53, nays 35, as follows:

[No. 260 Leg.]

YEAS—53

Aiken	Ellender	Murphy
Allen	Ervin	Pearson
Allott	Fannin	Prouty
Baker	Fulbright	Proxmire
Bennett	Goldwater	Randolph
Bible	Gurney	Saxbe
Burdick	Hansen	Smith, Maine
Byrd, Va.	Holland	Sparkman
Byrd, W. Va.	Hruska	Spong
Cannon	Hughes	Stennis
Church	Jordan, N.C.	Stevens
Cook	Jordan, Idaho	Talmadge
Cotton	Long	Thurmond
Curtis	Mansfield	Williams, Del.
Dodd	McClellan	Yarborough
Dole	McIntyre	Young, N. Dak.
Dominick	Metcalf	Young, Ohio
Eastland	Moss	

NAYS—35

Bayh	Harris	Mondale
Bellmon	Hart	Montoya
Boggs	Hatfield	Muskie
Brooke	Jackson	Nelson
Case	Javits	Pastore
Cranston	Kennedy	Pell
Eagleton	Magnuson	Ribicoff
Fong	Mathias	Schweiker
Goodell	McCarthy	Scott
Gore	McGee	Smith, Ill.
Gravel	McGovern	Williams, N.J.
Griffin	Miller	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Hartke, against.

NOT VOTING—11

Anderson	Mundt	Symington
Cooper	Packwood	Tower
Hollings	Percy	Tydings
Inouye	Russell	

So the motion to lay on the table was agreed to.

Mr. BYRD of West Virginia. Mr. President, the vote now recurs on the amendment which I offered. And I am willing to have a voice vote on the amendment if there are no further efforts to amend it.

Mr. JAVITS. Mr. President, I have an amendment to the amendment. It reads as follows:

Strike out the period at the end and add: "and actions hereunder shall be subject to judicial review as provided by Chapter 7 of Title 5 of the U.S. Code."

I shall complete my argument in 2 minutes.

Chapter 7 of title 5 of the United States Code gives the right of judicial review to any person aggrieved.

Mr. President, let us bear in mind that the whole problem is a very new impression. It just really happened here. And everyone seems to agree that they do not want the Comptroller General to be out from under the courts if he is going to function. This is not in the House bill. It will give all concerned an opportunity creatively to examine it to see that the right of judicial review is really preserved.

My information is—and I represent to the Senate that it is solely information, no research or anything else, because we cannot do it in the time available—that not every action of the Comptroller General can be reviewed. The parties are not eligible to sue. And there are certain problems, even before the Court of Claims, and I cannot represent to the Senate what they are. But they do bear upon the fact that the amendment of the Senator from West Virginia proceeds on the assumption that there is jurisdiction now, because he says that the exemption is not limited. He says there is jurisdiction. I do not know what it is, and I doubt that anyone will tell us within the time compass we have.

I hope that for the purpose of a creative action here that he will take it to conference and that the Senator might consider accepting the concept and principle that what we are after is that the Comptroller General's word on this shall be subject to court review. I could be wrong, but I have tried to ask the Senator to accept that principle. Perhaps in a conference this thing can be articulated in a sensible way.

Mr. SCOTT. Mr. President, I think the Senate has shown its concern that the function of the Comptroller General shall not be impaired. It has exhibited an awareness of its investment in the independence of the Comptroller General. And this has now been made abundantly manifest, no matter how individual Senators may have voted.

At the same time there underlies the concern of the Attorney General and of the Secretary of Labor in the continuance of the process of negotiation and agreement, because these methods in the American system are superior to the great danger and the immense risk involved in the frustration of any section or sector of the American people which might turn them into the streets, or it might lead them to fear that the functioning of our judicial procedure is inadequate to protect their concern for their right to employment and equal employment under the law. The last thing I want to see in America is people to think that the laws are not adequate, that the protection of the law has failed them, and that, therefore, there remains for them only this dreadful arbitrament of confrontation through violence.

In order to avoid that, I think this is our last best chance, as offered by the Senator from New York, to at least indicate that now that we have worked our will, we have exhibited our confidence in the Comptroller General, and we have said that we do not want his prerogatives impinged or derogated, we can at least say that the functioning of lawful procedures, including the rights of review and appeal, shall be preserved as they are in other instances under the United States Code. And that is all I understand the Senator from New York is proposing. He is simply sugesting that a right of review exists.

Bearing in mind that this goes to conference, I think it will be very helpful if the distinguished Senator from West Virginia could bring himself to accept this amendment. It would be very helpful in securing a final and reasonable conclusion of the conferees of the two Houses, that the right to review at least be secured.

For that reason, I support the suggestion and the amendment of the Senator from New York.

Mr. HOLLAND addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. HOLLAND. Mr. President, this would constitute a very real departure from the law. The law not only provides that the decision of the General Accounting Office shall be "final and conclusive upon the executive branch of the Government," but also, it has this additional provision:

> Except that any person whose accounts may have been settled, the head of the executive department or of the board, commission, or establishment not under the jurisdiction of the executive department to which the account pertains, or the Comptroller General of the United States, may, within a year, obtain a revision of said account by the Comptroller General of the United States, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government.

Mr. President, anybody who is affected by the GAO order has this right of appeal already under this provision. He has it for a year, and the decision of the Comptroller General in this case, as in the original case, is final and conclusive upon the executive branch of the Government, but only upon the executive branch of the Government. It does not preclude anybody from going to court. They have gone to court in repeated instances.

The provision offered by the Senator from New York offers a different kind of review, a review by the court, which is completely inconsistent with the provisions of the 1921 act, which already provides for a review, but with the same provisions that are applicable in the original case, that the decision of the Comptroller General shall be—I quote again:

> Whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government.

Mr. President, the 1921 act was a very carefully drawn, carefully worked out effort to prevent a clash between the legislative branch, represented by the Comptroller General, and the Executive Department; and to leave control of these decisions in one who represents the legislative branch, which alone has the power to make appropriations.

The amendment suggested by the Senator from New York would completely change that picture and would instead throw any decision of the GAO upon anybody's complaints, whether Executive or otherwise, into a court for review.

Personally, I do not want to give up any of the vital portions of the 1921 act. I think they have been very salutary. I think they have preserved the independence of Congress in the field of appropriations and seeing through to the proper use of those appropriations, and the amendment of the Senator from New York would bring about a completely different result.

Mr. President, I would not want to see us depart from the present law in that very vital regard, and that is exactly what the Senator from New York proposes in his amendment.

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.

Mr. BYRD of West Virginia. Mr. President, I am ready for a vote on the modifying language offered by the able Senator from New York. I am opposed to the language and I am ready for a vote. I had hoped to arrive at some language which we could accept but the amendment by Mr. JAVITS would place the Comptroller General under the Administrative Procedures Act, and we cannot accept this.

Mr. JAVITS. Mr. President, I ask for the yeas and nays?

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. RIBICOFF (after having voted in the affirmative). Mr. President, I have a pair with the distinguished Senator from Georgia (Mr. RUSSELL). If he were present and voting he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withdraw my vote.

Mr. MAGNUSON (after having voted in the affirmative). Mr. President, on this vote I have a pair with the Senator from South Carolina (Mr. HOLLINGS). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), and the Senator from Maryland (Mr. TYDINGS), are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Utah (Mr. BENNETT), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Illinois (Mr. SMITH) are detained on official business.

If present and voting, the Senator from Illinois (Mr. PERCY) would vote "yea."

On this vote, the Senator from Illinois (Mr. SMITH) is paired with the Senator from Texas (Mr. TOWER). If present and voting, the Senator from Illinois would vote "yea," and the Senator from Texas would vote "nay."

The result was announced—yeas 40, nays 44, as follows:

[No. 261 Leg.]

YEAS—40

Bayh	Harris	Montoya
Bellmon	Hart	Moss
Boggs	Hartke	Muskie
Brooke	Hatfield	Nelson
Case	Hughes	Pastore
Church	Jackson	Pearson
Cook	Javits	Pell
Cranston	Jordan, Idaho	Schweiker
Dole	Kennedy	Scott
Eagleton	Mathias	Stevens
Fong	McGee	Williams, N.J.
Goodell	McGovern	Yarborough
Gravel	Miller	
Griffin	Mondale	

NAYS—44

Aiken	Ervin	Murphy
Allen	Fannin	Prouty
Allott	Fulbright	Proxmire
Baker	Goldwater	Randolph
Bible	Gore	Saxbe
Burdick	Gurney	Smith, Maine
Byrd, Va.	Hansen	Sparkman
Byrd, W. Va.	Holland	Spong
Cannon	Hruska	Stennis
Cotton	Jordan, N.C.	Talmadge
Curtis	Long	Thurmond
Dodd	Mansfield	Williams, Del.
Dominick	McClellan	Young, N. Dak.
Eastland	McIntyre	Young, Ohio
Ellender	Metcalf	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Magnuson, for.
Ribicoff, for.

NOT VOTING—14

Anderson	McCarthy	Smith, Ill.
Bennett	Mundt	Symington
Cooper	Packwood	Tower
Hollings	Percy	Tydings
Inouye	Russell	

So Mr. JAVITS' amendment was rejected.

Mr. BYRD of West Virginia. Mr. President, the vote now recurs on my amendment. I am willing to accept a voice vote on it.

Mr. PASTORE. Mr. President, I think, in view of the modification of the language that was reported by the committee, which is an improvement on it, we should have a recording of it and I, therefore, ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Utah (Mr. BENNETT), the Senator from Illinois (Mr. SMITH) and the Senator from Oregon (Mr. PACKWOOD) are detained on official business.

If present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from Texas would vote "yea" and the Senator from Illinois would vote "nay."

The result was announced—yeas 73, nays 13, as follows:

[No. 262 Leg.]

YEAS—73

Aiken	Dominick	Jordan, Idaho
Allen	Eagleton	Kennedy
Allott	Eastland	Long
Baker	Ellender	Magnuson
Bayh	Ervin	Mansfield
Bellmon	Fannin	McClellan
Bible	Fong	McGee
Boggs	Fulbright	McGovern
Brooke	Goldwater	McIntyre
Burdick	Gore	Metcalf
Byrd, Va.	Gravel	Miller
Byrd, W. Va.	Gurney	Mondale
Cannon	Hansen	Montoya
Church	Hart	Moss
Cook	Holland	Murphy
Cotton	Hruska	Muskie
Curtis	Hughes	Pastore
Dodd	Jackson	Pearson
Dole	Jordan, N.C.	Pell
Prouty	Spong	Williams, Del.
Proxmire	Stennis	Yarborough
Randolph	Stevens	Young, N. Dak.
Saxbe	Talmadge	Young, Ohio
Smith, Maine	Thurmond	
Sparkman	Williams, N.J.	

NAYS—13

Case	Hartke	Ribicoff
Cranston	Hatfield	Schweiker
Goodell	Javits	Scott
Griffin	Mathias	
Harris	Nelson	

NOT VOTING—14

Anderson	McCarthy	Smith, Ill.
Bennett	Mundt	Symington
Cooper	Packwood	Tower
Hollings	Percy	Tydings
Inouye	Russell	

So the amendment of Mr. BYRD of West Virginia was agreed to.

Mr. JAVITS. Mr. President, I should like, for the information of the Senate, just to state that I think we have fought as hard as we can within this frame of reference at this time, on what I think was a very important issue, an issue which I think the President feels very strongly about. As I stated in the course of the debate, I feel that we have had a fair and square effort in every way, by attempted amendment. The first vote was essentially a strike-out vote to test this issue. The result of that vote was obviously the will of the Senate, and I do not propose to delay the Senate any further with another motion to strike, or all the things that might be done. I feel that after all these rollcalls, we know what the Senate wants.

I can only hope—and I speak only as an American now, not even as a Senator—that the sponsors of the bill, the manager, and the minority and majority conferees will look at this thing and really think it through. I think we are doing a most unwise and improvident thing, in a most unwise and improvident way.

It is my duty to say that, and I let the matter rest there.

Mr. BYRD of West Virginia. Mr. President, I thank the Senator. I appreciate his letting Senators know that they can depend on no further argument, debate, or votes on this particular controversial issue.

I think, now, that we might get on with the discussion of the money amendments. If there are any to be offered by any Senators, I shall be happy to discuss money amendments now, after which we ought to have a rollcall vote on final passage.

Mr. HARRIS. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment, as follows:

On page 6, line 16, strike out the figure "$1,000,000" and insert in lieu thereof "$3,000,000".

Mr. HARRIS. Mr. President, I ask for the yeas and nays on the amendment.

Mr. BYRD of West Virginia. Mr. President, will the Senator wait for that? We might be able to accept his amendment, and avoid having the yeas and nays.

Mr. HARRIS. Mr. President, I shall, I think, ask for the yeas and nays, but I shall not do it right this minute.

Mr. President, this amendment is a very simple one. I think it is one that Senators will wish to support. It would increase the supplemental appropriation for Indian health services by $2 million. This increase would be for what is commonly referred to as direct care and would be consistent with the $1 million increase recommended by the Committee on Appropriations for contract care.

The $2 million would be used to provide, for 300 additional hospital personnel at a cost of approximately $1,720,000; for additional supplies and materials costing $200,000; and for additional equipment at a cost of $80,000.

The need for this increase in the supplemental appropriation is overwhelming. It is estimated that in order to meet the staffing requirements for Indian hospital facilities that 225 to 250 employees per 100 average daily patients hospitalized and 120 employees per 100,000 outpatient visits are needed. The figures for 1968 show that the Indian Health Service was staffed with only 164 employees per 100 average daily patients and 47.8 employees per 100,000 outpatient visits, clearly below a suitable ratio of employees to patients.

Although the figures are shocking, what the figures actually mean to the Indian population is even more shocking. It is not uncommon in an Indian hospital to have one nurse responsible for more than one floor, with reliance often being placed upon members of a patient's family, untrained in medical care, to assist.

Nor is it uncommon for physicians in Indian hospitals to have a patient load far exceeding other physicians and for those physicians going to field stations or clinics to see as many as eighty patients a day.

By reason of a lack of funds, it is not uncommon for Indian patients who are seriously ill to be transported to an Indian hospital, or from one hospital to another in the back seat of an automobile rather than in an ambulance.

These incidents and many other equally shocking occurrences were reported to the Oklahoma congressional delegation by Indian leaders earlier this year. As a result of their report, Representatives ED EDMONDSON and JOHN N. HAPPY CAMP on behalf of the House Committee on Interior and Insular Affairs inspected certain Indian hospitals in Oklahoma. A report prepared by Representative EDMONDSON dated October 11, 1969, sets forth what he and Representative CAMP discovered, and I ask unanimous consent that this report be printed in the RECORD at this point.

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

REPORT ON CONGRESS

(By Representative ED EDMONDSON)

OCTOBER 11, 1969.

WASHINGTON.—Inspections of three Oklahoma Indian hospitals operated by the United States Public Health Service have brought to light drastic shortages of medicine and medical supplies, confirming reports recently brought to Oklahoma's congressional delegation by Indian spokesmen.

Hospitals at Pawnee, Tahlequah and Claremore, although staffed by dedicated personnel who are reaching thousands of Indians

at clinics in addition to their hospital duties, are simply not receiving the funds essential to good health care for their patients.

These are the unavoidable conclusions from an unannounced inspection of the Claremore hospital which Congressman John N. Happy Camp and I made last week on behalf of the House Committee on Interior and Insular Affairs—followed by staff inspections of the Pawnee and Tahlequah facilities this week.

FUNDING SHORTAGES CRUCIAL

The story at each of these hospitals is basically the same. Funds are so short—with funding on a 30-day basis and requisitions for supplies and equipment often long delayed—that adequate medical treatment is sometimes impossible. Here are some of the glaring examples:

At Claremore, a posted "out list" for use by doctors and nurses includes such basic drugs as buffered aspirin, librium, and vasodilan. Vitamin supplies were depleted and food purchases cut so deeply that nutritious diet for patients is actually in danger. Services of expert consultants in difficult cases have been drastically curtailed.

At Pawnee, tests for tuberculosis have been discontinued because necessary supplies are not provided; influenza shots cannot be given to more than 600 Indian students at Chilocco School because the vaccine is not available.

At Tahlequah, essential anti-biotics are "low in supply" or "out". The same can be said for certain anesthetics, IV sets for intravenous fluids, and other surgical supplies. No immunization shots are being given more than 400 Indian students at Sequoyah school because of shortages.

PROBLEM CLEARLY DEFINED

The blame for these conditions is squarely on the shoulders of the federal government which has long assumed major responsibility for Indian health both by law and treaty. Congress has failed to appropriate adequate funds to meet rising hospital and drug costs, and administrative spending ceilings have reduced available funds even further.

The situation is so bad currently that these hospitals are being financed on a month-to-month basis. As of October 6 and 7 when the hospitals were visited, October funding allocations had not been received. Missing drugs cannot be replaced until the allocation is received, and then if history is any indication, there will not be enough money for full replacement.

At Tahlequah, for instance, more than $15,000 in drugs were dispensed in August and September. Only $5,400 was allocated for drug purchase during the same period. At this rate, this hospital will for all practical purposes, be out of medicine within 60 days.

FACILITIES SHAMEFUL

The problem goes deeper than drug and operating fund shortages, which can be corrected by Congress in short order if it is the will of Congress to do so. Major expenditures must be made to replace and remodel the hospitals themselves. Funds must be committed for future years.

The Claremore hospital is not accredited. Accreditation was denied in 1960 with the comment that the hospital is "a hazardous, dangerous building and should not house hospital inpatients." Provisional accreditation was awarded in 1967 because a new building was being planned. This was withdrawn last February.

Tahlequah may be in its last year of accredited status. Several dangerous conditions exist at the hospital, any one of which is sufficient to deny accreditation. The hospital was accredited last year only because plans to correct the problems were on the drawing board. The funding situation this year is such that the hospital cannot in good faith offer hope of early improvement.

ADVISORY GROUP REPORT

These hospitals are staffed and operated by the Indian Health Service of the United States Public Health Service. The doctors, nurses, and administrators are doing a first-rate job within the limitations imposed on them. They must, however, wonder how the PHS can tolerate such conditions in facilities of its own.

The inspection trip came as a result of an eloquent plea delivered to the Oklahoma Congressional delegation last month by the Oklahoma City Area Advisory Board, Indian Health Service.

This group of tribal leaders brought to Washington a story of inadequacy and dangerous drug and equipment shortages. Our field inspection of three hospitals confirmed their story.

WHAT CAN BE DONE?

Congressman Camp and I have reported our findings to Chairman Wayne Aspinall of the House Committee on Interior and Insular Affairs, and Chairman James Haley of the Indian Affairs Subcommittee.

Steps are being taken to determine how much money is needed immediately to alleviate the current drug and equipment crisis, and how quickly Congressional action appropriating these funds can be taken.

We are also exploring the needs for fiscal year 1971 and subsequent years, and the Area Advisory Group has indicated it will return to Washington to make its plea early next year before the Appropriations Committees in the House and Senate.

We are hopeful administration ceilings on essential expenditures at these and other Indian hospitals will be revised upward without delay, to meet the actual crisis now in prospect.

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

Mr. HARRIS. I am happy to yield to the Senator from California.

Mr. MURPHY. I inquire of the Senator, is some of this money to be used for the California rural health demonstration project which is about to run out of money?

Mr. HARRIS. Exactly so. This amendment would add an additional $2 million to an item for which $1 million is presently provided, which would be available for Indian health services all over the country.

I have only very brief remaining remarks, which I think will explain the situation clearly to the Senator and to the Senate.

The report confirmed the earlier report of the Indian leaders that such basic drugs as buffered aspirin, librium, and vasodilan were not available in one hospital and that the same hospital was short of drugs for the treatment of diabetes.

It is inconceivable that needed immunization shots were denied to some 1,000 Indian children in the State of Oklahoma alone because of a shortage of drugs.

Representatives EDMONDSON and CAMP, during their inspection of the Claremore Indian hospital, obtained a list of the drugs that the hospital was either "out of" or "short of."

I think Senators would be appalled to see this list of basic drugs that this hospital, a very important Indian hospital in northeastern Oklahoma, was either "out of" or "short of," and I ask unanimouse consent that the list be printed in the RECORD at this point.

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

Doctors.—Below are items we are out of or short of. They are so labeled (available—suggested). Substitutes are listed adjacent to item.

Fulvilin (out).

Mylanta (out), possible substitute, AMT Tablets.

Librium 10 mg, (out), possible substitute, Pb 32 mg, Stelazine, Meprobamate, Thorazine.

Chewable Vitamins (out).

Phisohex 120 cc and gallon, (out).

Phenobarb ½ gr (out).

Cortisporin Otic, (short) (found some!)

Darvon 65 mg, (out), possible substitute, Aspirin, (headache) Fiorinal

Actifed, (out), possible substitute, Pseudophed Tabs, liquid.

Vasodilan Tabs, (out), possible substitute, Nicotinic Acid.

Buffered Aspirin, (out), possible substitute, Plain ASA.

Ampicillin suspension, (short), possible substitute, plenty—penicillin suspension.

Ampicillin I.V. (500 mg) (out).

Dilantin 100 mg capsules, (short).

Ampicillin 250 mg capsules, (short).

Gantrisin Tablets, (short), possible substitute, (We have plenty Triple sulfa tabs, liquid).

Diabinese Tablets, (short).

Ferrous Sulfate Tabs, (short).

Hydrocortisone Ointment, (short).

Kaopectate, (short).

Mr. HARRIS. Based upon information gained of the Indian health situation in Oklahoma and other information which the Indian Health Service has on health needs in other States, it is obvious that additional funds are needed.

In order to reverse the downward trend in program levels and make some inroad into the unmet health requirements of the Indian people, it is estimated that 300 positions need to be added in fiscal year 1970, together with additional funds required for supplies and equipment.

The health needs of the Indian in this Nation are crucial. An additional appropriation of $2 million will help eliminate the seriousness of the present situation, and is a minimum step which we should take. I think it is unfortunate that this sum is not more as well as the additional amount for contract needs. The report of the committee indicates that the current available appropriation is sufficient only to provide for two-thirds of known needs. With the increase in costs of providing medical care, the increase I am requesting, as well as the one provided by the committee, will do little more than let us operate at the present level, which is clearly inadequate. I therefore urge the adoption of my amendment.

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

Mr. HARRIS. I yield.

Mr. MURPHY. Mr. President, I ask the permission of my distinguished friend, the Senator from Oklahoma, that I may join him as a cosponsor of his amendment.

Mr. HARRIS. Mr. President, I ask unanimous consent that the names of Senators BURDICK, HANSEN, CANNON, HATFIELD, STEVENS, MONTOYA, WILLIAMS of New Jersey, BAYH, MCGOVERN, and

MURPHY may be added as cosponsors of the amendment.

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

Mr. MURPHY. Mr. President, I know of the Indian program in California. It is an excellent program. It is badly in need.

Mr. President, I am pleased to cosponsor and support this amendment adding $2 million to Indian Health Services, of the Department of Health, Education, and Welfare. This amendment is of great interest to me for California has the second largest Indian population in the Nation. One-sixth of the total Indian population in the country resides in my State, and they represent the State's fastest-growing minority. It has been estimated that California's Indian population doubled between 1950 and 1960, from 19,947 to 39,017. It is estimated that at present there are 100,000 or more Indians in California, and this represents an increase of 150 percent over the 1960 census count. My city of Los Angeles has been called, because of its large Indian population, the Indian capital of the world.

California Indians, in general, for the last decade, have not been able to participate in Federal programs for Indians. Beginning in the early 1950's a movement developed to terminate the special relationship and the special programs of the Federal Government for Indians. As a result, California Indians, since 1955, have been denied health services and since 1958, the benefit of Federal Indian education programs.

As a member of the Senate Labor and Public Welfare Subcommittee on Indian Education, I am aware of the great needs of the California Indians. In testimony before the subcommittee I have strongly urged the restoration to California Indians of Johnson-O'Malley education funds. The committee in its report, "Indian Education: A National Tragedy—A National Challenge," followed my recommendation and urged the restoration of Johnson-O'Malley funds to California. The Interior Department has made the decision to restore such funds to my State and progress has been made. It is my understanding that present plans call for the establishment of a director of Indian education in the California State Department of Education this year and the development of a comprehensive plan for special teacher training, curriculum development, and student counseling. The State is presently looking for a person to fill this position.

In the health area, California Indians, as I previously mentioned, were terminated from Federal health services in 1955. Mr. President, as this body well knows, the Federal Government has not terminated its special relations with the American Indians, nor should they. In fact, as appropriations and programs reveal, the reverse is true. The Federal Government is becoming involved in assisting Indian reservations in long-range economic development. Federal appropriations for health and other programs for Indians have increased. For example, the appropriation for Indian health in 1954–55 was $25 million. In 1969–70, this sum reached $100 million. Yet, Mr. President, with one-sixth of the Indian population of the country, California Indians receive none of these funds. If California Indians were to receive a proportionate share of Federal Indian health funds, based on the percentage of funds they received prior to termination, California's share would be $15 million. What is the equity of such a policy? There is none.

In 1967, the bureau of maternal and child health, of the California State Health Department, undertook a pilot project designed to improve Indian health. A commitment of $150,000 was made to the State department by the Public Health Service of the Department of Health, Education, and Welfare. At Governor Reagan's request, nine areas were surveyed and four were to be selected to participate. But the survey found that all nine wanted to participate and that there was a great need for such a program in all nine areas. As a result, the State of California requested additional funds so as to include all the areas. The request was approved and they secured a 1-year, $245,000 grant. The Public Health Service gave the State additional funds to continue the program until June 30, 1969. Thus, the State has received a total of $330,000 over 18 months for demonstration projects in each of the rural Indian reservation areas. The objectives of the program are community health education and the better utilization of existing health facilities. The projects, which are administered by the tribal council on subcontracts from the California Department of Public Health, have been successful in obtaining health coverage for many Indians not previously covered, in securing valuable assistance from the medical community and have been of help in other Indian-sponsored community organization projects. The projects have received almost unanimous support from groups and organizations in California which are interested and active in Indian matters.

Mr. President, there is no question there is great need for health services by California Indians. Since 1955, the health of California Indians has deteriorated in communicable diseases as well as chronic diseases. The death rate for influenza and pneumonia is twice that of the total population; tuberculosis, six times; accidents, four times; and cirrhosis of the liver, four times. Indian mothers fail to receive adequate prenatal care and their life expectancy is 20 years less than the average for all Californians. Seventy percent of the California Indian families, with an average size of six persons, earn less than $3,000 annually.

Mr. President, the health status of the Indian in California indicates a need for participation in the Federal programs. The California rural Indian health demonstration projects have been successful, have been instrumental in saving several lives by helping people who need assistance on a timely basis, and have conducted successful health educational campaigns. Therefore, I strongly urge the Senate to allow this program to continue. The need is there, the program is working, and equity demands that California Indians be allowed to continue these rural health projects. It would be indeed unfortunate if their projects were not continued. There has been a good response in the Indian community to them and a good rapport developed between the Indians and public and private agencies. Dr. George C. Cunningham, in a letter to me, put it this way:

> The urgency of this case in my mind stems from the fact that governmental and private agencies working with the Indians have lacked consistency, integrity and continuity. Having overcome the initial skepticism of the Indian communities and won their confidence, we would have a real problem restoring services if there was any hiatus of funding.

Thus, I urge the Senate to adopt the amendment, and I hope this will enable the funding of the much needed and successful California rural health project. As I understand it, about $300,000 is needed for this California project. Secretary Finch in cooperation with Governor Reagan and me, sent Mr. Forrest Gerard to examine this project. His report was most glowing and laudatory and those additional funds will help make available the funds for the California rural health demonstration project.

Mr. HARRIS. Mr. President, I am very grateful to the Senator from California. The amendment would add $2 million for Indian health services all over America, including the State of California.

Mr. President, I yield to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. MONTOYA. Mr. President, I commend the Senator from Oklahoma for taking the lead in this particular matter of providing money for health care for the American Indian.

I happen to serve on the Apppropriations Subcommittee for the Department of the Interior and Related Agencies which handles health care for American Indians. We provided an increase this year.

I felt at that time, however, that the increase we provided was not adequate enough. A few days ago, I had a visit from the Governor of Acoma Pueblo in New Mexico. And he and his delegation apprised me of the great need for health care in the Acoma Reservation.

This is something that is sorely needed not only in Oklahoma and New Mexico, but also all over the country.

The Indian is the forgotten individual in this country healthwise. His life expectancy, according to the last figures, is about 49 years, whereas other Americans have a life expectancy of close to 70 years at the present time.

I think it is about time that we in Congress take full cognizance of our responsibility to the American Indian.

I think the amendment offered by the Senator from Oklahoma will render a great public service. I think it will provide sorely needed health care all over the country.

I know that the Senate has been sympathetic to the American Indian. How-

ever, sometimes we get buried in fiscal figures which are involved in appropriations and we do not meditate over the great needs of the silent people of this country.

We do not do this willingly. However, the American Indian needs our help. And I think it is about time that we do something about it. I am not trying to cast any aspersions on my good friend, the Senator from West Virginia. I think my good friend, the Senator from West Virginia, is very sympathetic to the needs of all Americans.

I merely rise to commend the Senator from Oklahoma for taking the lead in securing this vitally needed appropriation of $2 million additional for health care for the American Indian.

Mr. HARRIS. Mr. President, I appreciate very much the eloquent and influential words of my distinguished friend, the Senator from New Mexico who has such wonderful record in this field.

Mr. President, I yield to the distinguished Senator from Arizona who also has evidenced great concern in this area.

Mr. FANNIN. Mr. President, I thank the Senator from Oklahoma for yielding.

Mr. President, I have great concern for the Indian people all over the United States. I have visited Indian hospitals in the last few months.

Mr. President, I would like to recite a little story of a visit I made to an Indian hospital at Winslow, Ariz., 2 months ago. They did not have the needed facilities. They did not have the personnel. In fact, I was told that when they wanted to move a patient, they would call one of the officers in the police department to come up and assist them.

I checked to see why they would be so short of funds. I found that this was generally true in other Indian hospitals in Arizona. I think this is a very needed additional amount of money that should be appropriated for this just cause.

I wholeheartedly support the distinguished Senator from Arizona.

Mr. HARRIS. I am pleased to yield to the Senator from Wyoming.

Mr. HANSEN. Mr. President, I will take only a moment. I thank the distinguished Senator from Oklahoma for yielding.

I very much support the effort he is making. This will address itself to a very vital need in this country.

Mr. BYRD of West Virginia. Mr. President, the testimony during the hearings was to the effect that there has been a gradual increase each year over the last several years during which we have had a specific mental health program. It was indicated during the hearing that there was $19 million in the regular bill and there would need to be an additional $1 million included in order to bring the funding up to the fiscal year 1969 level.

Mr. President, the able Senator from Minnesota (Mr. MONDALE) had asked for an additional $1 million. So, the subcommittee and the full committee accepted Mr. MONDALE'S recommendation. And the bill therefore carries an additional $1 million, to bring the funding up to the fiscal year 1969 level.

Mr. President, I think that the Senator from Oklahoma has made a very sound case for $2 million in additional money.

I am happy to accept the amendment. The Senator has a right to ask for a rollcall vote if he wants to. Or perhaps other Senators would like to have one. However, I am happy to accept the amendment and will do the best I can to hold it in conference.

I would like to get by without a rollcall if we could in the interest of saving time. However, if the Senator wishes to have a rollcall vote, he may.

Mr. HARRIS. Mr. President, I am deeply grateful for what the Senator has said. Other Senators are interested in the amendment and would like to have a rollcall vote. I therefore ask for the yeas and nays.

The yeas and nays were ordered.

Mr. McGOVERN. Mr. President, I strongly support the proposal by the Senator from Oklahoma (Mr. HARRIS) to increase funds for Indian health services. No group of Americans is more urgently in need of improved medical care than the Indian citizens across the Nation. I know, as chairman of the Senate Subcommittee on Indian Affairs and as a lifelong South Dakotan, of the desperate physical plight of the Indian people.

Every additional dollar invested in improved medical care will be returned several times in the form of a healthier, stronger, and more creative citizenry.

I commend Senator HARRIS for his leadership in proposing this amendment to assist the American Indian.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Tennessee (Mr. BAKER), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Utah (Mr. BENNETT), the Senator from Oregon (Mr. PACKWOOD), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Illinois (Mr. SMITH) are detained on official business.

If present and voting, the Senator from Illinois (Mr. PERCY), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 80, nays 0, as follows:

[No. 263 Leg.]

YEAS—80

Aiken	Goodell	Mondale
Allen	Gore	Montoya
Allott	Gravel	Moss
Bayh	Griffin	Murphy
Bellmon	Gurney	Muskie
Bible	Hansen	Nelson
Boggs	Harris	Pastore
Brooke	Hart	Pearson
Burdick	Hartke	Pell
Byrd, Va.	Hatfield	Prouty
Byrd, W. Va.	Holland	Proxmire
Cannon	Hruska	Randolph
Case	Hughes	Ribicoff
Church	Jackson	Saxbe
Cook	Javits	Schweiker
Cotton	Jordan, N.C.	Scott
Cranston	Jordan, Idaho	Smith, Maine
Curtis	Long	Sparkman
Dodd	Magnuson	Spong
Dole	Mansfield	Stennis
Dominick	Mathias	Stevens
Eagleton	McClellan	Talmadge
Ellender	McGee	Thurmond
Ervin	McGovern	Williams, N.J.
Fannin	McIntyre	Williams, Del.
Fong	Metcalf	Young, N. Dak.
Fulbright	Miller	

NAYS—0

NOT VOTING—20

Anderson	Inouye	Smith, Ill.
Baker	Kennedy	Symington
Bennett	McCarthy	Tower
Cooper	Mundt	Tydings
Eastland	Packwood	Yarborough
Goldwater	Percy	Young, Ohio
Hollings	Russell	

So Mr. HARRIS' amendment was agreed to.

EFFICIENT AND EFFECTIVE USE OF REVOLVING FUND OF THE CIVIL SERVICE

Mr. McGEE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 9233.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the amendment of the Senate to the bill (H.R. 9233) to amend title 5, United States Code, to promote the efficient and effective use of the revolving fund of the Civil Service Commission in connection with certain functions of the Commission and for other purposes, which was in the Senate amendment, strike out the following:

SEC. 3. Section 8340 of title 5, United States Code, is amended by adding the following at the end thereof:

"(g) Each annuity payable from the Fund based on involuntary separation and having a commencing date after November 1, 1969, but before January 2, 1970, shall be increased, from the commencing date of the annuity, by 5 percent."

Mr. McGEE. Mr. President, I move that the Senate concur in the House amendment to the Senate amendment extending to Civil Service retirement annuitants an increase from November 1, 1969, to January 2, 1970.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Wyoming.

The motion was agreed to.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate resumed the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. MANSFIELD. Mr. President, it is my understanding that there are one, two, or three amendments which will not take much time, after which we will vote on the pending bill. Then, it is the intention of the leadership to bring up the conference report on the coal mine safety measure. Tomorrow we will take up the Department of Defense Appropriation conference report, the Tasca nomination, and other conference reports, as they become available.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield briefly?

Mr. MANSFIELD. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask for the yeas and nays on final passage so all Senators will know that there will be a record vote.

The yeas and nays were ordered.

ORDER FOR ADJOURNMENT TO 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, so that Senators will be aware of the time tomorrow, I ask unanimous consent that when the Senate completes its business tonight, it stand in adjournment until 10 o'clock tomorrow morning.

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

Mr. MANSFIELD. The first order of business will be nominations on the calendar.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. DODD. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER (Mr. HART in the chair). The amendment will be stated.

The legislative clerk read as follows:

At the end of the provisions relating to the Department of State, add the following:

"ADMINISTRATION OF FOREIGN AFFAIRS
SALARIES AND EXPENSES

"For an additional amount for 'Salaries and expenses, administration of foreign affairs,' $310,000, to be made available only to the Passport Office, Bureau of Security and Consular Affairs, and any amount allocated to such office under the Department of State Appropriation Act, 1970, shall not be reduced as the result of the appropriation of this additional amount."

Mr. DODD. Mr. President, I can be very brief about this amendment because it is very simple. The amendment calls for an appropriation of $310,000 for the Passport Office of the State Department. I can be very brief because there is no need for a long speech.

The head of that office, Miss Frances G. Knight, stated the facts all too clearly in a message which all of us received. It was sent to all Members of Congress and the distinguished Senator from New Hampshire (Mr. MCINTYRE) had it printed in the RECORD yesterday.

As Miss Knight says:

The Passport Office ends 1969 in a bruised and battered condition, thanks to arbitrary budget cuts resulting in reduced personnel; lack of administrative support; lack of understanding of the changing travel patterns of U.S. citizens; and a total indifference to the predictable results of the forthcoming mass travel capability of the jumbo jets and the SST.

I cannot understand how we can spend taxpayers' money on a plethora of new programs and far-reaching activities yet fail to provide American taxpayers a service which is owed to them. The passport situation in my State is absolutely abominable. The clerks of court up there will no longer accept passport applications in many areas, which means most applicants have to go to Hartford.

But Connecticut is only one example. I suspect that my colleagues from Michigan and Texas know only too well the disastrous situation which exists in Detroit and in Dallas, Houston and Fort Worth when citizens try to secure passports. It is equally bad in Alaska and New York. Other States are more fortunate in having adequate personnel for the moment.

But, Mr. President, I stress the words "for the moment." If Frances Knight is correct, there may be long lines of people stretching across the country waiting to get their passports. This amendment which I submit is very simple. It will merely earmark sufficient funds for the Passport Office to insure that the American taxpayer will always be able to get his passport in timely fashion.

Miss Knight is known throughout the Government as one who runs an extraordinarily efficient office.

She is a dedicated public servant.

This Congress must not be the cause of terminating the good work being done in what is perhaps the only truly well run office in the whole Federal bureaucracy.

Furthermore, Mr. President, may I call the attention of my colleagues to the fact that the Passport Office is perhaps the only agency of the Federal Government which makes a profit on its yearly operations, a profit which is a savings to the taxpayer. In fiscal 1969, the budget for the Passport Office was $5,676,132. The Passport Office brought into the U.S. Treasury $16,550,703. This is a net profit of $10,874,571.

Mr. President, the Passport Office needs $310,000 in additional funds if it is to meet its obligations to the American taxpayer. We ask only $310,000 for an agency which is bringing a profit to the taxpayers of some $10.8 million.

I hope this amendment will be agreed to.

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

Mr. DODD. I yield.

Mr. MURPHY. Mr. President, I am interested in the remarks of the distinguished Senator from Connecticut. I know something of this situation. In past years it has been my understanding that there is no department in the Government that has worked with greater efficiency than the Passport Office. I had great reason to deal with that office on many occasions in my former employment. I got to know the Director. I cannot understand why this office should be denied the funds necessary to carry on a job which has been doing such an outstanding job.

I am glad that the distinguished Senator from Connecticut raised this question tonight. If the Senator is urging help for this particular office under the present directorship, I would like enthusiastically to join him and be associated with him in whatever he has in mind.

Mr. DODD. I thank the Senator from California.

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

Mr. DODD. I am happy to yield to the Senator from Arkansas.

Mr. MCCLELLAN. Mr. President, I would like to have my name added as a cosponsor of the amendment of the Senator from Connecticut. I think there is great merit in this request for an increase in funds. This is a situation developing that is going to become very distressing, if it is not already so. I think that this money is urgently needed and that it should be appropriated. Therefore, I trust the distinguished chairman of the committee will consider accepting the amendment. I do not think anyone here objects to it. If the chairman would accept it, it would expedite the situation in view of the time element involved.

Mr. DODD. Mr. President, I wish to thank the distinguished senior Senator from Arkansas for his support of the amendment. I am very grateful.

Mr. President, I ask unanimous consent that the names of the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Kansas (Mr. DOLE), the Senator from Alaska (Mr. GRAVEL), and the Senator from California (Mr. MURPHY) be added as cosponsors of the amendment.

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

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

Mr. MCCLELLAN. I yield.

Mr. MCINTYRE. Mr. President, I wish to commend the distinguished Senator from Connecticut for grabbing the ball and running with it here. Miss Knight's letter was so appealing and her case was so well stated that I could not help but have it printed in the RECORD. I, too, would like to be added as a cosponsor of the amendment.

Mr. DODD. I thank the Senator.

Mr. President, I ask unanimous consent to have the name of the Senator from New Hampshire (Mr. MCINTYRE) and the name of the Senator from Michigan (Mr. HART), who is now presiding, added as cosponsors of the amendment.

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

Mr. BYRD of West Virginia. Mr. President, I know of no objection to the amendment.

I have discussed this with the ranking minority member. The Senator from Nebraska will speak for himself on it, but I think we are all prepared to accept the amendment.

Mr. HRUSKA. Mr. President, I not only have no objection but I should like

to commend the distinguished Senator from Connecticut for bringing up this item and for relieving the situation which has developed.

The moneys allowed are well within the fees taken, and we will have rendered a proper service in consideration thereof. Thus I commend the Senator for bringing the matter up and would heartily concur with the chairman of the subcommittee in regard to its being allowed.

Mr. DODD. I am very grateful to the Senator from Nebraska for his support.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Connecticut.

The amendment was agreed to.

Mr. RANDOLPH. Mr. President, I have an amendment at the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 7, line 13, insert the following: and renumber chapters accordingly:

"CHAPTER IV—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

"For expenses necessary to improve health and safety in the Nation's coal mines, $10,000,000.

"CHAPTER V—DEPARTMENT OF THE INTERIOR

"For expenses necessary to improve health and safety in the Nation's coal mines, $15,000,000."

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

Mr. RANDOLPH. Mr. President, the Coal Mine Health Safety Act, as Senators know, is hallmark legislation. The efforts of many Members in this Chamber and in the other body have contributed to the effective effort to pass a strong measure.

Those who have labored on this legislation, the Senator from New Jersey (Mr. WILLIAMS), Senator JAVITS, and Labor and Public Welfare Committee members, Representative DENT, and many others, in both bodies, are very desirous that we provide funding as soon as possible, and we must not hamper the enforcement program and research effort. Also, the beginning of the disability payments at a later date. I have discussed this amendment with the able Senator (Mr. BYRD) who is manager of the pending bill, and others of the leadership.

Mr. President, I state again that the need is now. The chairmen of the Subcommittees on Labor of the House, Mr. DENT, and the Senate, Mr. WILLIAMS of New Jersey, who successfully managed the new Coal Mine Health and Safety Act to the point where all that remains is the adoption of the conference report by the Senate, have called attention to the need for appropriations to begin administration of our measure.

We believe that a supplemental appropriation of $15 million for the Bureau of Mines in the Department of the Interior and $10 million for the Department of Health, Education, and Welfare would be timely and appropriate in the pending measure. I have offered, with the able junior Senator from Pennsylvania (Mr. SCHWEIKER), an amendment to include those amounts in this bill.

I am informed, I must explain, that the Bureau of Mines may determine its requirement for the balance of fiscal 1970 to be approximately $9 million for enforcement requirements of the act and $16 million for research.

Consequently I feel that the Senate should know that we have an obligation to make an appraisal of the Bureau of Mines progress in meeting its responsibilities and likewise make an assessment of its fiscal position when the first supplemental of 1970 is under development early next year.

Mr. President, we must not hamper either the enforcement program or the research efforts of the Bureau of Mines or the Department of Health, Education, and Welfare in meeting the requirements placed on them to improve the health and safety of the coal miners of this Nation and to begin in an adequate manner the program of disability payments provided in the coal mine health and safety measure.

We are grateful, I emphasize, to the Senator from West Virginia (Mr. BYRD) who has given effective aid in the Coal Mine Health and Safety Act, for his cooperation. Our colleague, the manager of this bill, has agreed to the amendment.

Mr. BYRD of West Virginia. Mr. President, I have discussed this amendment with the Senator from Nebraska (Mr. HRUSKA) and we concur in its acceptance. The amendment puts back language which the committee had subtracted in title 4, but the amendment now being offered restores the language of chapter 4.

Therefore, Mr. President, I ask unanimous consent that the clerk may be allowed to re-number the titles and make other technical changes that would be necessitated by acceptance of the amendment.

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

Mr. SCHWEIKER. Mr. President, will the Senator from West Virginia yield?

Mr. RANDOLPH. I am gratified to yield to my helpful colleague from Pennsylvania.

Mr. SCHWEIKER. I want to say that I strongly support the efforts of the Senator from West Virginia, as well as the distinguished chairman of our committee, and other committee members, in regard to the pending amendment.

I personally believe that the bill is the most significant piece of industrial health safety legislation to come out of Congress in several decades.

I believe that this is a very important start and am very proud to be a cosponsor of the amendment, and thank the Senator from West Virginia (Mr. RANDOLPH) very much for yielding to me, and for his leadership.

Let me add that the amendment would provide badly needed additional funds to the Departments of Interior and Health, Education, and Welfare, in order that they might lose no time in carrying out the provisions of the new coal mine health and safety legislation.

The Department of the Interior would receive an additional $15 million for the Bureau of Mines for the balance of this fiscal year. This, if anything, is a modest increase, since it is estimated that all the new safety provisions will mean an annual cost of $47 million over the current operating budget of the Bureau of Mines.

Of this amount, about half would be used for enforcement purposes, such as the hiring of additional mine inspectors. The remaining half would go into a stepped-up program of coal mine safety research that the new legislation requires the Bureau of Mines to conduct.

In addition, the Department of Health, Education, and Welfare would receive under this amendment $10 million. About $3.5 million is needed to promote health research on the black lung program and start the massive lung X-ray program for miners provided for in the bill. And $6.5 million will be needed in order to fill some of the first compensation claims to be filed by those disabled miners and their families eligible for compensation under the new bill.

Mr. President, this is indeed a reasonable request for added funds and failure to provide them would undermine the start of the comprehensive coal mine health and safety program which this body and the other body have already supported so vigorously.

Mr. GRIFFIN. Mr. President, I realize that the hour is late and I understand the Senate interest is in getting on with this, but at the very least, I would like to register the concern of the administration as to the final result of the conference on coal mine safety legislation.

The administration advocated and supported meaningful coal mine safety legislation.

There is disappointment, frankly, with the final result. The cost of this legislation will be considerably higher than was anticipated—in the neighborhood of $300 million.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Secretary of the Interior and the Secretary of Labor to the Senator from New York (Mr. JAVITS) and other material which provides an analysis of the Coal Mine Safety legislation.

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

U.S. DEPARTMENT OF LABOR,
Washington, D.C.

Subject: Title IV, coal mine safety bill.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: We have consistently supported the principle that workers must be provided with adequate protection under workmen's compensation laws and that the State system of such laws should be continued and, where needed improved.

When I testified on June 3, 1969, before the Select Subcommittee on Labor, I said "We do wish to support the State system. I agree with you that there are many inadequacies in the system, and we have to develop a way of getting at those inadequacies."

When the Under Secretary of Labor testified on March 26, 1969, before the House General Labor Subcommittee of the Committee on Education and Labor in connection with the Federal Coal Mine Health and Safety Act, he supported the then existing section of the bill that would provide a motivation for the States to act in meeting the miners'

needs through improvement in State compensation law.

While we have consistently supported the improvements in State workmen's compensation law, we do not believe that superimposition of a Federal system is necessary to compensate coal miners who are disabled because of pneumoconiosis.

With its provision for a Federal take over of compensation payments, it is our considered judgment that the benefit section as set forth in Title IV of the Federal Coal Mine Health and Safety Act of 1969 is not the proper approach for the protection of the workers.

We believe that the solution to this problem is through any necessary improvement in the system of State workmen's compensation laws. In his testimony on March 26, 1969, the Under Secretary of Labor said: "Workmen's compensation has traditionally been provided through a system of State laws. The states possess procedures and know-how in the workmen's compensation field. It is our present judgment that reliance should continue to be placed on that system of State laws." We continue to support this position.

In addition to the fact that Title IV if enacted into law would constitute an intrusion into the State workmen's compensation system, we are troubled by the cost of the proposed program. We are here considering a program that over the next few years will cost many hundreds of millions of dollars. Our concern as to the potential cost of Title IV is based on the ongoing experience of the Commonwealth of Pennsylvania. In December of 1965, the Commonwealth of Pennsylvania began a limited version of the benefit program as outlined in Title IV. Title IV, however, would be much more costly in that it would provide benefits at a higher rate of compensation and to additional categories of people.

The Pennsylvania Act presently applies to miners who are totally and permanently disabled primarily due to pneumoconiosis. When the Pennsylvania program was under study prior to enactment, the best estimates were that between 5 and 8 thousand claimants would eventually become qualified. Since January 1966, the Commonwealth has processed more than 45,000 claims, and benefits are presently being paid to 25,600 miners. In addition, there is a backlog of approximately 4,000 claimants who will probably qualify under the Pennsylvania law. The cost implications of such numbers are obvious.

If this Title should be enacted into law the Congress would be singling out one group of workers who have contracted a specific disease for payment of special workmen's compensation benefits. Unfortunately, there are other categories of workers who are subject to other diseases in their occupational trade or process. State law now applies to these workers. Should the Federal Government enact a special benefit program for the coal miners other groups of workers would seek similar protection. A hodgepodge mixture of State and Federal compensation law could ensue.

For these reasons, we believe that Title IV is inappropriate for the Federal Coal Mine Health and Safety Act of 1969.

Sincerely,

GEORGE P. SHULTZ,
Secretary of Labor.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., December 12, 1969.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: In response to your request, estimates of the Federal costs of the benefit provisions of the Federal Coal Mine Health and Safety Act of 1969 have been developed. These estimates were developed after consultation between this Department and the Department of Health, Education, and Welfare; the Department of Labor, and the Bureau of the Budget.

Several major problems in preparing cost estimates developed. The language of the draft provision of the bill does not define the term "total disability due to pneumoconiosis". It simply provides that the Secretary of Health, Education, and Welfare shall, by regulation, prescribe standards for determining whether a miner is totally disabled due to pneumoconiosis. The standards established by Health, Education, and Welfare for such determination are an essential element in determining the cost of this program. From conversations with the Committee staff, it is not clear just what the intention is with respect to the establishment of criteria for determining eligibility due to total disability from pneumoconiosis. If the standards established by Health, Education, and Welfare allow those miners to qualify under this program who do not otherwise qualify for disability benefits under the social security program, the cost to the Federal Government could be in the neighborhood of $300 million or more during the first year. If, on the other hand, the standards established by Health, Education, and Welfare are similar to the standards established under the social security program, based on the Pennsylvania experience which is administered under comparable standards, the cost to the Federal Government could be in the neighborhood of $150 million or more during the first year. If the standards established by Health, Education, and Welfare are to be somewhere in between, the cost of course could range between these two figures.

The figures attached to this letter have been computed on the basis of both assumptions set out above. Any attempt to offset these costs by benefits otherwise payable for total disability under the social security program is extremely difficult. No exact figures are available indicating the number of miners presently receiving total disability benefits due to pneumoconiosis. Also various assumptions were made regarding the age of the potential beneficiaries, the number of dependents, mortality rates and other influencing factors. It must be understood that the assumptions underlying the attached figures may have introduced a margin of error into the estimates, the magnitude of which is unknown.

The estimates do not reflect State costs, which in future years would be considerable, nor do they consider Federal administrative costs of determining eligibility and making payments. It may cost $3,000,000 or more, including the cost of medical services, to make initial determinations of disability due to pneumoconiosis. In addition, there would be a continuing cost of preparing and issuing benefit checks.

Sincerely yours,

WALTER HICKEL,
Secretary of the Interior.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969—ESTIMATED FEDERAL COST OF BENEFIT PAYMENTS

SUMMARY

Plan I

The Federal benefit provision will be similar in experience to the Pennsylvania Pneumoconiosis Benefit Law.

The criteria for disability are:

1. The miner must have X-ray evidence of pneumoconiosis.
2. The miner must be completely disabled—not able to engage in any gainful employment.

First year cost without offsets, $154,650,000.

Twenty-year cost without offsets, $1,200,000,000.

Plan II

Criteria for disability:

1. X-ray evidence of pneumoconiosis.
2. Evidence of physical impairment.
3. Age.

First year cost without offsets, $383,650,000.

Twenty-year cost without offsets, $2,980,000,000.

Assume:

1. The Federal benefit provision will be similar in experience to the Pennsylvania Pneumoconiosis Benefit Law. The criteria for benefits are:

(1) The miner must have X-ray evidence of pneumoconiosis.

(2) The miner must be completely disabled—not able to engage in any gainful employment.

A. On 10/1/69, 25,579 miners were on Pennsylvania's benefit rolls. Two thousand will be transferred in the next 18 months from workmen's compensation to benefit payment by virtue of having exhausted benefits under workmen's compensation. Total on benefits 7/17/71, 27,579.

B. Based on workmen's compensation data, 62 percent of those compensated are anthracite miners, and 38 percent are bituminous miners.

27,579x38% = 10,500 bituminous.

27,579x62% = 17,079 anthracite.

C. In 1952 and 1969 Pennsylvania had approximately 25 percent of the underground bituminous-coal miners.

10,500x4 = 42,000, total number of bituminous miners in the inactive population who meet the Pennsylvania criteria.

D. In the active miners, the Public Health Service found 3 percent with X-ray evidence of advanced pneumoconiosis—80,000 × .30 = 2,400.

E. Total bituminous miners eligible for benefits—42,000 + 2,400 = 44,400.

F. There are no anthracite mines in any State other than Pennsylvania. Number of anthracite miners on the Pennsylvania benefit roll, 17,079.

G. Total number of bituminous miners and anthracite miners eligible for benefits—44,000 + 17,000 = 61,400.

H. Assume 7,000 men (4,500 bituminous miners and 2,500 anthracite miners) are on or will qualify for State workmen's compensation—61,400 + 7,000 = 54,400 total eligible miners.

I. Assume each miner has 1.5 dependents. Federal payment is $2,657—54,400 × 2,657 = $145,000,000.

J. Widows benefits, $9,650,000, for a total of $154,650,000 ($145,000,000 + $9,650,000).

Criteria for total disability:

1. X-ray evidence of pneumoconiosis.
2. Evidence of physical impairment.
3. Age.

Population at risk in 1952:

Bituminous-coal miners	400,000
Anthracite miners	120,000
Total	520,000

Mine population in 1952 and 1969:

Age group	1952 work force: Number of men	1952 work force: Surviving in 1969	Age 1969	1969 work force: Number of men	1969 work force: Age group
20 to 24	48,000	47,000	37 to 41	9,600	20 to 24
25 to 29	60,000	57,000	42 to 46	12,600	25 to 29
30 to 34	56,000	52,000	47 to 51	11,200	20 to 34
35 to 44	104,000	94,000	52 to 61	20,800	35 to 44
45 to 54	76,000	56,000	62 to 71	15,200	45 to 54
55 to 59	36,000	17,000	72 to 76	7,200	55 to 59
60 to 64	20,000	6,000	Over 77	4,000	60 to 64
Total	400,000	329,000		80,000	

Assume 93% of surviving men in 1952 work force now over 61 are eligible for benefits, or 75,000.

Assume of the surviving men in the 52 to 61 age group in the 1952 work force, 10,000 are still in the work force and that 25 percent of the remaining group are eligible for benefits, or 21,000.

(94,000 less 10,000 divided by 4, equals 21,000.)

Assume that in the present work force the number of eligibles is the same as the number with pneumoconiosis—80,000 times .10 equals 8,000.

Total bituminous miners presently on State workmen's compensation plan, 4,500 for a total of 99,500.

Anthracite Miners (See Plan I for basic data):

Employed in 1952—120,000. All are no longer employed in anthracite mines. Assume 60 percent mortality. Number of survivors in 1969—48,000.

Assume 75 percent are over 61 and eligible for benefits, 36,000.

Assume 50 percent of those less than 61 are eligible for benefits, 6,000.

Assume of the 6,000 presently in the anthracite work force, 20 percent would qualify, 1,200, for a total of 43,200.

Presently receiving State workmen's compensation, 2,500, which leaves 40,700.

Total bituminous miners, 99,500; total anthracite miners, 40,700; for a total of 140,200.

Assume each case has 1.5 dependents. Federal payment is $2,657.

Total cost of miner benefits: 140,200 times $2,657 equals $374,000,000.

Widow cost, $9,650,000.

Total cost, $383,650,000 ($374,000,000 plus 9,650,000).

Mr. GRIFFIN. Mr. President, I realize that the conference report is not before the Senate at this moment, but the amendments of the Senator from West Virginia would fund that legislation. Although there might be some technical questions raised to the amendment because the conference report has not yet been adopted. I realize that we are going to move on to the conference report yet this evening so I shall not object.

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from West Virginia.

The amendments were agreed to.

Mr. WILLIAMS of New Jersey. Mr. President, I have an amendment at the desk which I ask be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 7, line 13, insert the following, and renumber chapters accordingly:

"CHAPTER IV

"DEPARTMENT OF LABOR

"WAGE AND LABOR STANDARDS ADMINISTRATION

"For expenses necessary to implement the Federal Construction Safety Act of 1969, (P.L. 91-54) $2,000,000."

Mr. WILLIAMS of New Jersey. Mr. President, last August, the Construction Safety Act was enacted into law—Public law 91-54—to provide for improved health and safety conditions in the building trades and construction industry in all Federal and federally financed, or federally assisted construction projects.

The enactment of the Construction Safety Act offers great hope of reducing the dreadfully high fatality and injury rates in the construction industry. Last year alone, 2,800 men were killed on construction jobs. The estimated cost of death and injury in that industry runs at a minimum of $3 billion a year. In order to enable the Department of Labor to implement the Construction Safety Act, funds are vitally necessary.

I understand that it has been estimated that the cost of administration of a safety act of this nature runs at approximately $2 per worker. There are approximately 2.1 to 2.3 million construction workers on Federal, federally financed, and federally assisted projects. It is highly appropriate, therefore, that at least $2 million be appropriated to the Department of Labor so that it may begin to fulfill the promise of this recently enacted legislation.

Mr. BYRD of West Virginia. Mr. President, I am very happy to accept the amendment and I know that I speak for the Senator from Nebraska (Mr. HRUSKA) in so doing.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Jersey.

The amendment was agreed to.

Mr. GRIFFIN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

On page 10, after line 2, insert:

"MARITIME ADMINISTRATION

"STATE MARINE SCHOOLS

"For an additional amount for 'State Marine Schools' for The Maritime Academy for the State of Michigan, $130,000."

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the name of my distinguished colleague from Michigan (Mr. HART) be added as a cosponsor.

The PRESIDING OFFICER (Mr. HART in the chair). I am delighted to ask if there is any objection to the request of the Senator from Michigan? The Chair hears none, and it is so ordered.

Mr. GRIFFIN. Mr. President, at the beginning of the fiscal year there was no Maritime Academy for the State of Michigan. Thus, there could be no request in the budget submitted for this fiscal year. But there is now a Maritime Academy serving the Great Lakes in Michigan at Northwestern Michigan College.

The authorization for this appropriation has been approved and is law. And the institution has been established by the legislature of the State of Michigan.

In accordance with the provisions of the Maritime Academy Act of 1958, under which Federal assistance is provided for State marine schools, the pending amendment would provide Federal funds for assistance to a program that is already underway.

I have discussed the amendment with the distinguished Senator from West Virginia (Mr. BYRD) and the distinguished ranking minority member of the committee (Mr. HRUSKA) and it is my understanding they have no objection.

Mr. BYRD of West Virginia. Mr. President, the Senator from Michigan states the case correctly. He discussed this matter with the Senator from Nebraska (Mr. HRUSKA) and with me, and we have agreed to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

The amendment was agreed to.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I understand that the bill is just about ready for third reading.

I ask unanimous consent, for reasons which may or may not become apparent later—this is done with the approval of the joint leadership—with the understanding that when we return to this bill it will be to come to the third reading, that the pending business be laid aside temporarily and, if there is no objection to that request, that the conference report on the Federal Coal Mine Health and Safety Act be called up.

May I say, contrary to what I said earlier, it is very possible that the Defense appropriation conference report may also come up tonight, as long as so many Senators are on the floor.

FEDERAL COAL MINE HEALTH AND SAFETY ACT—CONFERENCE REPORT

Mr. WILLIAMS of New Jersey. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2917) to improve the health and safety conditions of persons working in the coal-mining industry of the United States. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report. (For conference report, see House proceedings of December 16, 1969, pages 39462-39481, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there obection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. WILLIAMS of New Jersey. Mr. President, on October 2, 1969, this body passed a coal mine health and safety law by a record unanimous vote of 74 to zero. Less than 1 month later, the House passed the coal mine bill by a vote of 389 to 4. Last night, at 10:30 p.m., our colleagues on the House side accepted the conference report by a vote of 333 to 12. Today, I submit to this body, the report of the committee of conference so that we may send this bill without any delay on to the President for signature and final enactment into law.

Mr. President, all 12 Senate conferees have signed the report which is in the nature of a substitute.

Before I proceed, I wish to bring to the attention of my colleagues the most gratifying complete cooperation I have received on this bill from all Senate conferees. The ranking majority member (Mr. RANDOLPH) and the ranking minority member (Mr. JAVITS) have worked with me in the development of this bill and in its passage many long hours. My colleague from West Virginia has brought

to this legislation his special knowledge of the health and safety problems in the coal mining industry and the special concerns of his constituents. My colleague from New York has brought to this bill his bipartisan desire for effective health and safety legislation. Both the majority and minority staffs have given of themselves unselfishly. They are to be commended.

The Senate conferees were successful in insisting on all provisions in the Senate bill which provided more effective protection to the coal miners. The conference report reflects an effect by the conferees of both Houses to blend the best of the Senate bill with the best of the House amendments. I firmly believe the conferees have achieved the most effective coal mine health and safety law ever considered by Congress.

Briefly, the conference report reflects the Senate conferees' insistence on the Senate's lower coal dust standard, and on the Senate's closed end conversion period for explosion-proof equipment. In addition, your conferees succeeded in retaining the Senate's more stringent penalties for criminal violations of the act.

At this point I ask unanimous consent to include a summary of the major provisions of the bill.

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

SUMMARY OF MAJOR PROVISIONS

TITLE I—GENERAL

(1) Grants authority for the promulgation of mandatory health and safety standards to the Secretary of the Interior (hereinafter referred to as the "Secretary"). The Secretary promulgates all mandatory standards, but is responsible for developing and revising only mandatory safety standards. The Secretary of Health, Education, and Welfare (HEW) is responsible for developing and revising mandatory health standards. No standard promulgated by the Secretary shall reduce the protection afforded miners below that provided by the interim mandatory health and safety standards contained in titles II and III, respectively.

(2) Provides opportunity for a representative of miners, whenever he has reasonable grounds to believe that a violation of a mandatory health or safety standard exists or an imminent danger exists in a mine, to obtain an immediate inspection of such mine.

(3) Provides a minimum of at least four annual inspections of each mine. Also provides a minimum of one spot inspection during every five working days of a mine (A) that liberates excessive quantities of methane or other explosive gases during its operations, (B) in which a methane or other gas ignition or explosion has occurred which resulted in death or serious injury at any time during the previous five years, or (C) the Secretary believes has especially hazardous conditions.

(4) Establishes the procedural mechanism for finding dangerous conditions or violations of standards in mines, and for the issuance of notices and orders—including withdrawal orders—relative to such.

(5) Provides administrative and judicial review procedures.

(6) Establishes mandatory civil penalties of up to $10,000 for operator violations of a standard or any other provision of the Act. Establishes a civil penalty of up to $250 to a miner who wilfully violates specified provisions of the Act (smoking, carrying of matches, etc.). Provides criminal penalties for any operator who wilfully violates a standard or knowingly violates or fails or refuses to comply with orders. Upon conviction, such operator shall be punished by a fine of not more than $25,000 and/or imprisonment for not more than one year for the first conviction, and for subsequent convictions, by a fine of not more than $50,000 and/or imprisonment for not more than five years. Also establishes similar civil and criminal penalties to any director, officer, or agent of a corporate operator for like violations, failures, or refusals. Criminal penalties are also provided for false statements, representations, or certifications relative to the Act, and for the introduction and delivery in commerce of any equipment for use in a coal mine which is falsely represented to be in compliance with the provisions of the Act.

(7) Provides for pay guarantees to miners idled by a withdrawal order.

(8) Prohibits the discharge or other discrimination against a miner for exercising rights under the Act.

TITLE II—INTERIM MANDATORY HEALTH STANDARDS

(1) Establishes interim mandatory health standards effective six months after the date of enactment of the Act.

(2) Requires each operator to take accurate samples of the amount of respirable dust in the mine atmosphere. The samples are transmitted to the Secretary and analyzed and recorded by him.

(3) Establishes a 3.0 milligram per cubic meter of air (mg/m^3) dust standard effective six months after enactment. Extensions of time to comply with the standard (permits for noncompliance) may be granted by the Panel (established by section 5) for a period not to exceed twelve months from the effective date of the standard.

(4) Establishes a 2.0 mg/m^3 dust standard effective three years after enactment, but the Panel may grant permits for noncompliance to an operator for a period not to exceed three additional years from the effective date of the standard.

(5) The Secretary of Health, Education, and Welfare has the continuing authority, beginning one year after enactment, to further reduce the dust standard below the levels established by the Act to levels which will prevent new incidences of respiratory disease and the further development of such disease in any person.

(6) Each operator shall cooperate with the Secretary of Health, Education, and Welfare in making a chest x-ray available to each miner within eighteen months after enactment, again three years later, and at such subsequent intervals determined by the Secretary of Health, Education, and Welfare but not to exceed every five years. Each worker who begins work in a coal mine for the first time shall be given a chest x-ray at the commencement of his employment and again three years later. If the second x-ray shows evidence of the development of pneumoconiosis, the worker shall be given an additional x-ray two years later. The x-rays may be supplemented by other tests deemed necessary by the Secretary of Health, Education, and Welfare. The Secretary of Health, Education, and Welfare is also responsible for reading, classifying, and recording all results of x-rays and other medical tests.

(7) Any miner who shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine where the respirable dust concentration is not more than 2.0 mg/m^3. Effective three years after enactment, the option of transfer shall be to a position in an area of the mine where such concentration is not more than 1.0 mg/m^3, or if such level of concentration is not attainable in the mine, to an area where the concentration is the lowest attainable below 2.0 mg/m^3. Any miner so transferred shall not receive less than the regular rate of pay received by him immediately prior to transfer.

(8) Incorporates the noise standard prescribed under the Walsh-Healey Public Contracts Act, and directs the Secretary of Health, Education, and Welfare to improve upon such standard.

TITLE III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

(1) Establishes interim mandatory safety standards effective three months after the date of enactment of the Act.

(2) Establishes detailed requirements to provide for safer working conditions in underground coal mines. These include requirements with regard to roof support, ventilation, combustible materials and rock dusting, electrical equipment, trailing cables, grounding, underground high-voltage distribution, underground low- and medium-voltage alternating current circuits, trolley and trolley feeder wires, fire protection, maps, blasting and explosives, hoisting and mantrips, emergency shelters, communications, escapeways, and other miscellaneous matters.

(3) Establishes requirements for the use of permissible equipment in all underground coal mines. Requires that all electric face equipment at gassy mines and all such small equipment at all mines be permissible within 15 months after enactment. It is also required that, in the case of mines not previously classified as gassy which are below the watertable, such large equipment must be permissible in 15 months, but the Panel may grant extensions of time (permits for noncompliance) of not to exceed in the aggregate an additional 33 months if the Panel determines, based on specified criteria, that the operator is unable to comply with the permissibility requirements because of unavailability of permissible equipment. In the case of such mines which are located entirely above the watertable, it is required that such large equipment be permissible within 51 months after enactment but the Panel may grant extensions of not to exceed 2 additional years on a mine-by-mine basis because of unavailability of such equipment.

TITLE IV—BLACK LUNG BENEFITS

(1) Provides for the payment of benefits for death or total disability due to pneumoconiosis.

(2) Coal miners and former coal miners who are totally disabled due to pneumoconiosis will receive benefits at a rate equal to 50 percent of the minimum monthly payment to which a disabled Federal employee in grade GS–2 would be entitled at the time of payment. This represents approximately $136 per month. Widows of coal miners and former coal miners whose deaths are due to pneumoconiosis or whose deaths occurred while receiving total disability benefits, receive benefits at the rate prescribed for totally disabled miners. The rates prescribed above are increased for dependents at the rate of 50 percent for one dependent (widow or child), 75 percent for two dependents, and 100 percent for three or more dependents. The benefits for miners and widows will be reduced on account of payments under the workmen's compensation, unemployment compensation, or disability insurance laws of the State and, in the case of miners only, on account of excess earnings, as provided under the Social Security Act for benefits payable under that Act.

(3) The following presumptions are used in determining entitlement:

A. If a miner who is suffering from pneumoconiosis was employed for 10 years or more in an underground coal mine, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment.

B. If a miner worked ten years in such a mine and died of a respirable disease, there

will be a rebuttable presumption that his death was due to pneumoconiosis.

C. If a miner is suffering from, or dies from, an advanced irreversible stage of pneumoconiosis, it will be irrebutably presumed his death or total disability was due to pneumoconiosis.

(4) Claims filed before December 31, 1972, will be processed by the Secretary of Health, Education, and Welfare in a manner similar to that he uses for processing claims for disability under the Social Security Act. If the claim is filed after December 31, 1971, benefits under that claim may be paid only until January 1, 1973. Claims filed on or after January 1, 1973, will be processed under the appropriate State workmen's compensation law if the Secretary of Labor has determined it has adequate coverage for pneumoconiosis. He will, generally speaking, determine a State law to have adequate coverage for pneumoconiosis if the cash benefits under such law and the criteria for determining eligibility are not less favorable to the claimant than those applicable to claims filed before January 1, 1973. Where the applicable State workmen's compensation law does not provide adequate coverage for pneumoconiosis, the persons entitled to benefits will have their claims processed (so far as applicable) under the terms of the Longshoremen's and Harbor Workers' Compensation Act.

(5) In the case of claims filed on or after January 1, 1973, no payments of benefits may be made after seven years after the date of enactment of the Act.

TITLE V—ADMINISTRATION

(1) Provides authorization for appropriations for health and safety research to be carried out by the Secretary of Health, Education, and Welfare and the Secretary, respectively.

(2) Requires the Secretary to expand programs for the education and training of operators, agents, thereof, and miners in accident-control, healthful working conditions, and in the use of coal mining equipment and techniques.

(3) Provides for economic assistance to any small business concern operating a coal mine to meet the requirements imposed by the Act. Such assistance shall be given by the Small Business Administration.

(4) Specifies qualifications and training requirements for employees of the Secretary; particularly inspectors.

TIMETABLE OF ACTIONS BY SECRETARY OF THE INTERIOR AND SECRETARY OF HEALTH, EDUCATION, AND WELFARE

[Action and due date after enactment]

1. Publish proposed health and safety standards for surface coal mines (Sec. 101 (i)), Secretary of Interior, 15 months after enactment.

2. Publish proposed health and safety standards for surface areas of underground coal mines. (Sec. 101(i)), Secretary of Interior, 15 months after enactment.

3. Publish all interpretations; regulations, and instructions not inconsistent with this Act (Sec. 101(j)), Secretary of Interior, immediately.

4. Appoint separate advisory committee on coal mine health and safety research (Sec. 102), both secretaries, 3 months after enactment.

5. Prescribe methods, locations, intervals and manner of sampling respirable dust (Sec. 202(a)), both secretaries, jointly, 2 months after enactment.

6. Establish time schedule for reducing respirable dust concentrations below established levels, Secretary of Health, Education, and Welfare, beginning 12 months after enactment.

7. Prescribe specifications for taking chest roentgenograms (Sec. 203(a)), Secretary of Health, Education, and Welfare, within 6 months after enactment.

8. Establish and publish proposed mandatory health standards re: noise (Sec. 206), both secretaries, within 6 months after enactment.

9. Prescribe manner for testing noise level at a coal mine (Sec. 206), Secretary of Health, Education, and Welfare, within 6 months after enactment.

10. Initial approval of roof-control plans (Sec. 302(a)), Secretary of Interior, 5 months after enactment.

11. Prescribe minimum air quantity and velocity reaching working face (Sec. 303(b)), Secretary of Interior, within 6 months after enactment.

12. Prescribe maximum respirable dust level for intake aircourses (Sec. 303(b)), Secretary of Interior, within 15 months after enactment.

13. Initial approval of ventilation and methane and dust control plan (Sec. 303(o)), Secretary of Interior, within 6 months after enactment.

14. Initial approval of plan of emergency action when mine fan stops (Sec. 303(t)), Secretary of Interior, within 5 months after enactment.

15. Conduct survey of availability of permissible electric face equipment and publish same (Sec. 305(a)(5)), Secretary of Interior, within 12 months after enactment.

16. Prescribe procedures and safeguards for making repairs on high-voltage lines (Sec. 307(d)), Secretary of Interior, within 3 months after enactment.

17. Establish minimum requirements for firefighting equipment (Sec. 311(a)), Secretary of Interior, 3 months after enactment.

18. Prescribe specifications for fire suppression devices (Sec. 311(e)), Secretary of Interior, within 15 months after enactment.

19. Require that devices for warning of fires be installed on belt conveyors. (Sec. 311(g)), Secretary of Interior, within 5 months after enactment.

20. Prescribe schedule for monthly fire suppression devices on belt haulageways (Sec. 311(g)), Secretary of Interior, 3 months after enactment.

21. Prescribe illumination standards (Sec. 317(e)), Secretary of Interior, within 12 months after enactment.

22. Establish methane limits in or on surface coal handling facilities (Sec. 317(h)), Secretary of Interior, within 15 months after enactment.

23. Prescribe minimum standards for emergency medical aid, Secretary of Health, Education, and Welfare, within 3 months after enactment.

24. Prescribe improved methods re: providing adequate oxygen (Sec. 317(o)), Secretary of Interior, after operative date of Title III.

25. Establish procedures for issuing permits re: hazards from cave-ins of tunnels under water (Sec. 317(r)), Secretary of Interior, prior to operative date of title III.

26. Propose standards for preventing explosion from gases other than methane and for testing such gases (Sec. 317(t)), Secretary of Interior, within 15 months after enactment.

27. Prescribe minimum Federal standards for "certified" or "registered" persons (Sec. 318(a)), Secretary of Interior, prior to operative date of title III.

28. Establish requirements for persons qualified as electricians (Sec. 318(b)), Secretary of Interior, prior to operative date of title.

29. Establish specifications re: permissible (Sec. 318(c)), Secretary of Interior, prior to operative date of title.

30. Prescribe procedures for field testing and approval of electric face equipment (Sec. 318(i)), Secretary of Interior, prior to operative date of title.

31. Study of ways to coordinate Federal and State activities in the field of coal mine health and safety (Sec. 512), Secretary of Interior, as soon as practicable after enactment.

Mr. WILLIAMS of New Jersey. Mr. President, one of the major issues in conference concerned the program of disability benefits to victims of black lung and their widows. As I am sure my colleagues will recall, during the debates on this bill, the Senate, by a unanimous rollcall vote of 91 to 0, added to the health and safety bill a temporary black lung benefits program. It was a program which called for an initial 1-year period of full Federal funding, and 2 years of Federal-State matching, under standards established by the Secretary of Health, Education, and Welfare. The House version was drastically different in that it authorized benefits to be paid to any eligible claimant who filed his claim within the next 7 years. All these payments were to be funded from the Federal Treasury.

The bills had one major concept in common. They both recognized that the States, with rare exception such as Pennsylvania, had sorely neglected to provide any effective benefit program for the ruined victims of this dreadful disease.

Furthermore, both bills to correct this neglect, provided that Federal standards would apply to determination of eligibility for benefits.

The Senate conferees had some degree of success in getting the House to recede from the full Federal funding and complete State exclusion from a disability benefits program. I say some degree of success. Under the House amendment the Federal Treasury would have borne the responsibility for claims filed within 7 years. Although the House would not completely recede to the Senate provision, it did agree to a program under which the Federal Government would accept the financial burden for the 50,000 miners who have already been disabled and are no longer employed, or should be no longer forced to struggle through another day's work in the mines. Miners or widows filing claims within the first 2 years, would be paid benefits by the Federal Government at an average of less than $50 a week. For persons disabled thereafter, the burden would fall on the State workmen's compensation program unless the State refused to accept the responsibility. If the State chooses not to fulfill this obligation to the disabled coal miners, the employers would be required to accept the obligation in accordance with the procedures of the Longshoremen's and Harbor Workers' Compensation Act.

I believe that this is a fair and responsible provision. I believe that this bill is a most effective and responsible piece of legislation offering promise and hope to our Nation's coal miners.

I urge my colleagues to adopt the conference report.

For the benefit of my colleagues, I ask unanimous consent to include at this point a complete section-by-section analysis of the conference report.

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

FEDERAL COAL MINE HEALTH AND SAFETY ACT—SECTION-BY-SECTION ANALYSIS AND EXPLANATION

The following analysis and explanation discusses all the provisions of the Federal

Coal Mine Health and Safety Act of 1969 as agreed to by the Conference Committee.

Section 1

This section cites the act as the "Federal Coal Mine Health and Safety Act of 1969."

Section 2. Findings and purpose

This section makes certain congressional findings relative to the need for, and desirability of, legislation to improve the health and safety of the Nation's coal miners. It emphasizes the fact that the operators of coal mines, with the assistance of the miners, have the primary responsibility to prevent accidents and occupational disease. It declares that the purpose of the act is to establish immediately comprehensive interim mandatory health and safety standards, to require that improved standards be developed, to require compliance by the operators and the miners, to aid the States in developing State health and safety programs, and to improve present research and training programs in this field. Thus, the overall objective of the Act is to eliminate unsafe and unhealthful conditions and practices and to provide benefits for miners and dependents afflicted by occupationally caused respiratory disease and, in accomplishing this objective, it is the intention of the conferees that it be construed liberally.

Section 3. Definitions

This section defines various terms used in the act.

The term "Secretary" means the Secretary of the Interior or his delegate.

The definition of an "operator" is designed to be as broad as possible to include any individual, organization, or agency, whether owner, lessee or otherwise, that operates, controls, or supervises a coal mine, either directly or indirectly. It does not, however, include persons whose primary responsibility is to run the mine or supervise employees such as a superintendent or foreman unless such persons meet the statutory definition of operator. These are the agents of the operator.

The definition of a "coal mine" is broad and intended to cover all areas and facilities of underground and surface, including auger, coal mines.

The definition of an "imminent danger" is broadened from that in the 1952 act in recognition of the need to be concerned with any condition or practice, naturally or otherwise caused, which may lead to sudden death or injury before the danger can be abated. It is not limited to just disastrous type accidents, as in the past, but all accidents which could be fatal or nonfatal to one or more persons before abatement of the condition or practice can be achieved.

The definition of an "accident" includes, but is not limited to, such occurrences as mine fires, ignitions, explosions, roof falls, or inundations. It also includes any other occurrence which causes injury, whether or not lost time results, or death to one or more persons.

Section 4. Mines subject to act

This section establishes that all coal mines the operations or products of which affect commerce and each operator and every miner of such mine are subject to this act. It applies to surface, as well as underground coal mines which affect commerce, including those coal mines which provide coal to the United States under contract or other agreement and to coal mines located on Federal lands.

Section 5. Interim compliance panel

This section establishes a five-member Government panel to consider applications for noncompliance permits under sections 202 and 305 of the act. The section authorizes the Panel to utilize the services, personnel and other assistance of the Departments of Health, Education, and Welfare, Interior, Commerce, and Labor in carrying out its functions without regard to any limitations in other statutes relative to providing such services, personnel, or other assistance or the funding of such assistance and to appoint hearing examiners to carry out hearings under those sections in accordance with section 554 of title 5 of the United States Code. Decisions of the Panel shall be subject to review under section 106. The Panel will continue in existence until completion of its functions under those two sections and then will terminate automatically. The Panel shall make annual reports to the Secretary for the Congress.

TITLE I.—GENERAL

Section 101. Health and safety standards; review

Subsection (a) of this section requires the Secretary, in the manner described later, to develop, promulgate, and revise improved mandatory safety standards for the protection of life and the prevention of injuries in coal mines subject to the act. He is also required to promulgate the mandatory health standards which are transmitted to him by the Secretary of Health, Education, and Welfare, as hereafter described. It is noted that responsibility for establishing any health standard under this Act rests with the Secretary of Health, Education, and Welfare.

Subsection (b) provides that no mandatory health or safety standard may be so promulgated which reduces the protection afforded miners below that afforded by the interim standards contained in titles II and III of this Act or below standards subsequently promulgated under this section.

Subsection (c) provides that when he develops mandatory safety standards, the Secretary must consult with other Federal agencies, representatives of States, appropriate representatives of coal mine operators and miners, advisory committees appointed for that purpose, and other interested persons. In developing safety standards, in addition to the attainment of the highest degree of safety protection for the miners, other considerations should be the latest available scientific data in the field, technical feasibility of the standards, and experience gained under this and other safety statutes.

Subsection (d) of this section directs the Secretary of Health, Education, and Welfare to develop and revise improved mandatory health standards for the protection of life and the prevention of occupational diseases of coal miners in the same manner as safety standards proposed by the Secretary of the Interior. When he has developed or revised a mandatory health standard, the Secretary of Health, Education, and Welfare will transmit it to the Secretary of the Interior who will publish it in the Federal Register as a proposed mandatory health standard.

Subsection (e) requires the Secretary to publish proposed mandatory health and safety standards in the Federal Register and to allow interested persons at least 30 days to submit written data or comments. Thereafter, unless an objection is filed as provided in subsection (f), the Secretary may, in the case of a safety standard, after consideration of all the data and comments which have been submitted, promulgate the standard with any modifications he deems appropriate. In the case of a health standard, unless an objection is filed, the Secretary of Health, Education, and Welfare may, upon the expiration of such 30-day period, and after consideration of all relevant data and comments transmitted to him, direct the Secretary to promulgate the standard with such modification as the Secretary of Health, Education, and Welfare may deem appropriate.

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TITLE I.—GENERAL

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Subsection (b) provides that no mandatory health or safety standard may be so promulgated which reduces the protection afforded miners below that afforded by the standards contained in titles II and III of the act. It is noted that responsibility for establishing any health standard under this Act rests with the Secretary of Health, Education, and Welfare.

Subsection (c) provides that when he develops mandatory safety standards, the Secretary must consult with other Federal agencies, representatives of States, appropriate representatives of coal mine operators and miners, advisory committees appointed for that purpose, and other interested persons. In developing safety standards, in addition to the attainment of the highest degree of safety protection for the miners, other considerations should be the latest available scientific data in the field, technical feasibility of the standards, and experience gained under this and other safety statutes.

Subsection (d) of this section directs the Secretary of Health, Education, and Welfare to develop and revise improved mandatory health standards for the protection of life and the prevention of occupational diseases of coal miners in the same manner as safety standards proposed by the Secretary of the Interior under subsection (c). When he has developed or rerevised a mandatory health standard, the Secretary of Health, Education, and Welfare will transmit it to the Secretary of the Interior who shall publish it in the Federal Register as a proposed mandatory health standard. This subsection clearly delineates the health responsibility of the Secretary of Health, Education, and Welfare from the safety responsibilities of the Secretary of the Interior.

Subsection (e) requires the Secretary to publish proposed mandatory health and safety standards in the Federal Register and to allow interested persons at least 30 days to submit written data or comments. Thereafter, unless an objection is filed as provided in subsection (f), the Secretary may, in the case of a safety standard, after consideration of all the data and comments which have been submitted, promulgate the standard with any modifications he deems appropriate. In the case of a health standard, unless an objection is filed, the Secretary of Health, Education, and Welfare may, upon the expiration of such 30-day period, and after consideration of all relevant data and comments transmitted to him, direct the Secretary to promulgate the standard with such modification as the Secretary of Health,

Education, and Welfare may deem appropriate.

Subsection (f) provides that during the period fixed for submission of written data and comments as described in the preceding subsection any interested person may file written objection to the proposed standards stating the ground therefore and requesting a public hearing. The Secretary will then publish in the Federal Register a notice specifying the proposed standard to which objections have been filed and hearing requested.

Subsection (g) provides that the appropriate Secretary will promptly hold a public hearing. Within 60 days after the hearing, the appropriate Secretary will make public his findings of fact in the Federal Register. The Secretary may promulgate the mandatory safety standard with such modifications as he deems appropriate. The Secretary of Health, Education, and Welfare may direct the Secretary to promulgate the health standard with any modifications the Secretary of Health, Education, and Welfare deems appropriate. If either Secretary determines after hearings that a proposed standard should not be promulgated or should be modified, he must publish his reasons therefor in the Federal Register.

The requirement of publication under this subsection serves to emphasize the point that it is the objective of this Act that both Secretaries take appropriate steps to insure that actions taken under this Act will be as public as possible.

Subsection (h) provides that mandatory standards promulgated as described above will be effective upon publication in the Federal Register unless the appropriate Secretary specifies a later date.

Subsection (i) requires the Secretary to publish proposed mandatory health and safety standards for surface coal mines and additional standards for surface work areas of underground coal mines within 12 months after the enactment of the act.

Subsection (j) provides that existing interpretations, regulations, and instructions of the Secretary and the Director of the Bureau of Mines under the 1962 act and other statutes would continue in effect until changed or modified, so long as they are not in conflict with this act. These relate to administrative instructions, interpretations, and regulations, some of which are now contained in the Federal Register. Also, there are some regulations, such as those relating to permissibility of equipment, that must continue until changed to avoid administrative problems. In some cases, items on permissibility and fire protection would be modified or superseded under this act. These instructions, interpretations, and regulations are to be published for purposes of consolidating them in one place and for information to the miners and operators.

Subsection (k) requires that copies of proposed standards and regulations be provided to the operators and the miners.

Section 102. Advisory committees

This section directs the Secretary and the Secretary of Health, Education, and Welfare to appoint two separate mandatory advisory committees in the field of coal mine health and safety research. Both committees would have Government, as well as non-Government members. It would also authorize the appointment of other advisory committees on other matters. Members of advisory committees who are not governmental employees will be paid on a per diem basis at a rate not in excess of that prescribed for grade GS–18 in the general schedule. The chairman and the majority of non-Government members must have no interests in the industry.

Section 103. Inspections and investigations

Subsection (a) of this section provides that there shall be frequent inspections and investigations in coal mines by authorized representatives of the Secretary. These inspections and investigations shall be made for the following purposes:

(1) Obtaining, utilizing, and disseminating information relating to health and safety conditions, causes of accidents and causes of diseases and physical impairments originating in coal mines;

(2) Gathering information with respect to mandatory 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, order or decision issued under this title.

For purposes of determining whether an imminent danger exists in a mine and determining whether or not there is compliance with a mandatory health and safety standard or with a notice, order or decision issued under the title, no advance notice of the inspection shall be provided to any person, and the representatives of the Secretary are required to make inspections of each underground coal mine throughout its entirety at least four times a year.

Subsection (b) of this section provides that the Secretary or his authorized representatives shall have a right of entry to a coal mine for the purpose of making inspections or investigations. It provides the same authority for the Secretary of Health, Education, and Welfare, or his authorized representative for the purpose of developing improved mandatory health standards. It also provides that the provisions of the act relating to investigations and records shall be available to the Secretary of Health, Education, and Welfare, in carrying out his functions under the act.

Subsection (c) authorizes the Secretary, by agreement, to utilize the services, personnel, and facilities of any Federal agency in carrying out the act. This provision does not prohibit the Secretary from contracting for the services of State agencies. However, the Secretary may not delegate his enforcement responsibilities to State agencies and personnel.

Subsection (d) provides the Secretary with various procedures and powers necessary in connection with the investigation of accidents or other matters relating to health and safety conditions at a mine.

Subsection (e) requires the operator of a coal mine in which an accident occurs to notify the Secretary and to prevent the destruction of evidence relating to the cause thereof. The Secretary or his authorized representative is required to take appropriate action to protect the life of any person where an accident occurs in a coal mine and rescue and recovery work is necessary. In such a case he may, if he deems it appropriate, supervise and direct rescue and recovery activity.

Subsection (f) authorizes representatives of the Secretary to issue appropriate orders to insure the safety of persons in a coal mine in which an accident has occurred. The operator of such a mine must obtain the approval of such representative 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.

Subsection (g) makes it clear that if the miners in a mine have reasonable grounds to believe that a standard is being violated or an imminent danger exists, their representative has a right to an immediate special inspection by notifying the Secretary or his delegate in the quickest fashion possible, either orally or in writing. Such notification, if oral, must, however, be reduced to writing and sent to the Secretary and a copy provided the operator, except that such copy shall not contain the names of the miners or their representative if the person giving the notice so requests. The inspector need not await the receipt of such written notice. As used here and throughout the Act, the term "representative of the miners" includes any individual or organization that represents any group of miners at a given mine and does not require that the representative be a recognized representative under other labor laws. A lawyer for the miners could also be a representative.

Subsection (h) authorizes representatives of the miners to accompany the authorized representatives of the Secretary on his inspection of a coal mine. This provision shall not, however, conflict with the prohibition against advance notice of inspections.

Subsection (i) requires irregular spot inspections every five working days at mines where the Secretary finds certain hazards.

Section 104. Findings, notices, and orders

Subsection (a) provides that if an inspector finds the existence of an imminent danger in any mine, underground or otherwise, he must immediately issue a withdrawal order to the operator requiring him to withdraw the men from the mine or area thereof affected and prevent entrance by anyone to that mine or area, except those miners necessary to abate the hazard. Withdrawal must be to a safe area. The order remains in effect until an inspector determines that there is no danger. The imminent danger may be due to a violation of a mandatory safety standard or some other cause not covered by a standard, including natural causes. It should be emphasized at this point that the operator has a duty under the Act to withdraw persons from a mine or area thereof affected by an imminent danger without waiting for an inspector to order it.

Subsection (b) provides authority for an inspector to issue notices of violations of standards, providing time to abate the violation. Where abatement is not completed within the time prescribed, the inspector must issue a withdrawal order to continue in effect until the violation is abated, as determined by the inspector. Notices should be issued as promptly as possible after the violation is observed whether or not the violation is connected before the notice is issued.

Subsection (c) provides that if an inspector finds a violation of a health or safety standard that does not cause an imminent danger, but is of such a nature as could significantly and substantially contribute to any mine safety or health hazard, and if he finds that the violation is due to an unwarrantable failure to comply with the standard, he includes the finding in the notice issued by him under subsections (b) or (i) of this section. If the inspector finds, at any time within 90 days after that notice is issued, another violation which is also due to an unwarrantable failure of the operator to comply, he must issue a withdrawal order for the affected area. Once such order is issued and an inspector finds other unwarrantable failure violations, he must continue to issue such orders until an inspection finds no similar violations.

The term "unwarrantable failure" means the failure of an operator to abate a violation he knew or should have known existed.

Subsection (d) enumerates the persons permitted in an area subject to a withdrawal order.

Subsections (e) and (f) prescribe the contents of a notice or order issued by an inspector and require that it be given to the operator or his agent.

Subsection (g) authorizes an inspector to modify or terminate a notice or order except an order issued under subsection (h).

Subsection (h) provides that if an inspector finds that health or safety conditions exist in a mine which, while they do not create a problem of an imminent danger,

are of such serious nature that it is reasonable to assume that an imminent danger will result soon, and that such conditions cannot be satisfactorily corrected because of a lack of available technology, he must notify the operator of the mine or his agent of these conditions and file a copy thereof, including his findings, with the Secretary and with the representatives of the miners in that mine. On receipt of this notice, the Secretary must cause a special investigation to be made which could include another inspection and which would include an opportunity for a hearing. Once the investigation is completed, the Secretary then would make findings of fact and issue a decision either canceling the notice or ordering a withdrawal of persons from the areas affected and that such withdrawal continue until such time as the Secretary, after a hearing, determines that the conditions have been abated. The hearings under this subsection are subject to section 554 of title 5 of the United States Code and decisions of the Secretary are subject to judicial review.

This provision is designed to meet situations that may arise in the future where a particular mine or section of a mine is being operated under conditions that are considered hazardous to the health or safety of the miner, but not of the type that would require the issuance of an imminent danger order. There may be, for example, mines or areas thereof where such situations may exist or will exist as mining continues deeper and deeper below the earth's surface. Such deep mining may present considerable health or safety hazards for which there is no available technology to overcome them.

Subsection (l) provides that when the samples of respirable dust taken and analyzed as required by section 202(a) show that the dust level exceeds the applicable health standards, the Secretary or his delegate without an inspection, or an inspector during an inspection, must find a reasonable time within which to take corrective action to reduce the concentration of respirable dust to the miners in the area of the mine in which such standard was exceeded and must issue a notice fixing such time for the abatement of the violation. During that time, the operator of the mine is required to cause samples of respirable dust to be taken as described in section 202(a) in the affected area during each production shift. If, upon the expiration of the prescribed period of time, or an extension thereof, the violation has not been abated, the miners shall be withdrawn from the affected area until there is reason to believe, based on actions taken by the operator, that the applicable dust standard will be complied with when production is resumed. Once a withdrawal order is issued, the Secretary, on request of the operator, must dispatch knowledgeable employees of the Department of the Interior to assist the operator in reducing the dust level, if such knowledgeable persons are available. Such persons may require the operator to take such actions as they deem appropriate to reach the objective of controlling the dust.

Section 105. Review by the Secretary

Subsections (a), (b), and (c) establish a procedure for reviewing administratively withdrawal orders issued by an inspector, modifications or terminations of such orders by an inspector and the reasonableness of the time limits in notices, upon request made by an operator or representative of the miners. Upon making the request, the Secretary must undertake a special investigation to ascertain the facts which must include an opportunity for a public hearing pursuant to 5 U.S.C. 554. Once completed, the Secretary must make findings of fact and issue a decision promptly. The filing of an application for such review cannot operate as a stay of any order or notice.

Subsection (d) authorizes the Secretary to grant temporary stays of orders, but not notices, in nonimminent danger cases after a hearing and a finding that there is substantial likelihood that the applicant will be successful and most importantly upon a finding that such relief will not adversely affect the miners health and safety.

Section 106. Judicial review

This section provides for review of any order or decision of the Secretary or the Interim Compliance Panel, except an order or decision under section 109(a), by the court of appeals for the circuit where the mine is located or the Court of Appeals of the District of Columbia by petition filed by the aggrieved operator or representative of the miner within 30 days from the date of issuance of the decision. Such review can only be obtained after the appellant exhausts all available administrative remedies. The court must hear the petition on the record before the Secretary or Panel and their findings, under the substantial evidence rule, will be conclusive. The court's decision may be appealed to the Supreme Court.

Subsection (c) authorizes the court to grant stays in the case of any appeal from a decision of the Secretary, except one involving an imminent danger order, and in the case of any decision of the Panel after a hearing and the making of findings relative to the likelihood of the appellant prevailing and, in the case of a decision by the Secretary, findings relative to the health and safety of the miners.

Subsections (e) and (f) authorize the Department of the Interior to use its attorneys in connection with such appeals. The commencement of proceedings for judicial review will not unless so ordered by the court operate as a stay of the decision by the Secretary of the Panel.

Section 107. Posting of notices and orders

Subsection (a) of this section requires that there be maintained at each coal mine an office and a bulletin board near the entrance of the mine where notices may be posted which are required by law. Any notice, order or decision required by the act to be given to an operator may be delivered to the office of the mine and a copy shall then be immediately posted on the bulletin board by the operator.

Subsection (b) requires the Secretary to cause a copy of any notice, order or decision required by this title to be given to the operator to be mailed immediately to the representative of miners in the affected mine and to the public official or agency of the State concerned.

Subsection (c) of this section permits the Secretary to deliver any notice, order or decision to an agent of the operator of a mine, and the agent is required to take appropriate measures to insure the compliance with the notice, order or decision.

Subsection (d) requires each mine operator to file with the Secretary, and keep current, the name and address of the mine and the name and address of the person who controls or operates the mine. Each operator is required to designate an official at such mine as the principal officer in charge of health and safety at the mine. Where the mine is subject to control of a person not directly involved with its daily operation, there shall be filed with the Secretary the name and address of both the person who controls the mine and of the person having overall responsibility for the health and safety program at the mine.

Section 108. Injunctions

This section authorizes the Secretary using attorneys appointed by him to institute civil action for relief, including permanent or temporary injunctions, restraining orders, or other appropriate orders, in the U.S. district court in which a coal mine is located or in which the operator has his principal office, in a number of specified instances. These civil actions will be brought whenever such operator or his agent—

(1) Violates an order or decision issued under this Act;

(2) Interferes with, hinders, or delays the Secretary or his authorized representative or the Secretary of Health, Education, and Welfare, or his authorized representative, from carrying out the act;

(3) Refuses to admit such representative to the mine;

(4) Refuses to permit inspection of the mine;

(5) Refuses to furnish information requested by the Secretary or the Secretary of Health, Education, and Welfare; and

(6) Refuses to permit access to and copying of records.

It is provided that temporary restraining orders may be issued only in accordance with Rule 65 of the Federal Rules of Civil Procedure, except that the time limit in such orders, when issued without notice, shall be no more than seven days. In any action to enforce an order or decision, the substantial evidence rule will apply.

Section 109. Penalties

Subsection (a) of this section provides that 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 be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense. In fixing the amount of the penalty, the Secretary is required to consider the operator's history of previous violations, the appropriateness of the penalty to the size of the business, its effect on the operator's ability to continue in business, the gravity of the violation, whether the operator was negligent, and the demonstrated good faith in rapidly complying after notification of violation. The penalties will not be finally assessed pending the termination of all opportunities for review under this section. This subsection also makes a miner subject to a civil penalty of up to $250 for any willful violation of any standard relating to smoking underground or the carrying of smoking materials, matches, or lighters underground.

The person must be given an opportunity to obtain a public hearing before an order assessing a penalty is issued. The commencement of any proceeding under this subsection, however, shall not stay any notice or order involving a violation.

The subsection also provides that where a person fails to pay a civil penalty, the Secretary may institute a civil action in a district court to collect the penalty. The court would hear the case de novo and determine all relevant issues, except issues of fact which were or could have been litigated before a court of appeals under section 106. This provision recognizes that the facts involved in the civil penalty may already have been fully litigated by the court of appeals under section 106 and should not be relitigated here. Also, in some cases, they could have been so litigated and were not. Upon the request of the respondent in the de novo proceeding, issues of fact not litigated under section 106 which are in dispute must be submitted to a jury and, on the basis of the jury's finding, the court would determine the amount of the penalty to be imposed. The court has jurisdiction to enter a judgment enforcing the order, or modifying it, or setting it aside, or remanding it to the Secretary.

Subsection (b) provides criminal penalties against an operator who willfully violates a standard or knowingly fails or refuses to comply with or violates an order or an order incorporated in a final decision issued under this act except decisions under subsection (a) of this section or section 110(b)(2) of this title. Upon conviction, the operator is subject to a $25,000 fine and 1 year imprisonment for a first violation, and a $50,000 fine and 5 years imprisonment for subsequent violations.

Subsection (c) provides that when a corporate operator violates a standard or knowingly violates or fails or refuses to comply with an order or an order incorporated in a final decision this section would subject any director, officer, or agent of the corporation who knowingly authorized, ordered, or carried out such violation, failure or refusal to the above civil and criminal sanctions.

Subsection (d) provides that any person who knowingly makes a false statement or representation in any document filed or maintained in accordance with the provisions of this act or any mandatory health or safety standard of this act or any order or decision issued under the act shall be fined not more than $10,000 or imprisoned not more than 6 months, or both.

Subsection (e) provides penalties against any person who knowingly distributes, sells, offers for sale, introduces, or delivers in commerce any equipment which is misrepresented as complying with this Act or with the Secretary's specifications or regulations.

Section 110. Entitlement of miners

Subsection (a) provides that, if a mine or a portion of a mine is closed by an order issued under section 104, the operator must pay all miners working during the shift when the order was issued who are idled by the order full compensation for the period they are idled but not for more than the balance of the shift. If the order is not terminated prior to the next working shift, all miners on that shift who are idled by the order will receive full compensation for the period they are idled but not for more than 4 hours of the shift. The section also provides a procedure for compensating miners idled due to withdrawal orders issued for unwarrantable failures to comply with a health or safety standard. In such cases, the Secretary would, after a hearing, issue an order requiring that all miners idled by such order be compensated by the operator at their pay scale for such idle time, or for seven days, whichever is less. The order is subject to judicial review. Whenever an operator violates or refuses to comply with an order issued under section 104, all miners at the affected mine who would be withdrawn or prevented from entering the mine as a result of such order shall be paid full compensation, in addition to pay received for work performed after the order was issued, for the period beginning when the order was issued and ending when the order is complied with, vacated, or terminated.

Subsection (b) prohibits discrimination against miners for having exercised their rights under this Act or for having participated, in any way, in the enforcement of the Act. The subsection provides procedures for obtaining reinstatement and back pay for miners discharged by operators and other remedies for miners discriminated against.

Section 111. Reports

All accidents in coal mines, including unintentional roof falls, except in abandoned panels or inaccessible or unsafe areas must be investigated by the Operator or his agent to determine the cause and the means of preventing a recurrence. Records will be kept and the information shall be made available to the Secretary and the appropriate State agency. These records will be open for inspection and include manhours worked and cover periods determined by the Secretary.

Every operator is required to establish and maintain such records and to make such reports and to provide such information as the Secretary may reasonably require to permit him to perform his functions under the Act. The Secretary is authorized to compile, analyze, publish reports or information so obtained. It is also provided that all records required under the Act will be available for public inspection, except as otherwise provided. This provision is not intended to abrogate any medical privilege which may exist regarding X-ray or other medical examinations under this Act.

TITLE II—INTERIM MANDATORY HEALTH STANDARDS

Section 201. Coverage

This section provides that the requirements in the remainder of the title will be interim mandatory health standards applicable to underground coal mines until they are superseded in whole or in part by improved mandatory health standards promulgated by the Secretary. They will be enforced in the same manner and to the same extent as any mandatory health standard promulgated under the provisions of section 101. 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.

This section also establishes that the objective of the health standards, both the statutory standards and those promulgated by the Secretary, is to prevent other occupationally caused disease and to make the atmosphere of the active workings of underground coal mines sufficiently free from respirable dust so that each miner can work an entire life without incurring any diability from pneumoconiosis or other occupation-related disease. The provisions of this section are permanent.

Section 202. Dust standard and respiratory equipment

Subsection (a) of this section requires each operator to take samples of the amount of respirable dust in the mine atmosphere to which miners in the active workings of the mine are exposed. These samples are to be taken by a device approved by the Secretary and the Secretary of Health, Education, and Welfare and in accordance with such methods, at such places, and at such intervals, and in such manner as the Secretaries shall prescribe. The samples will be taken by the operator and transmitted to the Secretary at the operator's expense and analyzed and recorded by the Secretary 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 the samples will also be made available to the operator. The operator must certify to the Secretary from time to time as to the condition of the mine atmosphere in its active workings. Such certification must include a statement of the average number of working hours—that is, production hours—actually worked during each shift, the quantity and velocity of air reaching each working face, and other matters.

Subsection (b) establishes that 6 months after enactment each coal mine operator must continuously maintain the average concentration of respirable dust in the atmosphere for each miner in all the active workings of the mine during each shift at or below 3.0 milligrams per cubic meter of air. If a noncompliance permit is obtained under section 202 for any mine, this level may be set by the Panel at the lowest level possible after considering the mine conditions and technology, between 3.0 and 4.5 milligrams for any active working place in that time.

Three years after enactment, this section establishes for all mines the level of respirable dust concentrations in the atmosphere for each miner in all active workings of the mine during each shift at or below 2.0 milligrams, but where a noncompliance permit is granted for any mine, the level for any active working place in that mine may be set by the Panel at the lowest level possible after considering the mine conditions and technology, between 2.0 and 3.0 milligrams.

In all cases, the dust standard is keyed to each individual miner. The air he breathes, wherever he works in the mine, must not contain more respirable dust during any working shift than the standard permits. No permit or renewal thereof can extend the effective date of the 3.0 milligram standard beyond 18 months after enactment, or the 2.0 milligram standard beyond 72 months after enactment.

Subsection (c) specifies the information needed in each application for an initial or renewal permit, including a representation in such application by the operator and a certified engineer that the extension is needed because the technology is not yet available to reduce the dust concentrations at those working places for which an extension is requested, or because of a lack of other effective control techniques or methods, or because of a combination of these reasons.

Subsection (d) provides that 6 months after the operative date of the title and from time to time thereafter the Secretary of Health, Education, and Welfare shall publish a schedule reducing the limit of dust concentrations below that prescribed by the preceding paragraph as he determines such reductions become technologically feasible in order to prevent new incidences of respiratory disease and the further development of such disease in any person. The schedule which may accelerate the effective dates of the dust standards prescribed in this section must prescribe the maximum time necessary to achieve the new levels taking into consideration present and future advancements in technology.

Subsection (e) provides that references to concentrations of respirable dust means the average concentration of respirable dust if measured with the MRE instrument or an equivalent concentration if measured with another device. Both the MRE and other devices must be approved by both Secretaries.

Under subsection (f) the term "average concentration" means, for a maximum period of 18 months after enactment measurements of a minimum number of the same production shifts in consecutive order are permitted to obtain a statistically valid sample. At the end of this 18 month period it requires that measurements be taken over one production shift only, unless the Secretary and Secretary of Health, Education, and Welfare find, in accordance with section 101, that single shift measurements will not accurately represent the atmospheric conditions during the measured shift to which the miner is continuously exposed.

Subsection (g) requires that the Secretary conduct spot inspections to insure compliance with the dust standards at all underground mines.

Subsection (h) provides that respiratory equipment must be made available to persons who are exposed to concentrations of dust in excess of the concentration permitted under this section. The use of respirators may not be substituted for environmental control measures. And adequate supply of respiratory equipment shall be maintained at each underground mine.

Section 203. Medical examinations

Subsection (a) of this section requires operators to cooperate with the Secretary of

Health, Education, and Welfare in making available to miners an opportunity to have a chest roentgenogram within 18 months after enactment, then again within 3 years thereafter, and once every 5 years thereafter. Each worker who begins work in a coal mine for the first time shall be given as soon as possible thereafter and again 3 years later, if he is still engaged in coal mining, a chest roentgenogram. If the second such roentgenogram shows evidence of the development of pneumoconiosis he will be given, 2 years later if he is still engaged in coal mining, an additional chest roentgenogram. These roentgenograms will 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 he thinks necessary. The films will be read and classified as prescribed by the Secretary of Health, Education, and Welfare and the results of such readings and of such tests will be submitted to the Secretary, the Secretary of Health, Education, and Welfare, and at the request of the miner, to his physician.

Subsection (b) provides that if, in the course of the period during which the statutory 3.0 standard is in effect, a miner, in the judgment of the Secretary of Health, Education, and Welfare shows evidence of the development of pneumoconiosis, he shall be afforded the option of transferring to another position in any area of the mine where the dust level does not exceed 2.0 mg/m³. The same provision applies during the period in which the statutory 2.0 standard is in effect except that the respirable dust in the place to which the miner transfers must be at a level below 1.0 mg/m³ or, if such 1.0 level is not attainable, to the lowest attainable level below 2.0 mg/m³.

The Secretary of Health, Education, and Welfare, in determining whether there is evidence of the development of pneumoconiosis, is not restricted to the results of chest roentgenograms. He may and should use such other examinations as he determines will permit a diagnosis of the disease.

In order to insure that miners who are afflicted with pneumoconiosis suffer no loss in compensation, the subsection provides that each miner who transfers to another job pursuant to this subsection shall receive his old or new rate of pay, whichever is greater.

Subsection (c) prohibits requiring the miner to pay for the X-ray or other medical examination and authorizes the Secretary of Health, Education, and Welfare to perform such X-ray and other examinations on a basis of reimbursement by the operator.

Subsection (d) authorizes the Secretary of Health, Education, and Welfare to provide for autopsies.

Section 204. Dust from drilling rock

This section provides that dust from drilling rock must be controlled by the use of permissible dust collectors or by water or water with a wetting agent, or by other approved methods or devices. Approved respiratory equipment must be provided persons exposed for short periods to inhalation hazards from gas, dust, fumes, or mist. When exposure is for a prolonged period, other methods to protect such persons or to reduce the hazard shall be taken.

Section 205. Dust standard when quartz is present

This section provides that where the respirable dust in the mine atmosphere contains more than 5 per centum quartz, the Secretary of Health, Education, and Welfare must prescribe an appropriate formula for determining the applicable dust standard for such working place and the Secretary shall apply such formula in carrying out his duties under this title.

Section 206. Noise standard

This section prescribes an interim noise standard and requires the Secretary of Health, Education, and Welfare to establish improved standards. In meeting the noise standard, the operator must not require the use of any protective device or system, including personal devices, which the Secretary finds are hazardous or which will cause a hazard to the miners.

TITLE III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

Section 301. Coverage

Subsection (a) provides that the remaining sections of this title shall constitute interim mandatory safety standards. They will be applicable to all underground coal mines until superseded by improved mandatory safety standards promulgated under section 101, and will be enforced in the same manner and to the same extent as such mandatory standards. Orders enforcing these standards will be subject to review as provided in title I. The provisions of this section are permanent.

Subsection (b) declares that the purpose of these interm standards is to apply now, without undergoing the lengthy administrative process for promulgation of standards, mandatory safety standards. These statutory standards were developed after careful consideration of the many factors that have caused death and injury in the past and are designed to better prevent the causes of these accidents.

In addition, this section directs the Secretary to take the lead in undertaking immediately and on an accelerated basis studies, investigations, and research to further improve upon these standards to develop new standards to provide increased protection to the miners. Particular attention is called to the need for new and improved standards to protect the miner from dangers from trolley and power feeder wires, splicing, the use of trailing cables, vulcanizing electric conductors, roof control, methane, and other matters. The Secretary is authorized to enter into contracts and make grants for this purpose. The section, however, does not preclude the promulgation of improved standards under section 101 where warranted until the completion of such studies, investigation and research. Further, there should be no further need for an advisory code certainly after the first year after enactment because it is expected that the Secretary will prescribe, within that time, as standards any matter not covered by this title that were in the code and which are found to be necessary in providing adequate safety. In short, the fact that this Act prescribes many new standards should not be viewed by the Secretary or the operators or the miners as the level of safety for the next several years. There should be no moratorium on new standards. If they are needed on the operative date, publish them.

Subsection (c) gives the Secretary authority, upon petition, to waive or modify a mandatory safety standard or exception thereto in the case of any mine where its application will diminish the safety of miners, or where there exists an alternative method of achieving the result of such standard without reducing the measure of protection afforded miners but his action under this authority must be consistent with the purposes of the act and not reduce the protection afforded miners.

After an investigation, and notice and opportunity for hearing to persons affected, the Secretary shall make findings of fact with respect to the matter and publish them in the Federal Register.

Subsection (d) provides that where the interim standards provide that certain implementation actions, conditions, or requirements must be conducted as prescribed by the Secretary, the rulemaking provisions of 5 USC 553 will apply unless the Secretary otherwise provides and not the procedures set forth in this title for promulgation of standards. Such implementation actions, conditions, or requirements, as well as any actions taken or instructions issued by an inspector, will be enforced in the same manner as the standards themselves. Also, this subsection provides that, in granting any exception to a mandatory safety standard established or promulgated under this Act the Secretary or his inspector will publish his reasons therefor and make them available to the miners at the mine. If the miners believe that the exception will diminish safety, their recourse is to utilize the provisions of section 301(c).

Section 302. Roof support

This section requires that each mine operator make a meaningful and continuing effort to improve the system of roof control in the mine and the means and measures for installing supports and maintaining a safe roof.

Subsection (a) requires that all active underground roadways, travelways, and working places be supported adequately and that a roof control plan suitable to the roof conditions and mining system be adopted for each mine by the operator and submitted to the Secretary for approval. Such plan shall be periodically reviewed by the Secretary. Temporary supports shall be used when persons are required to go beyond the last permanent supports, unless temporary supports are not required in the plan and the absence of such support will not pose a hazard to the miners. The criteria that the Secretary establishes for approving such plans should be exacting and be aimed at improving the roof control system of each mine. It is incumbent on the operator to show in each case, based on past history of roof falls and inspections, how really effective his plan is. The plan and revisions must be made available to the miners, both before and after approval.

Subsection (b) requires that the method of mining used shall not expose miners to unusual danger from roof falls caused by excessive width of rooms or entries or faulty pillar recovery mcthods.

Subsection (c) requires that the operator, in accordance with the approved plan, provide for the securing of each working place against roof fall hazards by requiring an ample supply of materials near the working face and at other locations, using safety posts, jacks, or other approved devices taking down loose material and replacing dislodged supports. All supports knocked out must be replaced promptly, except in recovery work.

Subsection (d) requires that when an operator is permitted to install roof bolts in accordance with a plan, they must be tested in accordance with that plan.

Subsection (e) bars operators from recovery of roof bolts under certain hazardous conditions. Where such recovery is permitted under the approved plan, it must be carried out only in accordance with the plan and by experienced miners using temporary support.

Subsection (f) requires that where roof, face, and ribs falls are possible, it is the mine operator's responsibility to insure that tests and examinations of roof conditions are made before work or machinery is started and frequently thereafter. Where hazardous conditions are found, the operator must take corrective action immediately. If such conditions create an imminent danger, persons in the affected area, as previously noted, must be withdrawn.

Section 303. Ventilation

Subsection (a) requires mechanical ventilation of all mines and a daily examination of the ventilation equipment.

Subsection (b) requires sufficient air currents in all active underground workings of a mine to dilute, render harmless, and to carry away flammable and harmful gases and smoke and fumes. The minimum percentage of oxygen and maximum percentage of carbon dioxide is specified. It makes no distinction relative to the minimum quantity of air between bituminous coal, lignite, and anthracite mines. It requires the Secretary to prescribe the minimum quantity and velocity reaching each working face within 6 months after enactment. The inspector can require that the operator provide a greater quantity and velocity of air where he deems necessary to protect the miner's safety. The Secretary must also prescribe, within one year after the operative date of the title, maximum permissible respirable dust level in the intake aircourses with the objective of reducing this dust to the lowest attainable level as quickly as possible after such levels are prescribed. In robbing areas of anthracite mines, if the air current cannot be controlled and measurements cannot be taken, the air must have perceptible movement.

Subsection (c) requires that the operator use properly installed and maintained devices to assure positive airflow to the working face of every working section, unless an exception, which will not pose a hazard to the miners, is made, in accordance with section 301(d) of this title, by the Secretary or his representative. It further requires sufficient space between the rib and the devices, and that the brattice cloth used be of flame resistant material.

Subsection (d) sets forth requirements that the operator must follow for preshift examinations. The provisions are similar to the 1952 act provisions, except that they apply to all underground coal mines before all shifts, not just production shifts, and except for several additional requirements including (1) an anemometer or other acceptable device capable of measuring the velocity of an air current is required, (2) an examination of belt conveyors on which men are carried before each shift, (3) an examination of coal carrying belt conveyors after each shift begins, (4) a preshift examination 3 hours prior to a shift instead of 4 hours, and (5) an examination of such other hazards and violations of standards, as an inspector may require. No miner may enter the underground portion of a mine until the preshift examination is completed, the examiner's report is transmitted to the surface and actually recorded, and until hazardous conditions or standards violations are corrected.

Subsection (e) requires that the operator provide at least one examination during a shift for hazards in each working section. If any hazardous conditions are found, they must be corrected immediately. If they create an imminent danger, persons must be withdrawn or prevented from entering until the conditions are corrected.

Subsection (f) requires that the operator provide weekly examinations for hazardous conditions in specified areas, except during any week that the mine is idle. It also requires that where a mine is idle for a week, miners cannot return until the examination is made; that hazardous conditions be corrected immediately; and that, if they create an imminent danger, the miners must be withdrawn by the operators or the inspectors.

Subsection (g) requires that the operator provide that a qualified person measure and record air volume at certain specified areas at a minimum of once a week. A record of such measurements must be kept.

Subsection (h) requires the operator, at the beginning of each shift, to have tests made by a qualified person, at the face before electrically operated equipment is energized. If the methane reaches 1.0 percent, the equipment must not be operated and action must be taken to reduce the methane content below the 1.0-percent level. Also, examinations for methane must be made during the shift at a minimum of 20 minute intervals unless an inspector requires more frequent testing. Tests will be made as close as safely possible to the roof, face, or rib. The subsection also provides that where methane is found in the air of any working place at 1.0 percent or more, ventilation adjustments by the operator must be made at once. While such improvements are underway, power must be shut off and no other work permitted.

Subsection (i) requires immediate adjustments in ventilation if a split of air returning from active underground working sections contains 1.0 percent of methane or more after tests. The tests must be made at 4-hour intervals.

It also requires that men be withdrawn by the operator or inspector, if he is present, and power shut off from a portion of a mine endangered by a split of air returning from active underground workings containing 1.5 percent of methane.

In virgin coal, withdrawal of persons is not necessary when the quantity of air in a split ventilating the workings is at least twice the minimum volume of air required in section 303(b) or required by an inspector under that section, and when the methane is tested continuously by a certified person, and when the air in the split does not pass over trolley wires or trolley feeder wires, unless the methane accumulation reaches 2.0 volume per centum or more. The term "virgin territory" means that area of a mine that is being penetrated for the first time is not surrounded on all sides by previous mining, and is of such extent that there has not been sufficient mining to reduce the amount of methane liberated during the extraction process.

Subsection (j) prohibits the operator from using air passing an opening of an abandoned area to ventilate an active working place, if it contains 0.25 or more percent of methane. Examination of such air must be made during the preshift examination.

Subsection (k) requires that the operator not use air passing through an abandoned panel or area which is inaccessible or unsafe for inspection to ventilate any working place in a mine. Also, no air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place, except that such air 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, if the air does not contain 0.25 percent of methane or more.

Subsection (l) directs the Secretary to require a methane monitor (approved as reliable by the Secretary after the operative date of this title) to be installed when available and kept operative on all electric face cutting equipment, continuous miners, longwall face equipment, and loading machines in all mines, except that such monitor shall not be required on any such equipment prior to the date such equipment must be permissible at various types of coal mines under section 305(a) of this act. These methane monitors must be set to deenergize automatically any electric face equipment on which installed when the monitor is not operating properly. The sensing device on these monitors shall be installed as close as possible to the working face. Such methane monitors must be set to give a warning automatically when the concentration of methane reaches 1.0 volume per centum and automatically, to denergize equipment on which it is installed when the concentration reaches 2.0 volume per centum or a lower figure set by the inspector.

Subsection (m) requires that the operator cause an inspection of idle and abandoned areas for methane, oxygen deficiency, and other dangerous conditions by a certified person as soon as possible, but not more than 3 hours before other persons may enter or work in such areas, but would permit persons, such as pumpmen, who are required regularly to enter such areas to make such examinations for themselves if they are trained and qualified in the use of instruments to detect methane and oxygen deficiency.

Subsection (n) requires that, immediately before an intentional roof fall is made, the operator cause pillar workings to be examined by a qualified person to ascertain whether methane is present. It would prohibit such falls if 1.0 percent or more of methane is present.

Subsection (o) requires a ventilation and methane and dust control plan, approved by the Secretary, to be adopted by the operator within ninety days after the operative date of this title.

Subsection (p) requires proper maintenance and care for permissible flame safety lamps.

Subsection (q) provides that, where areas are being pillared on the operative date of this title without bleeder entries or systems or some equivalent means approved by the inspector, the operator may complete pillar recovery in such areas to the extent approved by the inspector if the edges of pillar lines adjacent to active workings are ventilated so as to keep the methane content along the pillar line below 1.0 percent.

Subsection (r) requires that the operator ventilate each mechanized mining section with a separate split of air on the operative date of this title, except the Secretary may extend the time, on a mine-by-mine basis, not to exceed 9 months, if he determines that compliance is not possible on the operative date of this title.

The term "mechanized mining section" means an area of a mine (1) in which coal is loaded with one set of production equipment, and (2) which is comprised of a number of working places that are contiguous.

Subsection (s) requires that an operator cause examinations for methane by qualified persons before each shot or group of shots is fired. If methane is found in amounts of 1.0 percent or more, changes or adjustments shall be made at once. No shots may be fired if the methane is 1.0 percent or more.

Subsection (t) prescribes procedures that must be followed by the operator in the event any ventilating fan stops and would require that the operator adopt a plan to implement the procedures and provide for an orderly withdrawal of men from the working sections and for the systematic cutoff of power to the mine.

Subsection (u) requires that changes in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons shall be made by the operator only when the mine is idle and the power has been removed from the affected areas.

Subsection (v) requires that the mine superintendent or his assistant and the mine foreman shall read and countersign the daily reports of the preshift examiners and assistant foremen, and also the weekly reports covering examinations for hazardous conditions. It also requires them to correct hazardous conditions immediately and to withdraw the miners if the conditions create an imminent danger.

Subsection (w) requires the mine foreman and his assistants to make each day a record of the condition of the mine or portion thereof under his supervision which shall in-

clude the nature and location of such conditions and what action was taken to remedy them.

Subsection (x) requires that an operator notify the Secretary before he reopens an abandoned or inactive mine and that an inspection be made by an inspector before mining operations are started.

Subsection (y) requires that in all mines entries used as intake and return airways should be separated from belt entries. The air in belt entries should have only the minimum velocity needed to supply oxygen in adequate concentrations to be safe for men and to keep such entries free from methane in concentrations of 1.0 percent or more. If an authorized representative of the Secretary finds, in presently operated mines, that entries other than the belt entries are in condition to be used as intake and return airways the air velocities in the belt haulage entries should be limited to that needed to avoid oxygen deficiency and keep methane below 1.0 percent. The subsection requires, in the care of new mines and new mining sections, the Secretary to prescribe the standards for separation of intake and return airways from trolley haulage systems.

Paragraph (1) of subsection (z) requires that areas which are actively being pillared must be ventilated in the manner otherwise prescribed under section 303. The determination of whether an area falls under this paragraph is one for the Secretary or the inspector to make. The conference objective is to provide the greatest safety possible to persons in the area that is actively being pillared through the dilution and removal of the methane and other explosive gases that build up in dangerous quantities not only where miners are working to extract the pillars in that area but also where the pillars in that area have been extracted by such miners and where bleeders are used in that area. It is up to the operator and the Secretary or his inspectors to insure that this objective is achieved.

Paragraph (2) of subsection (z) provides that, within 12 months after enactment, all areas from which pillars have been wholly or partially extracted, and abandoned areas, shall be ventilated by bleeder entries or by bleeder systems or by equivalent means or be sealed. The conference agreement did not adopt the definition in the House amendment of "abandoned" because it was too broad and unworkable, but rather leaves it up to the Secretary or his inspector to determine on a case-by-case basis whether an area is, in fact, actively being mined or not in applying the provisions of this paragraph. The determination of which method is appropriate and the safest at any mine is up to the Secretary or his inspector to make, after taking into consideration the conditions of the mine, particularly its history of methane and other explosive gases. The objective is that he require the means that will provide the greatest degree of safety in each case. When ventilation is required, the Secretary or his inspector must be satisfied that the ventilation in such areas will be maintained so as continuously to dilute, render harmless, and carry away methane and other explosive gases within such areas and to protect the active workings of the mine from hazards of such methane and other explosive gases. In other words, he must be assured that such ventilation will be adequate to insure that no explosive concentrations of methane or other gases will be in this area. As an additional safeguard when ventilation is required, the conference agreement provides that air coursed through underground areas from which pillars are wholly or partially extracted which enters another split of air shall not contain more than 2.0 volume per centum of methane, when tested at the point it enters such other split. The managers intend that this latter provision not be construed as permitting accumulations of methane near or in the explosive range in the pillared or abandoned areas on the basis that the methane in the return does not exceed such percentage, and also expect that the Secretary will establish a lower percentage as soon as technology permits. When sealing is required, such sealing shall be made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active workings of the mine.

Paragraph (3) of subsection (z) provides that, in the case of mines opened on or after the operative date of this title, or in the case of areas developed on or after such date in mines opened prior to such date, the mining system shall be designed, in accordance with a plan and revisions thereof approved by the Secretary and adopted by the operator, so that, as each set of cross entries, room entries, or panel entries of the mine are abandoned, they can be isolated from the active workings of the mine with explosion-proof bulkheads approved by the Secretary or his inspector.

It is expected that the Secretary take the lead in improving technology in this area of controlling methane accumulations in job areas and to improve upon this important provision.

Section 304. Combustible materials and rock dusting

Subsection (a) requires that the operator not allow coal dust, loose coal, float coal dust or other combustible materials to accumulate underground.

Subsection (b) requires that where excessive amounts of dust are created and are raised during mining, steps shall be taken by the operator to reduce the dust. It also would require that, in working places, particularly within 40 feet of the face, that water or other no less effective means shall be used to reduce the dispersibility of the dust and reduce the explosion hazard.

Subsection (c) requires an operator to rock dust all areas of a mine to within 40 feet of the face unless the area cannot be reached or the rock dusting cannot be done in a safe manner. Exceptions to this rule may be granted by the inspector where he determines that the mine dust is too wet or too high in incombustible content to propagate an explosion and that granting the exception will not pose a hazard to miners. All crosscuts less than 40 feet from face workings must be rock dusted.

Subsection (d) requires that, when rock dust is applied, it must be distributed on the top, floor, and sides and in such amounts that there is 65 percent inert material in the coal-dust mixture. In return air courses where float coal dust accumulates, the percentage of inerts must be 80 percent. Where methane is in the air, the percent of incombustible content of such dusts must be increased 1.0 percent for each 0.1 percent of methane, where 65 percent of incombustible is required, and 0.4 percent for each 0.1 percent methane when 80 percent incombustible is required.

Subsection (e) provides that the above subsections shall not apply to anthracite mines. Anthracite dust that has a volatile ratio of 0.12 or less will not propagate an explosion when dispersed in air.

Section 305. Electrical equipment—general

Subsection (a) is designed to insure that all electric equipment used inby the last open crosscut of a mine is permissible. It eliminates the distinction between gassy mines and the so-called nongassy mines. It requires that all electric face equipment at gassy mines and all such small equipment at all mines be permissible within 15 months after enactment. It also requires that, in the case of mines not previously classified as gassy below the watertable, such large equipment must be permissible in 15 months, but the Panel may grant extensions of time of not to exceed in the aggregate an additional 33 months if the Panel determines, based on a new application and after an opportunity for a public hearing, that the operator, despite his diligent efforts, is unable to comply with the permissibility requirement because of unavailability of permissible equipment, and, in the case of such mines entirely above the watertable, one or more mine openings of which were made and connected with other openings prior to enactment, such large equipment must be permissible within 51 months after enactment but the Panel can grant extensions after an opportunity for a public hearing, of not to exceed 2 years on a mine-by-mine basis because of unavailability of such equipment.

In any case where a mine, not classified as gassy as provided in this section, is later found to be gassy under State law and such State law requires that all electric face equipment be permissible, such State law would control and all such equipment be permissible and be maintained in permissible condition and, of course, no permit could be issued by the Panel for that mine.

Subsection (b) requires that a copy of any permit granted by the Panel must be provided to the miners and State safety officials.

Subsection (c) requires that electric face equipment which was required to be permissible prior to the operative date of this title be maintained in a permissible condition.

Subsection (d) requires that all connections to power sources, except permissible power connection units outby the last open crosscut, must be made in intake air because of the ever-present danger of sudden methane buildup in the air current which could be ignited by arcing from the power connections.

Subsection (e) provides that the operator's mine may show all major electrical features of the mine and that all changes be shown promptly on the map. The map shall be available to the inspectors and the miners

Subsection (f) requires that all power circuits and electrical equipment, except trolley wires be deenergized before work is done, except for troubleshooting and testing. Repairs on energized trolley wires must be made by persons trained to perform electrical work on such wires and to maintain them. Work on deenergized circuits must be done by a qualified person or by a person, under such qualified person's direct supervisor, who is trained to perform electrical work and to maintain electrical equipment.

Subsection (g) requires periodic inspections of all electric equipment by a qualified person to prevent hazards from developing through neglect and that all defects be repaired by the operator before the equipment is used again. A record is to be made of such examinations and it shall be available to the Secretary.

Subsection (h) requires that all wiring and control equipment be large enough for the electric current which will be carried by them without creating excessive heat which would damage the insulator.

Subsection (i) requires all splices and electrical connections in wiring made to join two ends of conductors together use connectors or clamps so as to be able to carry the necessary current without overheating and that the splices be as well insulated as the original unspliced conductors.

Subsection (j) requires that cables entering metal frames of electric equipment pass through proper fittings that will not allow the cable to be damaged by movement of the cable as the equipment is used. Insulated wires must pass through insulated

bushings which will provide additional insulation at the point that the wire enters the metal compartment.

Subsection (k) requires that all ungrounded power conductors (except trailing cables on mobile equipment, specially constructed high-voltage cables, and wires used for grounding frames of equipment), be installed on proper insulators and not allowed to touch combustible material, roof, or ribs.

Subsection (l) requires that all power conductors, except trolley wires, trolley feeder wires and bare signal wires, be installed properly, insulated and protected from mechanical damage.

Subsection (m) requires that circuit breakers or fuses of correct type and size must be installed to protect all electric equipment and circuits against electrical short circuits and unexpected surges of current. 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.

Subsection (n) requires that disconnecting switches be installed in all main power circuits within 500 feet of the bottom of shafts and boreholes so that the circuit can be deenergized from inside the mine. Disconnecting switches must be installed in other main power circuits entering the underground portion of the mine within 500 feet of the point the circuits enter the mine.

Subsection (o) requires that electric equipment be provided with switches or other safe controls that are safely designed, constructed, and installed.

Subsection (p) requires protection against lightning for each ungrounded exposed power conductor entering the mine. The lightning arresters must be installed within 100 feet of the point of entry and connected to a low-resistance ground field which is separated from neutral ground by 25 feet.

Subsection (q) prohibits the use of nonpermissible lighting in underground mines.

Subsection (r) authorizes an inspector to require devices on face equipment so that the equipment could be deenergized quickly in the event of an emergency.

Section 308. Trailing cables

Subsection (a) provides that trailing cables used in an underground mine be fire resistant in accordance with requirements established by the Secretary.

Subsection (b) provides that each ungrounded conductor of all trailing cables will be protected against short circuits by an automatic circuit breaker, or other no less effective device approved by the Secretary, of adequate interrupting capacity. A means of disconnecting power from trailing cables must be provided and it must be possible to determine visually that the power is disconnected. This section would prohibit the use of fused nips for short circuit protection for trailing cables.

Subsection (c) provides that when two or more trailing cables receive power from one power distribution center provision shall be made to prevent a trailing cable being accidentally connected to the wrong size circuit breaker.

Subsection (d) limits the allowable number of temporary splices in a trailing cable to one. A trailing cable with a temporary splice may be used only for 24 hours. No splice shall be allowed in a trailing cable within 25 feet of a machine, except cable reel equipment. All temporary splices must be well made and have no exposed wires or splices that heat or spark under load. A splice means the joining by mechanical means of one or more conductors that have been severed.

Subsection (e) requires that permanent splices in trailing cables 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.

Subsection (f) requires that trailing cables be clamped to machines to prevent the trailing cables from pulling against the entrance gland and placing strain on the electrical connections, and requires that the cables be adequately protected from damage by mobile equipment.

Subsection (g) requires that trailing cable and power cable connections to junction boxes not be made or broken under load.

Section 307. Grounding

Subsection (a) requires that all equipment that is conveying electric current and which can become electrically charged due to a breakdown of insulation shall be grounded so that voltages cannot exist between equipment and ground which can injure personnel coming in contact with the equipment. Methods other than grounding may be permitted only if they provide no less effective protection.

Subsection (b) requires that the frames of all off-track machines must be maintained at earth potential (that is, no difference between machine and earth voltage) by methods approved by the inspector.

Subsection (c) requires that the frames of all stationary high-voltage equipment receiving power from ungrounded delta systems shall be grounded.

Subsection (d) requires that, before maintenance work is performed on surface or underground high-voltage systems, the power shall be removed and each ungrounded conductor of the system shall be grounded, except in special circumstances under special safeguards.

Subsection (e) requires that the electric power shall be removed from unused underground power circuits on days and shifts when the mine is not working. Circuits conducting power to transformers and rectifiers and excluded from this provision.

Section 308. Underground high voltage distribution

Subsection (a) requires that high-voltage circuits entering a mine shall be protected by suitable circuit breakers of adequate interrupting capacity. Each breaker shall be equipped with devices to provide protection against overcurrent, grounded phase, short circuit, and undervoltage.

Subsection (b) provides requirements for high-voltage circuits supplying portable, mobile or stationary high-voltage equipment.

Subsection (c) requires that the grounding resistor, where required, be of the proper ohmic value so that the voltage drop in the grounding circuit between the grounded side of the resistor and equipment frames be no more than 100 volts. The grounding resistor must be rated for the maximum fault current that can be expected, and it must be insulated from ground by a voltage equal to the phase-to-phase voltage of the system.

Subsection (d) requires that, 6 months after the operative date of this title, a fail safe ground check circuit be installed with each underground high voltage resistance grounded system to remove the power in case the grounding circuit is broken, thereby assuring an effective grounding circuit whenever the circuit is energized. Extensions up to 12 months may be permitted on a mine by mine basis.

Subsection (e) requires that underground high-voltage cables used in resistance grounded systems shall have conductors provided with metallic shields around their circumferences. Each circuit shall be provided with one or more conductors to serve as a system ground circuit. To assure adequate current carrying capacity of the ground circuit, each ground conductor shall have a cross-sectional area of at least 50 percent that of the cable power conductor. Each circuit shall also be equipped with an insulated ground check conductor No. 8 (AWG) or larger in size to serve as part of the ground continuity check circuit. Cables shall be adequate for the intended current and voltage. Splices shall be made to provide continuity of all components.

Subsection (f) requires that medium and high voltage couplers shall be of the three-phase type with either a metallic shell or covered with other materials no less effective than metal as the Secretary may require. If the outer shell is metal, it must be grounded to the grounding conductor in the cable. The ground check contacts must be broken first and the ground conductors broken last when the coupler is being uncoupled. Couplers must be adequate in size for the voltage and current of the circuit.

Subsection (g) requires that single-phase loads be connected phase to phase and prohibit connecting single-phase loads between one phase and the neutral or ground conductors.

Subsection (h) requires that high-voltage cable be installed in areas of the mine that are frequently inspected and shall be protected against all mechanical damage and guarded where men work or pass under them unless they are 6½ feet or more above the mine floor or rail. High-voltage cables must be securely anchored, properly insulated, guarded at ends and placed or insulated to prevent contact with trolley or other circuits.

Subsection (i) requires that disconnecting devices with visible contacts be installed at the beginning of all branch lines.

Subsection (j) requires that circuit breakers and disconnecting switches be plainly marked so that it can readily be determined which circuit these devices are associated with, and reduce the possibility of workmen inadvertently energizing a circuit that other workmen are repairing.

Subsection (k) prohibits temporary splices in high voltage cables used as trailing cables and requires permanent splices in such cables to be made in accordance with section 306(e). All other terminations and splices of high-voltage cable shall be made in accordance with manufacturer's specifications.

Subsection (l) provides that all metallic parts of stationary, portable or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage-system grounding circuit.

Subsection (m) prohibits the movement of energized power centers and portable transformers, except, when alternate sources of power to move such centers and transformers are not available, the Secretary may permit them to be moved while energized if an equivalent or greater hazard may result.

Section 309. Underground low- and medium-voltage alternating current circuits

Subsection (a) requires that section circuit breakers, complete with overcurrent, grounded phase, under-voltage, and short circuit protection, be installed to protect all low- and medium-power circuits.

Subsection (b) requires that underground low- and medium-voltage circuits contain either a direct or derived neutral which shall be grounded through a suitable resistor except under certain specified circumstances. The grounding resistor, where required, must be designed to limit the fault current to 25 amperes and be able to carry this current continuously.

Subsection (c) requires, within 6 mos. after the operative date of this title, a fail safe ground check circuit in low and medium voltage resistance grounded systems to remove the power from the circuit in case the grounding circuit becomes severed. Extension up to 12 months may be permitted on a mine-by-mine basis.

Subsection (d) requires that some device be provided other than the enclosed circuit breaker so that a workman can clearly see that the power is disconnected. Trailing cables on mobile equipment must contain a grounding conductor 6 months after the operative date of this title with one-half the cross-sectional area of the power connector. Extensions of time not to exceed 12 months may be permitted on a mine by mine basis. This grounding conductor must be maintained continuous in splices.

Subsection (e) requires that single-phase loads be connected between two phases of the alternating current circuit to prevent currents from flowing in the grounding circuit which would actuate the ground fault relay and open the circuit breaker.

Subsection (f) requires that circuit breakers be plainly marked to prevent a workman from inadvertently deenergizing the wrong circuit when repairs are to be made.

Subsection (g) requires that trailing cables on portable equipment operated from medium voltages contain grounding conductors, an insulated ground check conductor, and grounded metallic shields around the power conductors. On cable reel machines, metallic shields would not be required around the power conductors if the insulation were rated at least 2,000 volts.

Section 310. Trolley wires and trolley feeder wires

Subsection (a) requires that cutout switches be installed by the operator in trolley wires and trolley feeder wires at intervals of not more than 2,000 feet and near the start of all branch lines.

Subsection (b) requires that automatic current interrupting devices be installed to protect trolley wires and trolley feeder wires against damage by overcurrent.

Subsection (c) requires that transformers, trolley wires, and trolley feeder wires, and high-voltage cables be kept at least 150 feet from pillar workings and out by the last open crosscut.

Subsection (d) requires that trolley wires and trolley feeder wires be insulated and guarded adequately at doors, stoppings, at man-trip stations, at all points where men are required to work or pass regularly. Also, this section would require temporary guards where trackmen or other persons work in proximity to trolley wires and trolley feeder wires. The Secretary or the inspector may designate other places where trolley wires or trolley feeder wires shall be protected.

Section 311. Fire protection

Subsection (a) requires that suitable firefighting equipment adequate for the size, type and condition of the mine be provided as established by the Secretary. Also, the interpretations relating to such equipment in effect on the operative date of this title shall remain in effect until modified or superseded by the Secretary. This section would also require that an examination be made after every blasting operation to determine whether fires have been started.

Subsection (b) requires that storage places for lubricating oil and grease be of fireproof construction. It would also require that unless lubricating oil and grease are in specially prepackaged containers they shall be in portable fireproof closed metal containers or other no less effective containers approved by the Secretary.

Subsection (c) provides for fireproof structures or areas that house certain underground equipment. It also requires that all other underground structures be of fireproof construction. Also, air currents used to ventilate these structures or areas shall be coursed directly into the return.

Subsection (d) requires that where welding, cutting, or soldering is done underground it shall, whenever practicable, be conducted in fireproof enclosures. When this work is outside a fireproof enclosure, it shall be done under the supervision of a qualified person who shall make diligent searches for fire during and after such operations and shall immediately before and during such operations continuously test for methane. Also, such work shall not be conducted if the air current contains 1.0 or more percent of methane. Suitable firefighting equipment shall be immediately available during such welding, cutting, or soldering.

Subsection (e) requires that unattended underground equipment must be provided with fire suppression devices meeting specifications prescribed by the Secretary and suitable fire-resistant hydraulic fluids shall be used in the hydraulic systems of such equipment within 1 year after the operative date of this title. Such fluids shall be used in the hydraulic systems of other underground equipment unless fire suppression devices are installed on such equipment.

Subsection (f) requires that main and secondary belt drives be equipped with deluge-type water sprays or foam generators of sufficient capacity to control the fire and that such devices will automatically be actuated by a rise in temperature. Other no less effective means of controlling fire would also be permitted.

Subsection (g) requires that underground belt conveyors be equipped with slippage and sequence switches. It also directs the Secretary require automatic warning devices and fire suppression devices.

Subsection (h) requires conveyor belts acquired after the operative date of this title to be flame-resistant.

Section 312. Maps

Subsection (a) requires that the operator have an accurate and up-to-date map of the mine showing the active workings, worked out and abandoned areas, contour lines of elevations, elevations of main and cross or side entries, dip of the coalbed, escapeways, adjacent mine workings within 1,000, mines above or below, water pools, and oil and gas wells within 500 feet of the mine. The map shall be kept up to date by temporary notations and revised and supplemented on the basis of surveys made or certified by a registered engineer or surveyor.

Subsection (b) requires that mine maps shall be available upon request, to the Secretary, State coal mine inspectors, the miners operators of adjacent coal mines, persons owning, leasing or residing on surface areas and the Secretary of Housing and Urban Development.

Subsection (c) requires that a copy of the mine map shall be filed with the Secretary and would be available for public inspection when the mine closes permanently or temporarily.

Section 313. Blasting and explosives

Subsection (a) prohibits the storage or use of black powder underground. The use of unconfined shots underground is prohibited, except under special conditions and for special uses in anthracite mines.

Subsection (b) requires that the explosives and detonators be kept in separate containers until immediately before use. It would permit the firing of unconfined shots in anthracite mines provided certain stated precautions are followed.

Subsection (c) requires that permissible explosives, electric detonators, and permissible blasting devices be used in a permissible manner with permissible shot-firing units. Compressed-air blasting is allowed and more than 20 shots can be fired at one time only if the Secretary gives his approval. It specifies that only permissible explosives shall be used, how they shall be used, and under what circumstances more than 20 shots can be fired. It also describes where nonpermissible explosives can be used.

Subsection (d) requires that explosives and detonators when transported underground, be in specially designed containers.

Subsection (e) prescribes conditions under which explosives underground can be transported so that the possibility of accidental detonation is minimized. The explosives must be in special closed containers when transported in cars, on a belt, or in a shuttle car or they may be transported in equipment specially designed for transporting such materials.

Subsection (f) requires that explosives that are stored underground be kept in special containers designed to protect the explosives from accidental detonation. The containers must be kept in a dry rock-dusted location, except that in steeply pitching coal beds the containers may be placed in niches cut out of solid rock or coal to protect the container.

Subsection (g) requires that explosives stored in the working places be in closed containers, and no closer than 50 feet from the face or 15 feet from any pipeline, powerline, rail or conveyor, except, if kept in a niche, the container may be as close as 5 feet. Explosives and detonators must be stored so that they are at least 5 feet apart.

Section 314. Hoisting and mantrips

Subsection (a) requires that hoists, cages, platforms, elevators, or other devices used for transporting persons be equipped with certain safety devices, such as overwind, overspeed, and automatic stop controls, brakes capable of stopping a fully loaded cage or platform, adequately strong hoisting cable, and safety catches; that such hoisting equipment be examined daily; that a qualified hoisting engineer shall be on duty while persons are underground, except when automatically operated equipment is used.

Subsection (b) authorizes the inspector to require other safeguards for transporting men and materials, such as those in the present advisory code. It is expected, however, that efforts will be made to improve upon these also.

Subsection (c) requires that hoists and hoist ropes be capable of handling their loads safely. An indicator shall be provided to show the position of the cage, platform, skip, bucket, or cars.

Subsection (d) provides for communication between shaft sections and the surface hoist room.

Subsection (e) requires that each locomotive and haulage car be equipped with automatic brakes, where space does not permit, they shall be subject to speed reduction gear, or other devices approved by the Secretary.

Subsection (f) requires haulage equipment acquired on or after one year after the operative date, to be equipped with automatic couplers. All equipment now in the mines must be so equipped within 4 years after the operative date.

Section 315. Emergency shelters

This section authorizes the Secretary to require emergency shelters which are adequately equipped under guidelines to be established by the Secretary.

Section 316. Communications

This section requires that the operator install surface-to-underground telephone service or other two-way communication facilities between the surface and each working section that is more than 100 feet from a portal.

Section 317. Miscellaneous

Subsection (a) requires that the operator provide barriers and maintain them around locatable oil and gas wells penetrating coal beds or underground workings. The barrier must be at least 300 feet in diameter, but a greater or lesser barrier may be permitted. It provides authority for the Secretary to establish minimum Federal requirements.

Subsection (b) requires that exploratory boreholes shall be drilled in advance of working places under certain specified conditions.

Subsection (c) prohibits underground smoking in all mines and smoking in surface areas where smoking could cause a fire or explosion. It would require the operator to institute a program to prevent anyone from carrying smoking materials underground.

Subsection (d) requires that only permissible electric cap lamps shall be used by the individual miner for portable illumination underground. It also prohibits open flames underground except where specifically permitted by this statute for welding.

Subsection (e) directs the Secretary to prescribe standards for permissible lighting underground in the active workings of mines within 9 months after the operative date of the title. It also requires those standards to be complied with within 18 months after promulgation.

Subsection (f) requires that the operator provide at least two separate and distinct escapeways, at least one of which is ventilated with intake air, properly maintained to insure passage at any time, by any person, including a disabled person, and marked from each working section to the surface escape drift opening or escape shaft or slope facilities with adequate facilities in each escape shaft or slope to allow persons including disabled persons to escape quickly to the surface in event of emergency. This standard would further require that mine openings be protected to prevent surface fires, fumes, smoke, and floodwater from entering the underground portion of the mine. The standard would require that adequate facilities approved by the Secretary shall be provided in each escape shaft. This subsection also provides that no more than 20 men can work in a mine before a connection is made between two openings. During the final mining of pillars in a mine, not more than 20 men can work in the mine if only one mine opening is available. This subsection also requires that all new mines and new sections of existing mines separate the escapeway which is on intake air from the belt or trolley haulageway because mine fires often originate in these haulageways and within a relatively short time the air current is completely filled with smoke, and harmful matter. The Secretary is given the authority to determine the length of the entry which must be separated in accordance with section 301.

Subsection (g) requires that structures erected on the surface within 100 feet of any mine opening shall be of fireproof construction. However, where existing structures are not now of fireproof construction, fire doors shall be erected in the mine openings. The provision also requires that the door be tested and a record kept of such inspection.

Subsection (h) requires that methane and coal dust shall be prevented from accumulating in excessive concentrations in or on surface coal-handling facilities. Coal dust shall be prevented from entering the mine when coal is dumped at or near air-intake openings on the surface. It would provide for the establishment of limits for methane concentrations within 1 year of the operative date of this section, in or on surface coal-handling facilities.

Subsection (i) requires every operator of a coal mine to provide at his expense a program, approved by the Secretary, to train and retrain qualified and certified persons.

Subsection (j) authorizes an inspector to require protective cabs on face equipment where the height of coalbeds permits.

Subsection (k) requires that the openings of any mine declared inactive by the operator or is permanently closed or abandoned for more than 90 days, after the operative date of this bill, be sealed as prescribed by the Secretary. It would also require that openings to all other mines be protected to prevent entrance by unauthorized persons.

Subsection (l) authorizes the Secretary to require that adequate sanitary and bathing facilities be provided by the mine operator as well as a place to change and store clothes. Sanitary toilet facilities must be provided in active workings when surface facilities are not accessible.

Subsection (m) requires that the operator make proper advance arrangements for medical attention, including adequate communications and first aid for use in emergencies. It would require the operator to meet minimum standards set prior to the operative date of this title by the Secretary of Health, Education, and Welfare in making these arrangements, and require operators to file a plan with the Secretary in carrying out this requirement.

Subsection (n) requires that the operator make available to each miner a self-rescue device approved by the Secretary which will provide protection for a minimum of 1 hour against smoke, fumes, and noxious gases. Also, the miners must be trained and retrained in their use by the operator.

Subsection (o) directs the Secretary to prescribe improved methods of assuring that miners are not exposed to atmospheres that are deficient in oxygen.

Subsection (p) requires a check-in and check-out system to provide positive identification and records of everyone working underground. The record must be kept on the surface. Also, the miner would wear an identification check on his lamp belt. The check would include his name.

Subsection (q) authorizes the Secretary to require that devices to prevent and suppress ignitions be installed on electric face cutting equipment when technologically feasible.

Subsection (r) requires permits when mining under any body of water which would provide adequate safeguards against caveins and other hazards. The subsection is limited to new mines and new working sections of existing mines located under bodies of water considered sufficiently large by the Secretary to constitute an actual or potential hazard to miners in the mine. It also requires that no permit will be needed where the new working section is located under a reservoir being constructed by a Federal agency on the date of enactment where the operator is required by such agency to operate in a manner that protects the safety of the miners.

Subsection (s) requires that an adequate supply of potable water shall be provided for drinking purposes in the active workings of the mine.

Subsection (t) requires the Secretary to propose standards, within one year after the operative date of this title, for preventing explosions from explosive gases other than methane and for testing for accumulations of such gases.

Section 318. Definitions

The section defines the various terms used in this title and title II of the act.

Subsection (a) defines the terms "certified" and "registered" to mean persons who are certified or registered by a State in which they are working in accordance with the State standards. If a State does not have such a program or if its standards do not meet the minimum Federal requirements, then the Secretary of the Interior would provide such certification or registration until the State establishes a program whose standards meet minimum Federal requirements. The minimum Federal requirements for these positions must be established as soon as possible after enactment by the Secretary.

Subsection (b) defines "qualified person" to mean depending on the context a person deemed by the Secretary to be qualified to make tests or measurements required by the Act; or a person, qualified by training, education, and experience to be a master electrician.

Subsection (c) defines the term "permissible" to cover electric equipment, such as permissible electric lamps for portable illumination, explosives, shot firing units, blasting devices, and the manner of use of all of these. In each case to meet the test of permissibility, there must be compliance with the Secretary's specifications which are prescribed to prevent accidents.

Subsection (d) defines the term "rock dust" and establishes minimum requirements for the various types of inerts that are acceptable for use in inerting coal dust.

Subsection (e) defines "anthracite" as coal with a volatile ratio equal to 0.12 or less.

Subsection (f) defines "volatile ratio" by giving the formula for its determination.

Subsection (g) contains technical terms that are commonly used and understood in the coal mining industry and are defined as follows:

(1) "Working face" means any place in a coal mine in which the work of extracting coal from its natural deposits in the earth is performed during the mining cycle.

(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 men are normally required to work or travel.

Subsection (h) defines the term "abandoned areas" as sections, panels, and other areas that are not ventilated and examined in the manner required for active underground working places.

Subsection (i) defines the term "permissible" as applied to electric face equipment to mean electric equipment taken into or used inby the last open crosscut of the mine—that is the working place—or parts thereof which meets the Secretary's specifications relative to preventing the emission of a spark or arc which could cause a mine fire or explosion and which includes other features to prevent, where possible, accidents in the use of equipment.

The present regulations of the Bureau of Mines (schedule 2G) would continue until changed, but the Secretary must immediately develop practical methods, such as field testing, to facilitate approval, for permissibility both under the present regulations and under revised regulations—to account for the mines required to use permissible equipment by this Act. Such methods would recognize that the primary objective is to prevent mine fires and mine explosions from this equipment. But other safety features not related to the prevention of ignitions and explosions must not be ignored. Without sacrificing safety, some types of equipment, such as "home-made" equipment in some small mines, might be made permissible for this purpose.

Subsection (j) defines low, medium, and high voltage. Low voltage is up to 660 volts, medium voltage up to 1,000 volts, and high voltage means over 1,000 volts.

Subsection (k) defines "respirable dust" as dust particles of 5 microns or less in size.

Subsection (l) further defines the term "coal mine." The term "coal mine" is broadly

defined in section 3(h) of the act to cover all coal mines whether underground or not. In addition, this section would further define the term, in the case of underground mines, to include areas of adjoining mines physically connected underground. It is intended to apply primarily to section 305(a). Under that section, if two mines are so connected and one is gassy, then they both must be considered as gassy under this section. For this purpose, two mines separated by artificial barriers, one of which is gassy, must be considered as connected and therefore both are gassy.

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

Section 401

This section finds that there are a significant number of living coal miners who are totally disabled from pneumoconiosis arising out of employment in one or more underground coal mines; that there are a number of survivors of such miners whose death was due to this disease; and that few states provide benefits to such miners or survivors. It also provides that it is the purpose of this title to provide such benefits and to ensure that future adequate benefits are provided to coal miners and their dependents where disability or death occurs from such disease. It is intended that this title be construed in a manner that will assure accomplishment of this purpose and will provide benefit payments to the greatest number of eligible persons possible.

Section 402

This section defines various terms used in this title. "Pneumoconiosis" is defined to mean any chronic dust disease, whether in its advanced stages or not, of the lung, arising out of employment in one or more underground coal mines. It is anticipated that the disease will be determined by the best medical evidence possible, primarily x-rays. But pulmonary function tests, and other medical means may be used for diagnosis, as determined by the Secretary of HEW. The definition of a "miner" limits the application of this title to miners who are or were employed in underground coal mines. The parameters of the term "total disability" will be established from time-to-time by the Secretary of Health, Education, and Welfare, but he must not establish more restrictive criteria for determining disability than the criteria applicable under section 223(d) of the Social Security Act, as amended, for purposes of disability under that Act. It is expected that initially this criteria will be followed. As time goes on, the Secretary may develop more liberal criteria consistent with the purpose of this title.

Part B—Claims for Benefits Filed on or Before December 31, 1972.

Section 411

Subsection (a) directs the Secretary of Health, Education, and Welfare to pay benefits under this part to miners totally disabled due to pneumoconiosis and to widows of deceased miners whose death was due to this disease, in accordance with regulations promulgated by the Secretary.

Subsection (b) directs the Secretary to prescribe by regulation standards for determining under subsection (a) whether a miner is totally disabled due to this disease and whether his death was due to it. Such regulations must be promulgated finally in the Federal Register as soon as possible after enactment, but no later than 3 months after enactment. Such regulations shall be revised as needed.

Subsection (c) establishes certain presumptions in connection with subsection (a). If a miner who is suffering from pneumoconiosis was employed for 10 years or more in one or more underground coal mines, there will be a rebuttable presumption that the pneumoconiosis arose out of such employment. If a miner or former miner worked ten years in such mines and died of a respirable disease, there will be a rebuttable presumption that his death was due to pneumoconiosis. If a miner or former miner is suffering from, or dies from, an advanced irreversible stage of pneumonconiosis, it is irrebuttably presumed that he is totally disabled and the total disability or death was due to pneumoconiosis.

Subsection (d) makes it clear that, in the event a person does not meet the requirements for any of the above presumptions, such person may still obtain benefit payments under subsection (a).

Section 412

Under subsection (a), miners who are totally disabled due to pneumoconiosis will receive benefits at a rate equal to 50 percent of the minimum monthly payment to which a disabled Federal employee in the first step of grade GS-2 would be entitled at the time of payment. Widows of miners whose deaths are due to pneumoconiosis or whose death occurred while receiving benefits under this part receive benefits at the rate prescribed for totally disabled miners. The rates prescribed above are increased for dependents at the rate of 50 percent for one dependent (widow or child), 75 percent for two dependents, and 100 percent for three or more dependents.

Under subsection (b), the benefits for miners or their widows, will be reduced by an amount equal to payments under any workmen's compensation, unemployment compensation, or State disability insurance laws. The amount of such payment would also be reduced on account of excess earnings of a miner, but not his widow, as provided under section 203 (b) through (e) of the Social Security Act of the amount paid were a benefit payable under section 202 of such act.

Subsection (c) provides that such benefits payable shall not be deemed to be income for purposes of the Internal Revenue Code of 1954.

Section 413

Subsection (a) requires that, except as provided in Section 414, benefit claims under this part must be filed on or before December 31, 1972, to be eligible for payments. Once benefits are paid, however, on account of total disability and the miner dies, the widow will continue to receive such benefits.

Subsection (b) provides that the Secretary shall utilize, to the greatest extent possible and consistent with the purposes of this part, the personnel and procedures used to determine total disability under Section 223 of the Social Security Act, as amended. All other eligibility factors, such as, but not limited to age, required earnings shall be ignored. The purpose of this subsection is to use established machinery for the determination of total disability but in no way to be construed as imposing requirements as to quarters of earnings, age limitations, etc. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims.

Subsection (c) requires that claimants also file under the applicable State workmen's compensation law before, or simultaneous with, filings under this part. This requirement, however, shall not apply in cases where the Secretary finds that such filing would be futile because the period within which a claim under the State law may be filed has expired or because pneumoconiosis is not compensable under the State law or in any other case in which, he finds, such filing to be futile.

Section 414

Subsection (a) provides that benefit claims under this part for total disability must be filed on or before December 31, 1972, and death claims must be filed within 6 months after death of the miner, or by December 31, 1972, whichever is later. Thus, where a miner who is totally disabled due to pneumoconiosis and eligible for benefits later dies, his widow continues to receive such benefits as provided in section 412 even though death occurred after December 31, 1972.

Subsection (b) requires that if a claim is filed after December 31, 1971, but before December 31, 1972, the claimant can receive benefits through to December 31, 1972, under this part.

Subsection (c) provides that benefits under this part shall not be paid for any period of disability occurring prior to the date a claim is filed. However benefits accrue from the date the claim is filed—not the date it is approved.

Under subsection (d), no benefit payments shall be made to residents of any State which, after enactment, reduces to persons eligible under this program the benefits it pays under the laws of the State which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, and disability insurance, and which are funded in whole or in part by employer contributions. Benefit payments made under State programs funded by general revenues are not included in the maintenance of effort provision for the reason that they are not considered to be workmen's compensation, unemployment compensation, and disability insurance programs as such programs are generally understood. Any changes by a State in such payments or programs, including, but not limited to, the termination of such payments or programs in the case of persons eligible for benefits under this title, that are funded by general revenues subsequent to the date of enactment of this title shall not affect in any way payments under this title to eligible miners who are residents of such State.

Subsection (e) requires that benefits for widows under this part on account of death of a miner shall be paid if benefits under part B were being paid prior to his death to the deceased miner because of total disability due to pneumoconiosis, or if the miner died prior to January 1, 1973.

Part C—Claims for Benefits After December 31, 1972.

Section 421

Subsection (a) requires that on and after January 1, 1973, pneumoconiosis disability and death claims must be filed under the applicable State workmen's compensation law, except that, during any period when miners or their widows are found not to be covered by a State's workmen's compensation law which provides adequate coverage for this disease, they shall be entitled to claim benefits under this part.

Subsection (b) provides for the listing by the Secretary of Labor of such State laws that provide adequate coverage for pneumoconiosis. He shall publish such list by October 1, 1972, in the Federal Register and from time to time thereafter. During any period such State law is not so listed, it shall not be deemed to provide such coverage. Generally speaking, the Secretary will determine a State law to have adequate coverage for pneumoconiosis if the cash benefits under such law and the criteria for determining eligibility are not less favorable to the claimant than those applicable to claims filed before January 1, 1973, under part B; that the claim for benefits as filed within 3 years of discovery of disease, there are in effect provisions with respect to prior

and successor operators which are substantially equivalent to provisions contained in section 422(i), and there are other provisions as required by paragraph (F). The inclusion or failure to list a State's workmen's compensation law is subject to review in the U.S. court of appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia.

Section 422

Under subsection (a), during any period after December 31, 1972, when a State's workmen's compensation law is not so listed, the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, except certain specified sections thereof, shall be applicable to each operator of an underground coal mine in that State, to the extent the Secretary determines them applicable, relative to claims for death or total disability benefits due to pneumoconiosis arising out of employment in such mine. The Secretary of Labor is also authorized to publish additional provisions by regulation, together with all or part of the applicable provisions of said Act other than those specifically excluded, when he believes such publication will facilitate the administration of this part and will insure that each such operator shall be liable for, and secure the payment of, benefits to eligible persons. The objective of this provision is to provide adequate flexibility in the Secretary of Labor in carrying out this provision.

Under subsection (b), the operator of an underground coal mine is made liable for benefit payments under this part in those States in which a State workmen's compensation law is not included on the list published by the Secretary of Labor.

Subsection (c) requires that during such period benefits must be paid by the operator to those persons eligible under section 412(a) of this title in accordance with the regulations promulgated by both Secretaries. However, except as provided under subsection 422(i), no such benefits are payable by such operator unless if the death or total disability due to pneumoconiosis arose in whole or in part while the miner was employed in a coal mine of the operator. It should be noted here that the term "operator" is defined in section 3 of the Act and that definition applies to this part.

Subsection (d) provides that benefits paid by an operator under this section must be paid monthly in the same amount specified in section 412(a).

Subsection (e) limits payments to claims for benefits during any period after January 1, 1973, but, in no event, for any period after 7 years after the enactment of this Act.

Subsection (f) provides that claims for benefits under this section must be filed within 3 years after discovery of total disability due to the disease, or in the case of death due to the disease, within 3 years from the date of death.

Subsection (g) requires that the benefits must be reduced by the amount of any compensation received under any Federal or State workmen's compensation law because of death or disability due to this disease, but does not affect medical benefits and related care as provided under such law.

Subsection (h) provides that the regulations of Health, Education, and Welfare promulgated under section 411 of this title will apply to claims filed under this section. In addition, this subsection directs the Secretary of Labor to establish standards by regulation, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular mine or mines, and he may establish standards for apportioning, where appropriate, liability for benefit payments under this section among more than one operator.

Subsection (i) provides that, during any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after the operative date of this title shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection would not relieve the prior operator of any liability under this section. Also, it would not affect whatever rights the later operator might have against the prior operator. The intent of this provision is to insure that operators cannot escape liability under this section or State workmen's compensation laws to pay benefits to miners previously employed by them by the device of transferring their mines and going out of business.

Section 423

Subsection (a) requires that, during any period when a State workmen's compensation law is not listed by the Secretary of Labor as provided in this part, the operator of an underground coal mine therein must secure payment of benefits for which he is liable under this part by qualifying as a self-insurer, or providing insurance of such benefits.

Subsections b & c set forth what every policy or contract of insurance must contain to meet the requirements of subsection (a)(2), and require that they cannot be cancelled prior to the date specified in the policy or contract for its expiration without at least a minimum of 30 days notice to the Secretary of Labor and to the operator.

Section 424

Under this section, if benefits are due under section 422 and an operator liable for them has not obtained security or has not paid the benefits within a reasonable period of time, the Secretary shall pay them to the eligible person and such operator shall be liable to the United States for any payment under this title. It is specifically intended that the right of subrogation established by this section includes both active and inactive miners and to widows to whom benefits are paid under either this section or part B of this title, to the extent such miners and widows are entitled to bentfits from any operator under section 422. If benefits are due under section 422 and there is no operator who was required to secure such payment, the Secretary shall pay them to the eligible person.

Section 425

Under this section the Secretary may utilize the services of State and local agencies in connection with the administration of section 422.

Section 426

Under this section, the Secretaries of Labor and Health, Education, and Welfare are authorized to issue regulations to carry out this title. Also, both Secretaries must submit annual reports to the Congress. Finally, this section makes it clear that if a State's workmen's compensation law provides greater benefits than those payable under this title, such law shall not be construed or held to be in conflict with this title.

TITLE V—ADMINISTRATION

Section 501. Research

Subsection (a) directs the Secretary and the Secretary of Health, Education, and Welfare to conduct comprehensive studies, experiments, and demonstrations in their respective areas of expertise in the field of coal mine health and safety.

Subsection (b) provides that activities under this section in the field of coal mine health will be carried out by the Secretary of Health, Education, and Welfare while activities in the field of coal mine safety will be carried out by the Secretary of the Interior.

Subsection (c) provides that in carrying out this section and the research under sections 301(b) and 502(a) the Secretaries may use the services of public and private agencies and individuals. All information developed under the authority of this act must be made available to the general public, unless an exception or limitation is made by the Secretary of the Interior or the Secretary of HEW in the public interest.

Subsection (d) directs the Secretary of Health, Education, and Welfare to conduct research and studies on the health conditions of nonminers working with or around coal products in areas outside coal mines.

Subsection (e) authorizes separate appropriations for health and safety research to both Secretaries.

Subsection (g) authorizes grants by the Secretary of Health, Education * * * act to experiment with new techniques and equipment to improve health and safety on a finding by the Secretary that granting the exception will not adversely affect the health and safety of the miners. Subsection (g) authorizes grants by the Secretary of Health, Education, and Welfare for research and experiments on respiratory equipment.

Section 502. Training and education

This section directs the Secretary to expand programs to educate and train operators and miners relative to health and safety, and it would direct that the Secretary provide technical assistance to coal mine operators in meeting the requirements of this act.

Section 503. Assistance to States

This section directs the Secretary, in coordination with the Secretaries of Labor and Health, Education, and Welfare, to make grants to States to conduct studies and to carry out plans designed to improve State workmen's compensation and occupational disease laws as they relate to compensation for pneumoconiosis and injuries in coal mine employment, to assist the States in developing and enforcing effective health and safety laws and regulations applicable to mines in the States, and to promote Federal-State coordination and cooperation in improving health and safety conditions in the Nation's coal mines.

It provides that in order to receive the Federal assistance the State must submit an application setting forth its plans to improve State workmen's compensation laws, designating the State coal mining inspection or safety agency as the agency for administering the grant and containing assurance that it will have authority to carry out the purposes of the assistance, gives assurances that an adequate staff will be employed, sets forth the plans, policies, and methods to be followed in carrying out the grant, provide for extension and improvement of the State's program for coal mine health and safety, and prohibits advance notices of inspections, contains the usual common provisions relating to fiscal control and fund accountability and for reports to the Secretary, and meets additional conditions prescribed by the Secretary. The Secretary cannot disapprove an application without affording the State an opportunity for a hearing. If the State is aggrieved by the Secretary's decision, an appeal lies to the Court of Appeals for the District of Columbia. The section further provides that grants may be made to carry out the cost of training inspectors, and to assist States in planning and implementing other programs for the advancement of health and safety in coal mines. The Federal grant may not exceed 80 percent of the cost of the program. It authorizes the appropriation of $3

million for the fiscal year 1970 and $5 million for each succeeding fiscal year to carry out the program.

Section 504. Economic assistance

This section amends section 7(b) of the Small Business Act, as amended (15 U.S.C. 636(b)) to permit loans to assist coal mine operators who qualify under that act as small business concerns in the purchasing, rebuilding, or conversion of equipment and other facilities to comply with the standards established or promulgated under this act. Loans may also be made or guaranteed for such purposes under section 202 of the Public Works and Economic Development Act of 1965, as amended.

Section 505. Inspectors; qualifications; training

This section gives the Secretary authority to appoint qualified people as inspectors. They must, in general, have practical experience in the mining of coal or as a practical mining engineer, or a good educational background. The details of the person's qualifications would be developed by the Secretary in an effort to get the most qualified people. It would authorize the Secretary to work with educational institutions and the operators and the States in developing and financing cooperative programs to train selected persons as inspectors and to train others for possible selection as inspectors. Because of the immediate need to hire qualified persons as inspectors, the statutory and other limitations on personnel would not apply to inspectors and other persons needed to carry out the provisions of this act. The Congress is aware that this Act cannot be effective without sound and vigorous administration by well-qualified and dedicated personnel. It will require a great number of well trained personnel in the next several months to insure that the Act will be properly administered from the beginning. The history and record of health and safety in this industry requires no less than such effective administration. Coal mine health and safety enforcement and research no longer can be the stepchild to mineral production or to other programs of the Department of the Interior. They must be substantially expanded and improved.

Section 506. Effect on State laws

This section provides that only State laws less stringent than this act or those in conflict with this act shall be superseded.

Section 507. Administrative procedures

This section provides that certain procedures in title 5 of the United States Code would not apply to notices, orders or decisions issued under this act because the act prescribes the procedures to be followed.

Section 508. Regulations

This section authorizes the issuance of regulations to carry out the act.

Section 509. Operative date and repeal

This section establishes the operative date of the various titles of the act and provides for the repeal of the Federal Coal Mine Safety Act, as amended. In some cases, earlier dates in a particular title and prescribed and it is the purpose of this section that those dates be made.

Section 510. Separability

This section assures the continued effectiveness of the remainder of the act in the event any of its provisions are held invalid.

Section 511. Reports

This section provides for separate annual reports and recommendations to the Congress by the Secretary and the Secretary of Health, Education, and Welfare.

This title clearly delineates the areas of responsibility in the field of health and safety research by both Secretaries. The delineation is consistent with titles I through III of the act which also establish the roles of both Secretaries and it is the intent of the Congress that this delineation be followed. It is also intended that both Secretaries take the initiative and use the broad mandates set forth in this act to improve the health and safety of miners rapidly. The annual reports required by this section must provide detailed information of the actions taken and not taken by both Secretaries in meeting these responsibilities in order that the Congress may annually assess how effective they have been.

Section 512. Special report

This section requires a special report from the Secretary on Federal-State cooperation.

Section 513. Jurisdiction; limitation

This section prohibits the temporary enjoining of any statutory health or safety standard in any proceeding in which the standard's validity is in issue.

There follows a brief summary of a timetable of actions the Congress established by this bill which Congress intends must be met with the urging and cooperation of the miners and their representatives and the operators:

TIMETABLE OF ACTIONS BY SECRETARY OF THE INTERIOR AND SECRETARY OF HEALTH, EDUCATION, AND WELFARE

[Action and Due Date After Enactment]

1. Publish proposed health and safety standards for surface coal mines (Sec. 101(i)), Secretary of Interior, 15 months after enactment.

2. Publish proposed health and safety standards for surface areas of underground coal mines (Sec. 101(i)), Secretary of Interior, 15 months after enactment.

3. Publish all interpretations; regulations, and instructions not inconsistent with this Act (Sec. 101(j)), Secretary of Interior, immediately.

4. Appoint separate advisory committee on coal mine health and safety research (Sec. 102), both Secretaries, 3 months after enactment.

5. Prescribe methods, locations, intervals and manner of sampling respirable dust (Sec. 202(a)), both Secretary, jointly, 2 months after enactment.

6. Establish time schedule for reducing respirable dust concentrations below established levels, Secretary of Health, Education, and Welfare, beginning 12 months after enactment.

7. Prescribe specifications for taking chest roentgenograms (Sec. 203(a)), Secretary of Health, Education, and Welfare, within 6 months after enactment.

8. Establish and publish proposed mandatory health standards re: noise (Sec. 206), both Secretaries, within 6 months after enactment.

9. Prescribe manner for testing noise level at a coal mine (Sec. 206), Secretary of Health, Education, and Welfare, within 6 months after enactment.

10. Initial approval of roof-control plans (Sec. 302(a)), Secretary of Interior, 5 months after enactment.

11. Prescribe minimum air quantity and velocity reaching working face (Sec. 303(b)), Secretary of Interior, within 6 months after enactment.

12. Prescribe maximum respirable dust level for intake aircourses (Sec. 303(b)), Secretary of Interior, within 15 months after enactment.

13. Initial approval of ventilation and methane and dust control plan (Sec. 303(o)), Secretary of Interior, within 6 months after enactment.

14. Initial approval of plan of emergency action when mine fan stops (Sec. 303(t)), Secretary of Interior, within 5 months after enactment.

15. Conduct survey of availability of permissible electric face equipment and publish same (Sec. 305(a)(5)), Secretary of Interior, within 12 months after enactment.

16. Prescribes procedures and safeguards for making repairs on high-voltage lines (Sec. 307(d)), Secretary of Interior, within 3 months after enactment.

17. Establish minimum requirements fore firefighting equipment (Sec. 311(a)), Secretary of Interior, 3 months after enactment.

18. Prescribe specifications for fire suppression devices (Sec. 311(e)), Secretary of Interior, within 15 months after enactment.

19. Require that devices for warning of fires be installed on belt conveyors. Sec. 311(g)), Secretary of Interior, within 5 months after enactment.

20. Prescribe schedule for monthly fire suppression devices on belt haulageways (Sec. 311(g)), Secretary of Interior, 3 months after enactment.

21. Prescribe illumination standards (Sec. 317(e)), Secretary of Interior, within 12 months after enactment.

22. Establish methane limits in or on surface of coal handling facilities (Sec. 317(h)), Secretary of Interior, within 15 months after enactment.

23. Prescribe minimum standards for emergency medical aid, Secretary of Health, Education, and Welfare, within 3 months after enactment.

24. Prescribe improved methods re: providing adequate oxygen (Sec. 317(o)), Secretary of Interior, after operative date of Title III.

25. Establish procedures for issuing permits re: hazards from cave-ins of tunnels under water (Sec. 317(r)), Secretary of Interior, prior to operative date of title III.

26. Propose standards for preventing explosions from gases other than methane and for testing such gases (Sec. 317(t)), Secretary of Interior, within 15 months after enactment.

27. Prescribe minimum Federal standards for "certified" or "registered" persons (Sec. 318(a)), Secretary of Interior, prior to operative date of title III.

28. Establish requirements for persons qualified as electricians (Sec. 318(b)), Secretary of Interior, prior to operative date of title.

29. Establish specifications re: permissible (Sec. 318(c)), Secretary of Interior, prior to operative date of title.

30. Prescribe procedures for field testing and approval of electric face equipment (Sec. 318(i)), Secretary of Interior, prior to operative date of title.

31. Study of ways to coordinate Federal and State activities in the field of coal mine health and safety (Sec. 512), Secretary of Interior, as soon as practicable after enactment.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. GRIFFIN. Mr. President, I wanted to very briefly renew the concern I expressed earlier in connection with the amendment of the Senator from West Virginia (Mr. RANDOLPH) about the cost that will be involved in this final conference report. I wish it were as reasonable as described by the distinguished Senator from New Jersey. It is a matter of serious concern.

Mr. RANDOLPH. Mr. President, last December the Members of the Congress, in effect, said that we would pass effective, strong legislation for coal mine

health and safety. That has been the commitment of Congress. It is now being completed.

Mr. JAVITS. Mr. President, the coal mine health and safety bill reported by the conference is the product of months and months of work by the members of our Committee on Labor and Public Welfare and the House Committee on Education and Labor, and their staffs. The bill now before us represents, without question, the most comprehensive health and safety legislation ever brought before the Congress. The bill is, in a true sense, a landmark; one which represents a real turning point on our attitude toward health and safety of workers in this country and particularly the years of neglect of the workers in the most dangerous industry in America: coal mining.

Equally important, for the first time, this bill recognizes the Federal responsibility toward workers who have become the victims of occupational disease, in this case one of the deadliest of all occupational diseases, coal workers' pneumoconiosis or "black lung."

Mr. President, I would like to compliment the distinguished Senator from New Jersey, who as the chairman of the Subcommittee on Labor, has given of himself unsparingly in managing the Senate bill during a period of over 9 months. I also want to pay tribute to the Senator from West Virginia (Mr. RANDOLPH) whose spirit and knowledge of the coal industry were of such help to all of us on the Senate side.

Mr. President, for the widows of the miners who died so tragically last year at Farmington, W. Va., and for the many miners who have died in past years, including the 13 months which have elapsed since the Farmington tragedy, this bill is too late. It also comes too late to help those thousands of miners who, as a result of exposure to coal dust over a period of many years, have contracted pneumoconiosis, thus being condemned to spend their declining years enfeebled and gasping for every breath.

We cannot restore the gift of life to those who have been killed, nor is there any medical process known which would restore to normalcy lungs ravaged by years and years of exposure to respirable coal dust. We can, however, do all that is possible to reduce this awful toll of life, limb, and breath in the future; furthermore, we can ensure that those unfortunate miners who have been totally disabled by black lung receive some minimal amount of benefits which would enable them and their widows and children to live with some small amount of economic security. That, in essence, is what has been done in this report.

I know that the health and safety provisions of this bill will cost money. Operators will be required to change existing practices and install new types of equipment, sometimes at considerable cost. We have attempted to moderate that cost to the extent that we could, through appropriate extensions of time, and through help in the form of small business loans, but we have not sacrificed principle. In this bill, health and safety come first, and economics follow.

The health and safety provisions contained in the bill are, in general, a merger of the strongest provisions of both the House and the Senate bills. That is particularly true with respect to the dust standards. They are not controversial and are covered in the conference report and the statement of the House managers, as well as the section-by-section analysis which has been prepared.

I do want to discuss, in some detail, title IV of the bill relating to compensation for black lung victims and their widows, because it is the part of the bill which is the most controversial. I personally have had a great deal to do with some of its provisions. At my request the Secretary of the Interior submitted cost estimates of the benefit program under title IV of approximately $150 million to $383 million. Furthermore, yesterday the administration, through the Secretary of Labor, announced its opposition to title IV on the basis of its cost and the fact that it represented an intrusion by the Federal Government into State workmen's compensation programs.

I do not believe that this program will cost what Secretary Hickel has estimated it will.

In particular, the estimate should be adjusted to reflect an average number of dependents of one rather than 1.5, at least 2,000 or 3,000 more workers than assumed in the estimate as presently receiving workmen's compensation payments, and the amounts which will be offered or recovered under section 424. With these adjustments, the actual annual cost of this bill during the first years after enactment is estimated by my staff at $80 to $100 million and certainly no more than $120 million, per year.

Furthermore, I believe that title IV should not be condemned as an invasion of States rights, but rather praised as a step to insure that the victims of this tragic occupational disease receive some bare minimum of compensation, with the cost to be borne by the Federal Government, insofar as workers for whom no employer liability can be established under traditional workmen's compensation criteria, and by the employers insofar as their responsibility can be established under such traditional criteria.

The provisions relating to benefits for victims of black lung in the House and Senate bills differed considerably. However in adopting the compensation provisions contained in their respective bills, both the House and the Senate explicitly based their action on the incontestable fact that, with the possible exception of Pennsylvania, the workmens compensation programs of the States had utterly failed thousands of coal miners throughout the country who have become totally disabled or who have died from black lung. The Senate, by an extraordinary 91 to 0 vote, agreed to establish an interim emergency program, with the States paying half the cost in the third and fourth years, pending a study and recommendations by the Secretary of Health, Education, and Welfare of a permanent solution. That study was to include the desirability of employer financing, among other things.

It will also be recalled that the compensation program originally proposed to the Senate would have been paid for, in part, with half the proceeds of the assessment which would have been imposed on operators under the bill as reported by the committee. The assessment was deleted from the bill, but only because of the point of order raised by the Senator from Vermont.

The House, by an overwhelming vote, approved what amounted to a permanent, federally financed program. Under the House bill, benefits were payable to totally disabled miners for life and to the widows of miners who died from pneumoconiosis, with a time limit of 7 years for claims to be filed by miners and no time limit at all for widows. The House program clearly would have cost more to the Federal Government than the Federal payments part of title IV of the bill reported by the conference committee.

Now, though the administration did not actively oppose the House bill, it opposes the conference bill. Previously, the administration did not indicate that it preferred the Senate to the House version of the bill.

The Secretary of Labor urges that we should encourage the States to improve their laws. But, and this is the crux of the matter, he says that in the last analysis we must continue to rely on State laws. In essence, the administration view is that Congress must refrain from doing anything to insure that disabled workers receive even a bare minimum of benefits even though under most State laws they have no entitlement to benefits.

A few months ago, the administration sent to the Congress proposed occupational health and safety legislation, which I was privileged to sponsor in the Senate. The President's message and the testimony of the Secretary on the bill made it absolutely clear that the reason this legislation is necessary is because the States and private industry are simply not doing a good enough job. The proposed occupational health and safety bill recognizes, quite properly, that where the States are now doing a good job they ought to be permitted to continue, but where they are not, the Federal Government ought to step in. Furthermore, all the States should meet Federal minimum standards.

If the Federal Government has a proper role to play in preventing occupational diseases and injuries from occurring, does it not have an equally proper role to play in endeavoring to see that the unfortunate victims of occupational diseases and injuries receive minimum adequate compensation?

Now let me be clear on one matter: I am certainly not an advocate of federalization of workmen's compensation law, either generally or with respect to black lung in particular; and the conference report does no such thing. That would have been an indefensible waste of the administrative apparatus and ex-

pertise that presently does exist in the States. Nor do I deny for a moment that the States themselves deserve full credit for the development of the workmen's compensation concept, truly one of the pioneering social reforms of this century. But we can and we should require State workmen's compensation programs to meet bare minimum standards of decency. What is involved, in the last analysis, is the principle that industry should bear the cost of benefits for its injured and diseased workers. It is on that principle that I offered the compromise adopted by the conference which reduced the 7-year fully federally funded program of the House bill to a 3-year Federal program, followed by a program based on minimum workmen's compensation benefits payable by employers under State laws, or, if the State law did not require the payment of adequate benefits, under Federal law. That is what title IV does in the case of death or total disability due to black lung.

The proposal which is embodied in title IV of the bill is, in fact, much less of an intrusion on the general principles of workmen's compensation than was the House bill, which would have covered, under a completely Federal program, active miners as well as inactive miners who filed claims within a maximum period of 7 years and widows who filed claims at any time.

Under title IV of the conference bill there is a general cutoff date of December 31, 1971, on the filing of claims for permanent Federal benefits—with certain exceptions for widows. In the case of claims filed anytime in 1972, benefits are payable under the Federal program only until December 31, 1972. Commencing January 1, 1973, claims must be filed under State workmen's compensation laws unless the applicable State law has failed to meet certain minimum criteria for adequate coverage of pneumoconiosis. If the State law fails to meet these criteria, operators will be liable to pay benefits under Federal law. The criteria which State laws must meet include payment of benefits for total disability or death due to pneumoconiosis arising out of employment substantially equivalent to or greater than the benefits payable under the federally financed part of the program; that is, $136 per month for a miner or widow with no dependents, $204 if there is one dependent, $238 if there are two dependents, and $272 for three or more dependents.

These amounts, it should be noted, are far below the 66⅔ percent of the average miner's monthly pay, the percentage recommended by the U.S. Labor Department for workmen's compensation payments in the case of total disability.

Another criterion which the State law must meet is that the standards for determining total disability or death due to pneumoconiosis must be equivalent to those established by the Secretary of Health, Education, and Welfare under the Federal benefits program. This is particularly important since it is because black lung has simply not been recognized as an occupational disease until very recently that most workmen's compensation laws have failed to provide adequate coverage to coal miners. The standards for determining total disability will, at least initally, be those applied under the OASDI program. They generally require that a person be unable to pursue gainful employment for at least 1 year before he is considered totally disabled.

Another important criterion is a statute of limitations on the filing of claims of 3 years from the discovery and it is discovery, not occurrence, of total disability due to pneumoconiosis or death due to the disease, whichever is later. This criterion is designed to insure that, to the extent possible to do so consistently with traditional workmen's compensation criteria, after December 31, 1972, the cost of benefits for at least some of the active and inactive miners and widows elegible for benefits under the federally financed program will be borne by the operators of the mines in which such miners were employed and whose pneumoconiosis arose out of their employment in such mines.

The cost of any Federal benefits to such miners and widows will be reduced either through the operation of the offset provisions applicable with respect to workmen's compensation payments under part A or, in case the miner or widow for some reason does not file a claim for such benefits, through payments by the operator liable for the benefits to the Federal Government, as subrogee, under section 424.

State laws will also have to contain provisions governing the liability of successor operators included in section 423, which are designed to prevent any operator from escaping liability to pay compensation by the simple expedient of transferring ownership of the mine prior to January 1, 1973. Just such transfers have occurred, on a wholesale basis, to escape liability under the laws of at least one State.

Finally, State laws will have to meet other minimum criteria, based on provisions of the Longshoremen's and Harbor Worker's Compensation Act as the Secretary of Labor specifies in order to insure that adequate coverage for total disability or death due to pneumoconiosis is provided, but these may not be inconsistent with the criteria I have previously mentioned. Thus, the Secretary could not require any State to raise its level of benefits above those specified in section 412.

If a State law meets these criteria, that is the end of the matter, so long as it continues to do so. If, however, the State law does not meet these criteria, then operators of mines in such States are made liable to pay and secure benefits under Federal law itself. The benefit levels are the same as those provided under the federally financed program; the standards for determining death or total disability due to pneumoconiosis are the same as those applicable under the Federal program; provisions governing the liability of successor operators apply as described above, and the appropriate sections of the Longshoremen's and Harbor Worker's Compensation Act are made applicable. The Secretary of Labor is also given the power to prescribe additional provisions, not inconsistent with the provisions of the bill, as necessary to carry out the purpose of this part.

The result of this compromise is to substantially reduce the Federal cost of the program from the House bill through the application of traditional workmen's compensation principles.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

DEPARTMENT OF DEFENSE APPROPRIATION BILL, 1970—CONFERENCE REPORT

Mr. ELLENDER. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15090) making appropriations for the Department of Defense for the fiscal year ending June 30, 1970, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report. (For conference report, see House proceedings of December 17, 1969, pp. 39721–39723, CONGRESSIONAL RECORD).

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. ELLENDER. Mr. President, I wish to say that we had a very good conference with Members of the House. As a matter of fact, we were in session only about 3 or 4 hours and ironed out all of our differences in that length of time, which is somewhat unusual.

Mr. President, the conference committee agreed on an appropriation of $69,640,568,000. This is an amount of $8,099,632,000 under the original budget estimate, and an amount of $5,637,632,000 under the revised budget estimate. It is $317,912,000 over the amount allowed by the Senate and $319,480,000 under the amount allowed by the House.

The results represent the best compromise that the Senate conferees could achieve. I wish to make special note of the fact that the net effect of the funding action of the conferees is an almost perfect example of the give-and-take of the American democratic system. The pluses and minuses, over all, nearly balance in what was receded by each House. This was not done by design, and no running totals influenced any decision. It was purely fortuitous. But it does represent the spirit of the conference in which each member was concerned only with what was best for our country.

I shall report on the more important

items in conference and be available for any questions that might arise.

Probably the single most important action of the conference was that connected with the conversion of Polaris submarines to Poseidon submarines and the related missile system production. It will be recalled that the budget requested funds for the conversion of six submarines during fiscal year 1970. The House went along with this, but the Senate allowed only two. The Senate's position was that in the Polaris we had a highly reliable strategic missile system and that we should not proceed too hastily in converting a system we knew had to be proven until such time as the replacement system—the Poseidon—was demonstrably proved as reliable. In the conference a compromise was effected, providing for the conversion of four submarines when it became clear that the most efficient and economical manner in which to schedule the conversion program was through the conversion of four submarines in fiscal year 1970. The conferees agreed to provide no funds for the overhaul of Polaris submarines. The net effect of these actions was an increase over the Senate bill of $250.3 million. We also agreed that the funding program agreed to was in no sense a commitment of the Congress approving a specific number of conversions of Polaris submarines in fiscal years 1971 and 1972.

Speaking personally, I would have preferred to have maintained the Senate position, for I believe it to be economically hazardous to proceed with any system until all research, development, test, and evaluation problems have been ironed out.

The second largest item on which the Senate conferees receded was its reduction of $30.4 million for international military headquarters which had been allowed in the House. The Senate's position on this matter, Senators will recall, was that the Department of Defense appropriation bill was not the proper vehicle for these funds. Rather, it was thought that these appropriations should have been included in the foreign assistance appropriation. However, as we went to conference, the funds had not been included in the House version of that bill nor in the bill as reported by the Senate committee.

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

Mr. ELLENDER. I yield.

Mr. FULBRIGHT. I agree with the Senator on what he has just said, and I associate myself with his statement.

It was because funds for the support of international military headquarters had not been in the House bill that the action was taken, but the jurisdiction had always heretofore been in the Foreign Relations Committee for this item, and I hope that next year it will be again.

Mr. ELLENDER. The Senator is correct. These funds have heretofore been carried in the military assistance appropriations.

Mr. FULBRIGHT. I think the action was entirely proper.

Mr. ELLENDER. Under these circumstances the Senate receded and agreed to the inclusion of the funds in the Defense Appropriations Act for fiscal year 1970 but agreed to require the Bureau of the Budget to study this matter to determine where these functions should be provided for in future budgets. In other words, it is my hope that it will go back where it properly belongs.

The Senate conferees were successful in retaining a number of important items found in the Senate bill. One of these dealt with the availability of appropriations in future years in those appropriations previously referred to as "no-year" appropriations inasmuch as these procurement and research and development appropriations for many years have been available until expended. The conference agreement accepts the Senate version of a change in this availability. "Shipbuilding and conversion" unobligated balances that are 5 years old shall be included in the budget for rescission. All other procurement unobligated balances that are 3 years old shall be similarly included in the budget for rescission. The same applies to all research, development, test, and evaluation unobligated balances, only the period is limited to 2 years. I believe these provisions to be extremely worthwhile from the standpoint of economy since these actions will have the force of placing congressional control over all such balances.

The Senate conferees were successful in retaining the amendment made on the Senate floor prohibiting the use of funds provided in this act to finance the introduction of American ground combat troops into Laos and Thailand.

Mr. FULBRIGHT. Mr. President, will the Senator permit me to congratulate him on retaining that item?

Mr. ELLENDER. I thank the Senator very much. Of course, the fact that shortly before the conference, the President stated his approval of the amendment made the job of the Senate conferees much easier.

The conferees spent considerable time in working out the disagreement related to Navy ship repair. Final agreement approved the following language contained in the conference report:

> The conferees feel that the morale and retention rate of Navy personnel is of paramount importance and recommend that ship repair work be performed in, or as near as possible to—up to 300 miles of—the home port of the vessel when it cannot be accomplished at the home port itself.

It was the view of the Senate conferees that this was an equitable adjustment of a controversial matter.

Mr. President, I ask unanimous consent to have printed in the RECORD a tabulation summarizing congressional action on each appropriation included in the Department of Defense appropriation bill.

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

SUMMARY OF CONGRESSIONAL ACTIONS ON THE DEPARTMENT OF DEFENSE APPROPRIATION BILL, 1970 (H.R. 15090)

TITLE I—MILITARY PERSONNEL

Item	New budget (obligational) authority, fiscal year 1969	Original budget estimates of new (obligational) authority, fiscal year 1970	Revised budget estimates of new (obligational) authority, fiscal year 1970	New budget (obligational) authority recommended in the House bill	New budget (obligational) authority recommended in the Senate bill	Conference action	Conference action compared with— Revised budget estimate	House	Senate
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Military personnel, Army	[1] $8,409,969,223	$8,535,000,000	$8,551,700,000	$8,312,000,000	$8,107,000,000	$8,107,000,000	−$444,700,000	−$205,000,000	
Military personnel, Navy	[1] 4,455,200,000	4,526,000,000	4,508,500,000	4,370,000,000	4,368,400,000	4,368,400,000	−140,100,000	−1,600,000	
Military personnel, Marine Corps	[1] 1,534,734,204	1,580,000,000	1,577,000,000	1,518,000,000	1,518,000,000	1,518,000,000	−59,000,000		
Military personnel, Air Force	6,093,600,000	5,959,000,000	5,952,800,000	5,835,300,000	5,823,000,000	5,823,000,000	−129,800,000	−12,330,000	
Reserve personnel, Army	287,200,000	311,000,000	311,000,000	308,000,000	306,700,000	306,700,000	−4,300,000	−1,300,000	
Reserve personnel, Navy	129,150,000	139,700,000	140,400,000	131,400,000	127,900,000	131,400,000	−9,000,000		+3,500,000
Reserve personnel, Marine Corps	36,550,000	45,700,000	45,700,000	45,000,000	45,000,000	45,000,000	−700,000		
Reserve personnel, Air Force	71,800,000	87,700,000	88,200,000	83,400,000	81,200,000	81,200,000	−7,000,000	−2,200,000	
National Guard personnel, Army	320,900,000	363,500,000	363,500,000	356,800,000	356,800,000	356,800,000	−6,700,000		
National Guard personnel, Air Force	88,000,000	101,600,000	103,100,000	97,300,000	97,300,000	97,300,000	−5,800,000		
Total, title I—Military personnel [2]	[1] 21,427,103,427	21,649,200,000	21,641,900,000	21,057,200,000	20,831,300,000	20,834,800,000	−807,100,000	−222,400,000	+3,500,000

Footnotes at end of table.

SUMMARY OF CONGRESSIONAL ACTIONS ON THE DEPARTMENT OF DEFENSE APPROPRIATION BILL, 1970 (H.R. 15090) —Continued

TITLE II—RETIRED MILITARY PERSONNEL

Item	New budget (obligational) authority, fiscal year 1969	Original budget estimates of new (obligational) authority, fiscal year 1970	Revised budget estimates of new (obligational) authority, fiscal year 1970	New budget (obligational) authority recommended in the House bill	New budget (obligational) authority recommended in the Senate bill	Conference action	Conference action compared with— Revised budget estimate	House	Senate
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Retired pay, Defense	$2,450,000,000	$2,735,000,000	$2,735,000,000	$2,735,000,000	$2,735,000,000	$2,735,000,000			

TITLE III—OPERATION AND MAINTENANCE

Operation and maintenance, Army	$7,963,310,000	$7,596,000,000	$7,504,500,000	$7,214,447,250	$7,185,841,000	$7,214,447,250	−$290,052,750		+$28,606,250
Operation and maintenance, Army, 1966 (appropriation to liquidate contract authorization)		(142,165,000)	(142,165,000)		(1)	(1)			
Operation and maintenance, Navy	5,376,200,000	5,383,000,000	5,323,700,000	5,037,300,000	5,129,200,000	5,037,300,000	−286,400,000		−91,900,000
Operation and maintenance, Navy, 1966 (appropriation to liquidate contract authorization)		(66,000,000)	(66,000,000)		(1)	(1)			
Operation and maintenance, Marine Corps	455,190,000	457,000,000	457,000,000	420,000,000	420,000,000	420,000,000	−37,000,000		
Operation and maintenance, Marine Corps, 1966 (appropriation to liquidate contract authorization)		(2,500,000)	(2,500,000)		(1)	(1)			
Operation and maintenance, Air Force	6,866,700,000	6,716,000,000	6,711,700,000	6,454,500,000	6,445,000,000	6,445,900,000	−265,800,000	−$8,600,000	+900,000
Operation and maintenance, Defense agencies	1,068,800,000	1,098,000,000	1,095,000,000	1,074,600,000	1,069,400,000	1,069,400,000	−25,600,000	−5,200,000	
Operation and maintenance, Army National Guard	276,164,000	306,000,000	306,000,000	300,000,000	297,800,000	297,800,000	−8,200,000	−2,200,000	
Operation and maintenance, Air National Guard	277,800,000	333,334,000	342,534,000	330,534,000	330,534,000	330,534,000	−12,000,000		
National Board for the Promotion of Rifle Practice, Army				52,750		52,750	+52,750		+52,750
Claims, Defense	38,000,000	41,000,000	41,000,000	41,000,000	37,000,000	39,000,000	−2,000,000	−2,000,000	+2,000,000
Contingencies, Defense	10,000,000	10,000,000	10,000,000	5,000,000	5,000,000	5,000,000	−5,000,000		
Court of Military Appeals, Defense	654,000	666,000	666,000	666,000	666,000	666,000			
Total, title III—Operation and maintenance	22,355,818,000	21,941,000,000	21,792,100,000	20,878,100,000	20,920,441,000	20,860,100,000	−932,000,000	−18,000,000	−60,341,000

TITLE IV—PROCUREMENT

Procurement of equipment and missiles, Army	$5,671,500,000	$5,933,000,000	$5,069,100,000	$4,281,400,000	$4,254,400,000	$4,254,400,000	−$814,700,000	−$27,000,000	
Transfer from stock funds	(510,000,000)	(50,000,000)	(50,000,000)	(50,000,000)	(50,000,000)	(50,000,000)			
Procurement of aircraft and missiles, Navy	2,574,300,000	3,409,000,000	3,235,500,000	2,696,600,000	2,465,500,000	2,620,000,000	−615,500,000	−76,600,000	+$154,500,000
Transfer from stock funds	(440,000,000)	(25,000,000)	(25,000,000)	(25,000,000)	(25,000,000)	(25,000,000)			
Shipbuilding and conversion, Navy	820,700,000	2,698,300,000	2,631,400,000	2,588,200,000	2,242,770,000	2,490,300,000	−141,100,000	−97,900,000	+247,530,000
Other procurement, Navy	2,505,600,000	2,271,000,000	2,022,700,000	1,461,800,000	1,524,600,000	1,484,600,000	−538,100,000	+22,800,000	−40,000,000
Procurement, Marine Corps	669,500,000	650,600,000	650,600,000	500,848,000	500,848,000	500,848,000	−149,752,000		
Aircraft procurement, Air Force	3,860,000,000	4,081,000,000	3,775,200,000	3,434,700,000	3,380,800,000	3,405,800,000	−369,400,000	−28,900,000	+25,000,000
Transfer from stock funds	(600,000,000)	(325,000,000)	(325,000,000)	(325,000,000)	(325,000,000)	(325,000,000)			
Missile procurement, Air Force	1,720,200,000	1,794,000,000	1,486,400,000	1,431,000,000	1,448,100,000	1,448,100,000	−38,300,000	+17,100,000	
Other procurement, Air Force	2,716,000,000	2,320,000,000	1,938,300,000	1,636,000,000	1,576,200,000	1,576,200,000	−362,100,000	−59,800,000	
Procurement, Defense Agencies	81,700,000	84,000,000	77,600,000	61,600,000	61,600,000	61,600,000	−16,000,000		
Total, title IV—Procurement	20,619,500,000	23,240,900,000	20,886,800,000	18,092,148,000	17,454,818,000	17,841,848,000	−3,044,952,000	−250,300,000	+387,030,000

TITLE V—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Research, development, test, and evaluation, Army	$1,521,165,000	$1,822,500,000	$1,849,500,000	$1,575,300,000	$1,600,820,000	$1,596,820,000	$−252,680,000	+$21,520,000	−$4,000,000
Research, development, test, and evaluation, Navy	2,141,339,000	2,207,100,000	2,211,500,000	2,040,400,000	2,193,251,000	2,186,400,000	−25,100,000	+146,000,000	−6,851,000
Research, development, test, and evaluation, Air Force	3,364,724,000	3,594,300,000	3,561,200,000	3,056,900,000	3,062,026,000	3,060,600,000	−500,600,000	+3,700,000	−1,426,000
Research, development, test, and evaluation, Defense agencies	472,600,000	500,200,000	500,200,000	450,000,000	450,000,000	450,000,000	−50,200,000		
Emergency fund, Defense	50,000,000	50,000,000	100,000,000	75,000,000	750,000,000	75,000,000	−25,000,000		
Total, title V—Research, development, test, and evaluation	7,549,828,000	8,174,100,000	8,222,400,000	7,197,600,000	7,381,097,000	7,368,820,000	−853,580,000	+171,220,000	−12,277,000
Grand total	74,402,249,427	77,740,200,000	75,278,200,000	69,960,048,000	69,322,656,000	69,640,568,000	−5,637,632,000	−319,480,000	+317,912,000
Memoranda: Appropriations to liquidate contract authorizations		(210,665,000)	(210,665,000)						

[1] Includes amounts warranted by Treasury Department pursuant to Public Law 91-31.
[2] Does not include "Retired Pay, Defense." See title II.
[3] Language provision to liquidate contract authorization.

Mr. ELLENDER. I move the adoption of the conference report; and if there are any questions, I shall be glad to attempt to answer them.

Mr. FULBRIGHT. Mr. President, I ask the Senator first, what was the final money difference between the conference report and what the Senate approved?

Mr. ELLENDER. The total of $69.6 billion approved by the conferees is an increase of $317.9 million over the Senate bill.

Mr. FULBRIGHT. More than the Senate approved?

Mr. ELLENDER. That is right. In other words, without our meaning to do it, the difference was almost split between the Senate and the House.

Mr. FULBRIGHT. That often happens. I have just a few questions, but I wish to make a short preliminary statement.

Recently, I made a series of four speeches in the Senate concerning the public relations activities of the military services and the Department of Defense.

From 1952 to 1959, when budgeting categories were revised, the Congress, by law, limited the amounts that could be spent within the Department of Defense on public information and public relations. In fiscal year 1959, the last year a congressional limitation was imposed, the allowance was $2,755,000. According to data supplied to me by the Department of Defense, the three military services and the Department spent 10 times that amount for this purpose in the last fiscal year—$27,953,000.

I suggested to the Appropriations Committee that the limitation be reinstated, and that a ceiling of $10,000,000 be imposed for public affairs spending in fiscal 1970. Unfortunately, the timing of my suggestions to the committee was such that it was not possible for the committee to go into this subject in the detail it deserved before it marked up the bill. I was pleased to see, however, that the committee concurred in House cuts of $5 million in military public affairs programs. This is a step in the right direction but much more needs to be done to bring these activities under effective congressional control.

With regard to the questions, on this item of this reduction of $5 million for military public affairs programs, I believe that item was in the bills of both Houses, I believe was not in conference, but remains in the bill; is that correct?

Mr. ELLENDER. That is correct. The House made reductions totaling $5 million in the funds requested for public affairs, and the Senate concurred in those reductions.

Mr. FULBRIGHT. It was not in conference, as I understand.

Mr. ELLENDER. No. Not the $5 million.

Mr. FULBRIGHT. I have been unable to determine what the original budget request was for these programs. Does the Senator have available an estimate of the total budget request for this program, including personnel and other costs?

Mr. ELLENDER. First, let me say to the Senator from Arkansas that funds for public relation activities are not submitted as an individual budget activity, but are included in funds provided for the general housekeeping operations of the Department of Defense and the three Services. In order that the Senator's request could be considered by the full committee, the Department of Defense was requested to determine the cost of these activities and the committee was provided the total estimated cost of $34.2 million of which $15.1 million represents the cost of military personnel.

Mr. FULBRIGHT. Then that is a substantial increase over what my figures were, $27.9 million.

Mr. ELLENDER. That was the budget program for fiscal 1970.

Mr. FULBRIGHT. For the current fiscal year?

Mr. ELLENDER. Yes. However, I want to stress that $15 million of the total represents the costs of military personnel.

Mr. FULBRIGHT. And the balance is for operations and maintenance?

Mr. ELLENDER. Yes.

Mr. FULBRIGHT. I think it would be of great service, certainly to me and I believe to the Senate, if the Senator and his committee staff could induce the Department to furnish these figures in an intelligible way. What happens, I think, is that there are about nine different items, so that it is almost impossible for us to find out precisely what is involved, and since this is such an important item, I again reemphasize that I do not believe Congress ever intended that these huge agencies we create are to be given public relations funds to go out and propagandize their program to the people of this country, in the hope that it will filter back and influence Congress. It creates a kind of self-perpetuating organization, in which we are deprived, I think, of objectivity in determining these amounts.

I think it is essential that we be able to identify what these budget requests are, and how much these agencies are spending on public relations.

I also, of course, would hope that the Senator would reinstate the former practice of putting a ceiling on public relations.

Mr. ELLENDER. Mr. President, as I stated a while ago, we found that these funds are included in several different appropriations. I agree with the Senator, that it would be desirable to have these funds better identified. I have directed the staff of the committee to contact the Department of Defense and advise them of the Committee's interest. I am sure we can get this information.

Mr. FULBRIGHT. Mr. President, when the Senator says he can, I know he can, because he is the acting chairman of the only committee that can do this. I cannot. I have great difficulty in getting the information I obtain.

Mr. ELLENDER. As the Senator knows this matter came up after our subcommittee had completed its hearings. If it had been brought up while the hearings were going on, we could have gotten everything specifically.

Mr. FULBRIGHT. I agree. Mr. President, I hope the Senator understands that I am not criticizing him. I am trying to lay the basis for obtaining the information, because it pertains to a very important activity.

I think all Senators are entitled to know, and I want to know, of the activity in this area and how much is being spent. That is the only reason for these questions.

Mr. ELLENDER. Mr. President, I think the Department of Defense knows of the Senator's interest in this matter. I think that hereafter they will make these figures more available, and they will probably set them out so that everyone can see the exact amount being spent for the purpose to which the Senator refers.

Mr. FULBRIGHT. Mr. President, can I assume that the distinguished Senator from Louisiana is also concerned about the matter?

Mr. ELLENDER. I am concerned about it, and I will follow through with it.

Mr. FULBRIGHT. And the Senator will have the staff do this. I am certain from my own experience that this will be a much more efficient way than anything I could do.

Mr. ELLENDER. I can assure the Senator that when the next appropriation bill comes up, we will take a good long look at the public relation activities of the Department of Defense, and the Army, Navy, and Air Force.

Mr. FULBRIGHT. Mr. President, that was my next question on this subject.

In the consideration of the 1971 budget, which is now in preparation, the Senator will request that these items be so identified that it will be easy for us to know what they are and then be able to judge them.

I would hope that the Senator would consider seriously the reinstitution of the former practice of having ceilings on this particular activity of public relations.

Mr. ELLENDER. I assure the Senator that this matter of a limitation on the total available for public relations will be considered by the committee.

I think the Senator is perfectly right in desiring to know how much is being spent for these purposes.

Mr. FULBRIGHT. Mr. President, I thank the Senator very much. It is an important matter. The Senator is quite right. I was quite late. As a matter of fact, I did not know. I had a staff man work on the matter for some time.

It is very difficult to get this information. And as soon as it was prepared, I used it in the statements I made on the floor.

The Senator from Louisiana has certainly been most cooperative. I appreciate it very much. I am sure that with his cooperation we will get a meaningful response from the Pentagon.

Mr. McINTYRE. Mr. President, will the Senator yield for a commendation?

Mr. FULBRIGHT. I join in it.

Mr. ELLENDER. I yield.

Mr. McINTYRE. Mr. President, I say to my distinguished friend, the Senator from Louisiana and to all members of the Subcommittee of the Committee on Appropriations dealing with defense matters that this issue started for me way back in February as a member of the Armed Services Committee of the Senate.

I think as I look back to February, that the two big issues facing this Congress were whether we could reduce military expenditures and whether we could get some meaningful tax reform. I suppose

that tax reform hangs in the balance tonight. But I think a budget that is overpowering is a budget that is difficult to meet.

With the combination of the Senate and House Armed Services Committee and the two Committees on Appropriations, the cut of $8.1 billion has been sweated through and has been obtained.

I think that the Senator from Louisiana, moving in in the last minute to represent our distinguished dean of military affairs, the Senator from Georgia (Mr. RUSSELL), has done an excellent job.

I commend the Senator and his committee.

Mr. ELLENDER. Mr. President, I appreciate that very much. I say in due deference to the Defense Department that they cooperated fully with us.

I would say that a large portion of the cuts made were suggested by the Defense Department—of course, with a little prodding.

They said they could cut this out and cut that out and could do this and could do that.

In addition, we cut a few hundred million dollars additional.

Mr. McINTYRE. Mr. President, I do not want to deny any credit to the Defense Department. However, I think they were perhaps reading the handwriting on the wall.

Mr. YOUNG of North Dakota. Mr. President, the bill the House sent us was a good bill and the Senate bill was a good bill. We had some excellent staff assistance.

However, I would like to go beyond either the Johnson budget or the Nixon budget. The conference report now before us represents a cut of about $9 billion.

The services themselves asked for $109 billion. Of course, it is their responsibility to defend the United States. And this was their idea of the amount of money it would take. However, there is a vast difference between $109 billion and the amount of money Congress appropriated.

I would point out that the Joint Chiefs of Staff agreed that under all the circumstances this was a satisfactory budget. They even helped us, particularly Secretary Laird, to make these very large savings.

Mr. FULBRIGHT. Mr. President, I join in the commendation of the Senator from Louisiana and the committee.

I certainly include the staff. The staff of the committee has been most cooperative with me and with the members of my staff.

Mr. Bill Woodruff, Mr. Francis Hewitt, Mr. Guy McConnell and Mr. Edmund Hartong are all very competent people.

This is the first time, I think, in many years that the committee, working with the House committee, has turned this burgeoning budget around. And it is going in the right direction. I think it is a very healthy sign. I hope that I can be of assistance to them.

I know that the Senator from Louisiana and his colleagues have worked very hard. It is a very difficult job.

U.S. ACTIVITIES IN LAOS

Mr. President, though I do not believe it went far enough, I was pleased that the Senate, following the executive session discussion of the U.S. activities in Laos, approved an amendment prohibiting the introduction of ground combat troops into Laos or Thailand.

I am very pleased that the Senator from Louisiana has just informed us that that provision was retained in conference.

I did not initially support the language offered by the distinguished Senator from Idaho (Mr. CHURCH) because it appeared to imply Senate approval for an open-ended policy of bombing in Laos—an activity authorization which I do not believe any President has sought, nor any has Congress granted.

Since the White House—and therefore the administration—has apparently embraced the Senate amendment on ground combat troops, I now wonder what assurances can be given the American people through the Senate on the question of our bombing in Laos.

It was testified the other day, as the Senator knows, that there are very large numbers of bombing strikes mounted from Thailand going on in Laos, and particularly that bombing associated with the Laotian war rather than with the Vietnam war, or as they related it in our testimony, the Ho Chi Minh Trail.

Is there any limit on the amount of bombing we will undertake?

What are the prospects for the level of bombing in the coming months?

Why has this administration continued the secrecy surrounding disclosure about the extent of our bombing?

What are the prospects for the administration to make full disclosure to the American people as they have now done to the Senate?

In closing, I might note the attached Harris poll. Though over 50 percent of the public favored sending of advisers to meet a Communist threat in Laos, only 19 percent favored the sending of combat troops to forestall a Communist takeover.

The question was never asked about what the people thought about sending bombers—probably because either the poll takers did not know about the bombing or because they believed those polled knew nothing about bombing in Laos.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the Harris survey, entitled "U.S. Advisers for Laos Are Favored, 57 to 30."

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

U.S. ADVISERS FOR LAOS ARE FAVORED, 57 TO 30

(By Louis Harris)

The U.S. policy of sending military advisers to Laos to aid the forces there resisting a Communist take-over is supported nationally by a 57 to 30 per cent margin. However, in a showdown situation in which it appeared that only by U.S. troop intervention could Laos be kept from going Communist, only 19 per cent of the public would favor sending in American fighting men.

Laos, which borders on Vietnam, has been the scene of heightened guerrilla warfare in recent months, with an estimated 50,000 North Vietnamese troops reported to have been infiltrated there. The United States is believed to have an undercover network there of military advisers to assist the government resistance. Congressional committees have recently been holding secret hearings to determine if U.S. "adviser" activity in Laos might not be a prelude to American involvement in another Vietnam.

Fundamentally, the set of public opinion on sending military advisers to Laos is not dissimilar to what it was about South Vietnam in 1963. The public wants to see as much help as possible given to the forces resisting a Communist take-over. But, in the wake of the Vietnam experience, no more than one in five Americans is prepared to commit fighting troops. A relatively higher 37 per cent want the United States to "stay out of Laos altogether." The crucial middle ground, which holds the balance, is equally opposed to sending troops or of pulling out entirely.

Between Oct. 16 and 22, a cross-section of 1,771 people across the country was asked:

"North Vietnam has recently sent a large number of troops into Laos which is right next to South Vietnam. The United States has sent military advisers into Laos to help prevent that country from being taken over by the Communists. Do you favor or oppose the U.S. sending in military advisers to Laos?"

SENDING U.S. MILITARY ADVISERS INTO LAOS

[In percent]

	Favor	Oppose	Not Sure
Nationwide	57	30	13
Under 8th grade educated	50	28	22
High school educated	58	29	13
College educated	61	31	8

To test just how far beyond the adviser stage in assistance public opinion would go, this question was also put to the cross-section:

"If it appeared that the Communists were going to take over the government of Laos, would you favor sending in American troops to keep the Communists from taking over, continuing to send in military advisers as we are now, or staying out of Laos altogether?"

IF LAOS WERE THREATENED BY COMMUNIST TAKE-OVER

[In percent]

	Send troops	Just advisers	Stay out
Nationwide	19	31	37
By education:			
8th grade or less	22	20	36
High school	20	32	35
College	16	36	39

When asked their reasons for favoring commitment of troops, advisers, or staying out of Laos altogether, the thinking of the public was significant. Here is a summary of their volunteered reasons:

WHY STAY OUT ALTOGETHER—37 PERCENT

"We don't need another Vietnam" (15 percent).

"Leave Asia to Asians (6 percent).

"Bring home all our troops from Asia" (5 percent).

"Let them decide their future" (4 percent).

"Mind our own problems at home" (3 percent).

"We can't win a war in Asia" (3 percent).

"I'm tired of war" (1 percent).

WHY SEND IN MILITARY ADVISERS—31 PERCENT

"Only advisers, but not troops" (16 percent).

"Train Laotians to fight for themselves" (5 percent).

"Communist threat must be met" (4 percent).

"Advisers might prevent a big war" (3 percent).

"Advisers would know how far to go" (3 percent).

WHY SEND U.S. TROOPS—19 PERCENT

"Must prevent spread of Communist aggression" (9 percent).

"Send in troops to win, get it over with" (4 percent).

"Finish what we started in Asia" (3 percent).

"Stop Communists there, instead of in U.S." (3 percent).

Mr. FULBRIGHT. What the Senate did, and what the President did, very obviously was approved by a large percentage of the silent majority of the American people. But I think the bombing remains to be answered, and I hope a spokesman for the administration who announced the other day that the administration favored the amendment adopted by the Senate, would find the answers to the question of the bombing and how much they anticipate and what to expect in this request.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. MANSFIELD. Mr. President, in my 27 years in Congress, I have never seen a more remarkable performance than that of the distinguished senior Senator from Louisiana (Mr. ELLENDER). He undertook the management of this bill on less than an hour's notice. He performed with distinction and credit. He had the answers and the information available for all the questions which were asked.

I want to pay my personal tribute to this Senator, who has performed with such integrity, distinction, and knowledge on such short notice in undertaking the management of one of the most difficult bills which will come before this session of the Senate.

So, to the Senator, I just want to emphasize my thanks and my gratitude; and I know I speak for all the Senate in the words I have just uttered.

I wish to pay tribute also to the members of the staff who worked so diligently on this bill, particularly Bill Woodruff, Fran Hewitt, Guy McConnell, and Ed Hartung.

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.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. SPONG. Mr. President, I am pleased that in this supplemental appropriation bill there is an additional appropriation of $3,700,000 for emergency conservation measures for runoff retardation and soil erosion prevention in Virginia. I testified on behalf of this appropriation before the subcommittee. These funds are necessary as a result of damage done to vast acreage of land in Virginia as a result of hurricane Camille.

Severe flood damage on August 19 and 20 where as much as 31 inches of rain fell in a 6-hour period caused property damage in 12 of our counties in excess of $113 million and a loss of 150 lives.

This additional appropriation will finance conservation measures required to restore damaged stream channels and preclude further damage and loss of life in the affected area.

On behalf of the people of Virginia, I express appreciation to the Senator from West Virginia (Mr. BYRD) and members of the subcommittee for their favorable response to this request.

HELP FOR SMALL- AND MODERATE-SIZED BUSINESS

Mr. HART. Mr. President, I invite attention to a small but important item included in the supplemental appropriations bill.

The Senate Appropriations Committee recommends $5 million be appropriated for the State technical services program within the Department of Commerce.

This program has received two 3-year authorizations, in each case the authorizations increasing from $10 million in the first year, to $20 million in the second year and to $30 million in the third year.

The authorization for the program this year, its fifth, is $20 million. The administration originally requested no funds for the program.

However, the Department of Commerce, using program funds, contracted with Arthur D. Little, Inc., of Cambridge, Mass., to evaluate the program.

I ask unanimous consent that the recommendations and conclusions of that study be printed in the RECORD at the end of my remarks.

In brief, the recommendation is that the program should be retained and continued.

After receiving that report, the Department of Commerce requested $5 million in this supplemental bill for this fiscal year, the minimum amount needed to keep the program operating.

Unfortunately, the House Appropriations Committee struck the item in its entirety.

My intention in speaking today is to applaud and support the action of the committee and to urge the Senate conferees to fight hard to maintain the full amount approved by the Senate.

The purpose of the program is "to place the findings of science usefully in the hands of American enterprise." This aid is most useful to small- and medium-sized busineses which cannot afford major research undertakings. The information supplied has been developed at Government expense and is available to the public.

The Michigan program costs $450,000 a year, of which $150,000 comes from Federal funds and the remainder from the State, industrial gifts and fees and in-kind services supplied by participating colleges or universities.

Eleven universities and colleges participate in the system, which is coordinated from a central office in East Lansing.

Let me give an example of how the program works in Michigan.

A small firm in my State produces a laser beam device used in siting the installation of sewerlines. The company was too small to have a full testing program, and was therefore surprised to learn after having sold a number of the devices that certain atmospheric conditions deflected the laser beam. Purchasers of the device were complaining and making claims for repayments.

The firm was unable to solve the problem and was, I am told, in danger of going out of business. By chance, one of the STSP directors learned of the problem. While the particular college at which he was located could not come up with the answer, he fed the problem into the system. A physicist at another institution supplied the answer, the defect was corrected, and the firm was able to continue in business.

This is a perfect example of how the State technical services program, operating in 46 States, helps small- or medium-sized businesses to compete with the giants of industry. At a time of growing concern over the concentration of economic power, it would seem a wise investment, indeed, to put $5 million into a program which helps get the latest scientific breakthroughs from the laboratory to small- and medium-sized businesses.

Once again, I applaud the action of the Senate Appropriations Committee, in particular, the Senator from West Virginia (Mr. BYRD), the chairman of the Supplemental Appropriations Subcommittee. I hope that other Senators will join me in urging our conferees to hold fast on this item.

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

II. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

SUMMARY

Our evaluation of the STS program shows it is providing a useful and economic service in transferring technology which substantially benefits the nation. The program can be made more effective and costs reduced by concentrating the federal and state investments in efforts and services which yield the most returns. We recommend that the STS program receive continued Federal and State support with increasing emphasis on direct service to industry.

Detailed conclusions and recommendations are supported and amplified in the following sections.

B. CONCLUSIONS

1. Federal support justification

The program should receive federal support because—

Risks of innovations necessary for industrial growth are spread across a large number of companies;

Increased tax returns are obtained from successful innovations which the program helped develop; and

Social benefits are an important product.

A major block to innovation by small firms with limited technical resources is the high

risk associated with the cost of technical assistance in solving problems.

A major contribution of the program to economic development is the distribution of the costs of high-risk innovation.

2. Program benefits

The program is meeting its goals by providing technical services which result in both primary and secondary economic and other benefits to the nation.

In general, the program produces economic benefits which are greater than its cost, but the benefit-to-cost ratio can be improved.

We estimate that expected tax returns to federal, state, and local governments based on increased economic activity generated by the program will cover its cost.

Most of the successful cases interviewed produced significant secondary economic and social benefits in addition to primary benefits, such as increased sales and new jobs, and cost savings.

The program has been most helpful to small and medium sized firms which do not have broad technical and research capabilities.

The program has provided useful technical services to firms who would not or could not pay for such services.

An important effect of the program is increased awareness by program users of external technical resources and how to apply them.

3. Program content

Field services, including referral, are the most valuable part of the program. Information and educational services are secondary and discretionary activities.

In each year, a few successful cases will produce most of the benefits, while the majority of cases produce little or no benefit, which is typical of activities involving innovations.

It is not possible in most cases to predict whether a user will benefit from services.

Technology transfer was an important ingredient in almost all interviewed cases. The technology transferred was seen as new and valuable to the user, although it may have existed elsewhere for some time.

Problem-solving services provided under the program do not conflict with those available from other private or public sources.

Successful STS program personnel are aggressive risk-takers who are willing and able to make informed judgments on technical and business issues, and to commit resources in situations where a successful outcome cannot be predicted.

4. Areas for program improvement

Communications between states can be improved to facilitate more complete exploitation of useful results and technique. The OSTS has a unique contribution to make in such communication.

The program only partially benefits from other Department of Commerce activities which are directed to stimulating the growth of the economy.

C. RECOMMENDATIONS

The information we have obtained and the conclusions drawn from them have led us to make the following recommendations:

1. The program should be retained and federal support continued.

2. Problem-solving services to industry which do not participate in federally-sponsored R&D programs because of small size or nature of industry should be the central activity of the program.

3. Field services which are oriented towards problem-solving should receive increasing emphasis through increased budgets and more personnel.

4. Education, information services, and demonstrations should be de-emphasized and only used as discretionary activities in support of need-oriented field services.

5. Federal funding levels should be increased gradually in a manner which permits new personnel to be adequately trained.

6. The funding formula for the states should be revised and expanded to take into account need factors, as well as performance.

7. The OSTS should design and institute a management information system to provide continuing evaluation of program effectiveness and direction, particularly with respect to economic effects and benefits.

8. The OSTS should play a stronger role in defining and guiding program activities and methods, including program evaluation.

9. The Department of Commerce should establish regional offices for improved communication and coordination of activities between the states.

10. Organizational and geographical location of STS field offices should be reviewed in the light of increased emphasis on field services.

11. The state directors should have more flexibility in the use of funds.

12. The Department of Commerce should review other activities (such as documentation, information, and educational services) which parallel the services of STS to eliminate duplication and promote increased working cooperation.

13. The Department of Commerce should continue to obtain interview-based case histories and comparative economic studies to determine the economic benefits resulting from industrial innovations and how to maximize them through technology transfer programs.

RECESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate stand in recess, awaiting the call of the Chair, with the understanding that the recess not extend beyond 10 p.m. tonight.

There being no objection, at 9 o'clock and 35 minutes p.m. the Senate took a recess, subject to the call of the Chair.

On the expiration of the recess, at 9 o'clock and 52 minutes p.m., the Senate reassembled, and was called to order by the Presiding Officer (Mr. Moss in the chair).

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum. Before anyone answers to his name, I suggest that the attachés call all Senators so they may be here for a vote which will take place shortly.

The PRESIDING OFFICER. The attachés will notify all Senators that there will be a vote shortly.

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.

Mr. MANSFIELD. Mr. President, first, I wanted to apologize to my colleagues for the delay which in effect they have been forced to undergo this evening without knowing—the reasons beforehand. I hope they will understand the position in which the leadership found itself, after a brief statement which I will make, and which I am sure will be joined in by others, including the distinguished Senator from Washington (Mr. MAGNUSON) and the distinguished Senator from Louisiana (Mr. ELLENDER) on our side of the aisle, and others on the other side of the aisle. So I do wish to apologize to all my colleagues for this inconvenience. I can only say, in extenuation, that an unusual circumstance arose which we thought was entitled to some consideration.

Mr. President, the Senator from Nebraska (Mr. HRUSKA) is introducing an extension of the continuing resolution, at the request of the President of the United States, with reference to the Labor-HEW appropriation bill. As I understand the situation, the President feels that he will be compelled to veto the bill in its present form at the present time. He has therefore requested the leadership of the House and the Senate to defer final approval of the bill until Congress returns in January. An official letter confirming this action will be in the hands of the leadership of the House and Senate this evening.

That is all I have to say at this time. In addition to the Senators from Louisiana and Washington, the distinguished Senator from Rhode Island, on this side of the aisle, was also involved and in attendance at the meetings which have been held during the past several hours.

Mr. HRUSKA. Mr. President, I have an amendment at the desk. I ask that it be read.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk read as follows:

In line 7, page 15 change the period to a comma, and insert "except that subsection (c) of Section 102 of P.L. 91–117, as amended, is hereby repealed, and in lieu thereof the following is inserted. "(c) January 30, 1970, whichever first occurs"."

Mr. HRUSKA. Mr. President, I ask for the immediate consideration of the amendment.

The PRESIDING OFFICER (Mr. Moss in the chair). Without objection, the Senate will proceed to the immediate consideration of the measure.

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

Mr. HRUSKA. I yield.

Mr. HOLLAND. Mr. President, does this refer solely to the bill mentioned by the majority leader, or does it continue the whole of the continuing resolution?

Mr. HRUSKA. The way the amendment is drawn it is a general amendment of the continuing resolution which is contained in the bill and it, therefore, would cover any contingency of any of the pending appropriation bills which have not yet been signed, and which might be vetoed, but as far as we know, the only intention of the President is the veto of the Labor-HEW appropriation bill.

Mr. HOLLAND. Am I correct in my understanding that the existing continuing resolution provides that if an act is passed, it becomes effective——

Mr. HRUSKA. On enactment.

Mr. HOLLAND. And the continuing resolution applies only to those not enacted.

Mr. HRUSKA. That is correct.

Mr. MANSFIELD. But specifically it applies to the Labor-HEW appropriation bill.

Mr. HRUSKA. I might suggest that I

be permitted to give an explanation. Then I would be glad to entertain questions. From time to time during the course of the year continuing resolutions have been approved by Congress, in order to provide for the funding of departments and agencies for which regular appropriation bills have not been enacted prior to July 1, which is the beginning of fiscal year 1970.

The present continuing resolution has for its latest effective date the sine die adjournment of the first session of the 91st Congress. That is provided for in the language which we will repeal and for which we will substitute new language.

The result of that repeal and the substitute language inserted extends the time for effectiveness of the continuing resolution until the date of enactment of any appropriation bill which fails of enactment prior to sine die adjournment, but not later than January 30, 1970. So the latest termination date in the continuing resolution, as amended, will be January 30, 1970, instead of sine die adjournment, as it now exists.

This amendment, which was read, will be inserted at line 7 on page 15, and it simply says:

In line 7, page 15, change the period to a comma, and insert "except that subsection (c) of section 102 of P.L. 91–117, as amended, is hereby repealed, and in lieu thereof the following is inserted: '(c) January 30, 1970, whichever first occurs,'."

Mr. MANSFIELD. Mr. President, may I say that those who participated in the several meetings which have been held did so with some degree of apprehension, to be honest, with a recognition of the situation in which the Senate finds itself, and with the knowledge that if this is to become effective it will take the approval of both Houses. Whether or not that will be forthcoming still remains to be seen.

I understand that the letter I have indicated from the President of the United States is on its way to the Capitol at this moment. Whether or not the letter will be satisfactory remains to be seen.

But it seemed to those of us who participated in these discussions that as a result of a direct request from the President of the United States we should give the President the consideration which is due him in his office and in his responsibilities, even though we might have some apprehension as far as we were concerned as to our particular responsibility in this matter.

We feel that the amendment which is now at the desk extending the continuing resolution is not so binding that if an agreement is not reached in both Houses it would still be valid—it would not. But we felt also that in view of this request by the Chief Executive of this Nation that we, as responsible Members of the Senate, ought to give that request the consideration which it deserved. Such consideration, I might say, should be accorded to any President of the United States.

I hope we have done the right thing. We have acted in good faith. I am sure that the President has acted in good faith. Every option, in my opinion, remains available to the Senate and to the Congress. The President simply has indicated quite strongly through intermediaries that it will be his intention to veto the Labor-HEW appropriation bill in its present form. We take him at his word.

May I add, at the same time, that the Senate passed a Labor-HEW appropriation bill that it regards as on the whole very good and vitally needed.

It is true that it contains funds which are not controllable by the President and which he must spend, of course, because of the law. He cannot impound many of those funds.

I believe that is the crux of the question. The President is interested in curbing inflation in this country. He has singled out this particular bill as one that incorporates excessive amounts for the particular programs covered. That is his prerogative as President. However, I think it should be brought out at the same time that some of the excessive amounts in the bill were incorporated at the request of the President of the United States, and I refer specifically to a $2 billion request for OEO.

Mr. MAGNUSON. And $1.117 billion for advance funding.

Mr. MANSFIELD. And $1.117 billion for advance funding.

But the President has now made this request to curb inflation in this fashion and has made his intentions known to the Congress.

It was on that basis, after long and serious consideration, that the members in the conference agreed to undertake this action tonight. I must take full responsibility on this side for what has occurred. I feel that I ought to make a fuller report to members of the Democratic Party, and because of that I am calling a caucus of the Democrats at 9 o'clock tomorrow morning in room 207.

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

Mr. MANSFIELD. I yield.

Mr. PASTORE. I think it should be clearly stated that there is nothing in this program which compels us to vitiate, compromise, or change any of our express decisions thus far. As far as I know, the conferences will be held beginning tomorrow but all we are being asked to do, before we culminate the final decision on this bill, is that we wait until we return in January after the Christmas vacation.

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. Mr. President, I think the matter has been well and properly stated by the distinguished majority leader and by the Senator from Rhode Island. We would serve no one's cause here if we were to engage either in any defensive or exculpatory statements, or any attempt to indicate either regret or blame. The House and Senate, in the normal legislative processes, have proceeded to work their will. In the items of funds to permit the operation of the OEO, both political parties, in this body, and in the other body, have felt that the war on poverty cannot be conducted without funds, that we cannot ease the condition of the disadvantaged, the left behind, or the unfortunate, unless we commit the Federal Government. In this the administration has played its part.

There are other areas where there have been legitimate and understandable differences in both parties which are not really partisan. But the differences have led to an excess of zeal arising from the finest of motives. But they have, nevertheless, led to an excess, also, of expenditures which we here are advised the President finds unacceptable in the amounts added in the other body and in the Senate.

Therefore, nothing happens in what we now propose, except deferment in action, so that we will not, through any form of precipitating a confrontation, cause a disastrous effect on the innocent. We are not going to deprive the family assistance program of funds. We are not going to cut off caseworkers without salaries. We are not going to say that because Congress has not acted, or because the President has acted, the work of the Government cannot go on.

What we are saying is that, recognizing the conditions under which we presently find ourselves, we simply ask the understanding of the Members of this body, and of the other body, to permit us to deter whatever action the Executive takes it to the 19th of January, rather than having it occur now.

In this, I am in entire agreement with what the distinguished majority leader has said, and I thank him and the Senator from Rhode Island (Mr. PASTORE) for their explanations.

Mr. BAYH. Mr. President, will the Senator from Montana yield for a question?

Mr. MANSFIELD. I yield.

Mr. BAYH. I have not had the experience that other Senators have had as to a reasonable interpretation of the amendment, but I wonder, am I correct in believing, that by that resolution, it will be at the same rate presently expended for this?

Mr. MANSFIELD. Yes, indeed. That is understood.

Mr. BAYH. The Senator from Washington (Mr. MAGNUSON) has done such a magnificent job, and a very patient job, I must say, as have Members of both parties, although we have differences of opinion on both sides as to what should be done. But the Senator from Washington has done a great job, and I think that he should be complimented for it.

I should like to ask, is there any need for us to act this evening? Could we not wait until tomorrow to see what the differences might be between the present rate of expenditures and that to which the President objects? I think that the Senator from Pennsylvania and the majority leader do not want to get into a confrontation that will precipitate a departure from those—we do not want the result that he mentioned. Is it necessary for us to pass it this evening without any chance to compare that ourselves?

Mr. MANSFIELD. No, it is not necessary, in the opinion of the Senator from Montana. But I am frank to state that it would be advisable, in view of the informal commitments which have been made.

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

Mr. MANSFIELD. I am happy to yield to the Senator from Washington.

Mr. MAGNUSON. I was a little bit concerned about all of this tonight, because we are having a meeting of the conference on HEW tomorrow, and we could resolve it and come back to the Senate with a report.

I do not know what started this, or why HEW was singled out for this proposed veto of the President. Some of the amounts, as the majority leader has stated, are so-called uncontrollables. They are amounts which Congress has directed to be passed on, such as welfare assistance to the States—social security is in this, and we OK'd that.

I sit in on these conferences with the majority leader and the rest of us, and they will agree with me, that before I would agree to any such resolution—I personally do not know what the Senate would do—I want a letter from the President of the United States, in black and white, saying that he will veto the HEW bill. Then, of course, we have the practical proposition, if he is going to do that, whether he would call us back and have us go all over it again. We would probably end up with the same result. I am sure it would not change at all. We would come back here right after the holidays, or right after Christmas. I have some responsibility for the comfort of my colleagues, including myself. But all of a sudden, tonight, they show up and they will veto the HEW bill; they want us to let it go; have a conference tomorrow; report it out; and then leave it here.

I am not going to be irresponsible to hundreds of millions of people in this country who are dependent upon this bill, and for holding the bill up unless the President of the United States says he will veto it. Then it becomes his responsibility. I think there is no Member of the Senate that would not agree with me on that.

The President says that he will send a letter up here. I am looking forward to it. I told him that in his letter—and the majority leader will agree—he should spell out what items in the HEW bill he is against, and what items he believes are excessive. Are they items in cancer research? Are they items such as family assistance, which the Senator from Pennsylvania just said we are not going to defer?

Well, is that too much?

What about family planning? Clinical research? Health manpower and medical research? Community colleges or vocational education? Libraries or student aid?

I do not know what this veto is all about. Why pick on HEW? But I think that the President has the responsibility. He surely has the authority. If he thinks that HEW's budget is too big, and that he should veto it, then the Senate will come back and work its will.

As a practical matter, if he wants to call us back the day after Christmas, that is all right with me. I happen to be directly involved in this. I shall not like it. No one in this Chamber will like it, of course.

But I want a letter from the President of the United States telling me—and I want to make it public—that he will veto the HEW bill. I would like to have some definitions and specifics.

Mr. YOUNG of North Dakota. Mr. President, will the Senator from Washington yield?

Mr. MAGNUSON. No, I will not yield. I am one that is most concerned on this. People will say to me, "Why did you not take the bill out?" We could get the bill out tomorrow. We are all ready. I would like to send it down there and have him veto it, which the President has a right to do. The President may have some good reason to veto it. I hope that he will specify what he is against, what he is for, and why the bill is excessive.

The amazing thing about it is that all the money amendments to the bill were passed in the Senate by votes of 2- or 3-to-1. The extra billion of dollars in title I was put in by the House, by a great majority. Thus, Congress has been working its will.

Someone suggested tonight that we should have a little more time to let Congress work its will. That is what we have been doing for weeks.

I do not wish to discommode any Senator. I suppose the resolution would be a stopgap. The people in conference agree that if we do not get the letter, this does not go, does it?

Mr. MANSFIELD. No. This is contingent on the letter which I understand is on the way up.

Mr. MAGNUSON. Mr. President, what we are talking about is $1,529 million over what the budget recommended. We are not far over the House figures. I could name impacted areas and a lot of other items. That is what Congress wants. The Congress is the place to appropriate the money. The President has the right to veto the bill if he does not think it is right, but he has no right to say to Congress, "I am not quite ready to veto it. I want you to hold it up until you get back. I do not want to take your vacation away from you."

I do not think Congress should be responsible for delaying this, including billions for the welfare of the country, unless we know he is going to veto it and we have to reach a practical solution.

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

Mr. MAGNUSON. I yield.

Mr. McGOVERN. Did I understand the Senator to say the bill is $600 million above the amount requested by the administration?

Mr. MAGNUSON. No; there is $600 million they can control.

Mr. McGOVERN. What is the difference between the administration's request and the amount in the bill?

Mr. MAGNUSON. The difference is about $1.530 billion.

Mr. McGOVERN. It is $1.5 billion?

Mr. MAGNUSON. From the revised budget requests, but a request for $3 billion was sent up by the administration itself.

Mr. McGOVERN. So it is $1.5 billion above?

Mr. MAGNUSON. This happened so suddenly; we are getting the figures and I will put them in the RECORD. The Senate bill, as passed yesterday, was $1,529,266,000 over the President's revised and amended budget.

Mr. McGOVERN. Is it not a fact that Congress reduced the defense requests sent up by the administration by somewhere around $6 billion?

Mr. MAGNUSON. I would have to defer to the Senator who handled the defense appropriation bill for an answer to that question.

Mr. ELLENDER. It is almost $9 billion from the Johnson budget.

Mr. McGOVERN. $9 billion?

Mr. ELLENDER. From the Johnson budget, and $5 billion from the Nixon budget.

Mr. MAGNUSON. We are $1.5 billion over the so-called revised budget, and we are somewhat more over the Johnson budget. That was all voted by the House and the Senate, many of them being yea-and-nay votes.

Mr. McGOVERN. I think, to keep the matter in perspective when we are talking about the inflationary impact, the country ought to understand that taking those two bills, the Defense Department appropriation and HEW appropriation, the Congress has reduced the total amounts for those bills five or six times the difference in the HEW bill. We saved five or six times in the Defense sector what we have spent on HEW.

Mr. MAGNUSON. I am not going to discuss what we have done here or there; I have learned from being on the Appropriations Committee that if we cut $1 billion from this bill, it does not mean it is going to be added to other items. Each item must stand on its own merits.

That is what Congress decreed. We have not had a conference. We will have a conference tomorrow between what the House and Senate provided. Conferences usually split the amounts down the middle. I think we have a pretty good bill to take care of the needs of the country. I do not know why this bill should be singled out for a veto, but that is the President's prerogative.

I would take $600 million out of the foreign aid program instead of this one if I were personally running the budget, which I am not; but that is a different story.

What I want to say is that I want some definite assurance, in black and white, that he is going to veto the bill as it now stands, or as it will stand tomorrow afternoon.

Mr. SCOTT. Mr. President, if the Senator will yield on that point——

Mr. MAGNUSON. $543 million was added on the Senate floor, by the vote of the Senate.

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

Mr. MAGNUSON. In just a minute. If the President says he is going to veto it for certain, and why, and what items are too high or what items are too low, or how far we went over the budget, or whether the House did the wrong thing, or whether we agreed with the House, then we would have a practical problem and a resolution of the problem probably

should be forthcoming and adopted. But it should be based on the fact that we get the assurance that he is going to veto the HEW bill.

Mr. SCOTT. Mr. President, if the Senator will yield, I have just been informed that the President will send a message—I am told within the next 30 minutes—and we will have his message regarding his veto. Beyond that, I am no more able to read the executive mind than the Senator from Washington. If the Senator will be around for 30 minutes, we will have a letter.

Mr. MAGNUSON. I will be here until it is finished, if it takes to New Year's Eve.

I would like to have time out, just like everybody else, but I do not know why at this last minute somebody says he is going to veto the HEW bill. I say, "Why are you going to veto it? What item do you disagree with?"

I cannot get that information. I doubt if the letter will give me that information. I hope it does.

Mr. YOUNG of North Dakota. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. YOUNG of North Dakota. I think an explanation should oe made. I heard earlier this evening on good authority that the President of the United States was going to veto the HEW bill. I took it on my own initiative to ask Bryce Harlow, the top assistant, and the Budget Director Robert Mayo to meet with us. It was not their request; it was mine. The reason I did so was that the only way we could forestall a special session right after Christmas was to amend the pending bill by putting a continuing resolution on it. That is why we had to act tonight. This was the only means to forestall having to convene right after Christmas. This was done at my initiative. The President did not ask for the meeting we had tonight.

Mr. MAGNUSON. Mr. President, the Senator from North Dakota, with his usual courtesy, came to me about 4 o'clock and said he was worried about it because he heard this. I said, "We are going to have a conference tomorrow. Why not wait until the conference tomorrow, because we will have a bill ready?" They gave us assurance that the President said he was going to veto the bill. I want it in black and white. I do not want to leave Sunday night and go wherever I am going and have all the educators, all the health people, the children in school, the social security people—everybody in America is involved in this bill. I do not want them to ask me "Why didn't you pass a social security bill?" If the President wants to hold it up, I want to say, "Don't talk to me. Send your letters and communications to 1800 Pennsylvania Avenue"——

Mr. PASTORE. 1600.

Mr. MAGNUSON. 1600. No, I am right—1800. That is where all these people working there give him advice. [Laughter.] I am right. It is 1800 Pennsylvania Avenue.

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

Mr. MAGNUSON. I yield.

Mr. HOLLAND. Does this plan involve any different date for coming back? I think we were told yesterday it would be the 19th of January. Will there be any change in that date?

Mr. MAGNUSON. The distinguished leadership can answer that. I do not know.

Mr. MANSFIELD. No; we will still be coming back on the 19th.

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

Mr. MAGNUSON. I yield.

Mr. ELLENDER. This has been said on two or three occasions: The conferees will meet tomorrow.

Mr. MAGNUSON. Yes.

Mr. ELLENDER. Even though this bill is amended, it would not preclude the Senate from taking up the conference report.

Mr. MAGNUSON. No.

Mr. ELLENDER. What this will do is simply give us a little holiday of about 3½ weeks. That is the purpose of it. It will simply defer passing upon the conference report, or the adoption of it, until after January 19, instead of this week. That is all it amounts to.

Mr. MAGNUSON. That may not necessarily be so.

Mr. ELLENDER. Let me say something further to my good friend from Washington: If the President should veto this bill, and we were in session now, we may not be able to override his veto; but if we wait until after the 19th and then come back here, with people desiring to have more money for their schools, and so forth, we will not have any difficulty in overriding the veto, if Congress acts upon it favorably.

Mr. MAGNUSON. I do not know. But the Senate ought to override the veto, because the majority of the money and programs that were put in the bill, the different items, were voted for overwhelmingly by the Senate.

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

Mr. MAGNUSON. I yield.

Mr. HARRIS. Does not the Senator think we are dealing with such serious matters of national priorities in this bill that it does not require action tonight? Could we not wait and see what is in the President's message and, as the distinguished Senator from Washington has said, find out whether it is education, research, health, or what it is that is objected to, and then we will have an opportunity tomorrow, perhaps the conferees could go ahead and get a report back, and we would not need to act on a matter of such momentous importance to the country as this bill is, if we are interested in national priorities, tonight?

Mr. MAGNUSON. Well, I would like for that to happen. The Senator did not mention a couple of other programs. Pollution—air and water pollution—are in this bill.

Mr. HARRIS. That is right.

Mr. MAGNUSON. If the President wants to veto that, I would like to know, but I do not know what he objects to. He has a perfect right to object to them, but we are talking about a comparatively small sum in this great field of health, education, and welfare, as compared to other things. They ought to stand on their own feet, but I think, with a trillion dollar gross national product—I should not mention the word "trillion"; I do not understand it. $999 billion I understand better.

I think the House of Representatives and the Senate overwhelmingly, in most cases, suggest these things should be done. We are the custodians, we are the ones who have to determine what money is appropriated. We ought to have that consideration, at least until we have the conference report, and see where we are. But this will be the last appropriation bill. I am not opposed to the resolution of the Senator from Nebraska, but I want it at least understood—and I am sure I do not have to worry about the word of the Senator from Nebraska, his word is as good as his bond—that unless this letter comes, and unless the letter is specific on what he objects to, we will not know what to do. I would like to have it. Maybe in the conference we could use it tomorrow. I would like to know what he is opposed to.

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

Mr. MAGNUSON. Will this resolution then be dropped?

Mr. HRUSKA. No, that is not true.

Mr. MAGNUSON. Then here we are again.

Mr. HRUSKA. No, we are not. Let us recall the agreement. The agreement was that we would pass this amendment, and we would pass this bill. The enactment of the bill with this amendment would not stand in the way of either course of action which is in contemplation, either the submission of the conference report tomorrow, and voting on it tomorrow, or a deferment of action until January 19 on that conference report, when we come back.

If the bill is enacted tomorrow, the resolution falls; there is nothing for it on which to operate. If it is enacted, we shall have HEW funded between the time we adjourn sine die and the time we return on January 19. I am sure all the Members of this body would want that contingency taken care of.

Mr. MAGNUSON. By all means; we want to keep going at least at last year's level, if not the House allowance level.

Mr. HRUSKA. That is correct.

Mr. MAGNUSON. But the President has 10 days, as I understand it, to veto a bill.

Mr. HRUSKA. Surely.

Mr. MAGNUSON. Suppose we decide to pass the bill, and 10 days from tomorrow night—when we can get the bill out, I am sure—if 10 days expires, we are back in the same position. Therefore, the Senator's resolution is more important.

Mr. HRUSKA. It would not stand in the way. It would operate if the bill is not enacted. If it is enacted, it falls. But I suggest it would be advantageous to act on this bill tonight, because then we can have our conference tomorrow, and make a conference report on this bill tomorrow.

Mr. MAGNUSON. But if the President does not send up the letter——

Mr. HRUSKA. Oh, he will send up the letter.

Mr. MAGNUSON. But what is he against?

Mr. HRUSKA. Well, that is something that——

Mr. MAGNUSON. I do not mean item by item, but is it the National Institutes of Health, too much money for health? I want to know.

Mr. HRUSKA. The Senator from Washington wanted to be sure whether the bill would be vetoed, so we could take this action, and this continuing resolution amendment is necessary, if the bill is to be vetoed, in either contingency. The letter will be forthcoming.

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

Mr. MAGNUSON. I want to look at the letter.

Mr. AIKEN. May I ask a question?

Mr. MAGNUSON. I want to look at the letter, because I am not going to be responsible for delaying the HEW bill unless the President of the United States says in no uncertain terms why he opposes the bill.

Mr. HRUSKA. Mr. President, if that letter is forthcoming, all responsibility for this will rest on the man who says he is going to veto the bill, and it will absolve completely the competent chairman of the Subcommittee on the Health, Education, and Welfare appropriation. In the instant that the letter is sent over, the responsibility will be transferred to 1600 Pennsylvania Avenue.

Mr. MAGNUSON. Ho, ho, ho. Not with every educator in town, and every retired person, and everybody, stopping me on the street and saying, "Why didn't you pass the bill? We don't know what we are going to get, we don't know what we are going to have, we don't know what is going on in social security, medical research, and health"—they are going to come to me, and I am going to refer them to 1600 Pennsylvania Avenue.

Mr. HRUSKA. And the Senator from Washington, being the articulate man he is, will say, "The bill is not passed because I got a letter from the President," and in the meantime, the department will continue to function on the continuing resolution.

Mr. MAGNUSON. Well, I am going to have a lot of copies made, because some people will not believe what I say.

Mr. AIKEN. Mr. President, may I ask the Senator from Nebraska a question?

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. MAGNUSON. I am going to get a machine and have copies made.

Mr. AIKEN. Does the continuing resolution apply to every appropriation?

Mr. HRUSKA. Yes, it is in general language.

Mr. AIKEN. And there is no assurance that the foreign aid appropriation will ever become law. Inasmuch as the foreign aid passed the House of Representatives by a vote of 200 to 195, and that is a very small margin indeed, tomorrow being Friday, we do not know whether the conference report will be approved by the House of Representatives. If it is not, we must have this continuing resolution, or else all foreign aid expenditures will stop.

Mr. HRUSKA. The continuing resolution, as amended, will apply to any and all agencies for which a regular appropriation bill is not passed by sine die adjournment.

Mr. AIKEN. I think it is very important to have this resolution.

Mr. HRUSKA. It is, indeed.

Mr. AIKEN. And I am not thinking of HEW; I am thinking of other appropriations.

Several Senators addressed the Chair.

Mr. MAGNUSON. Mr. President, I have the floor, do I not?

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. MAGNUSON. Just a minute. I am not objecting to the continuing resolution. The only thing I want to be sure of is that if there is no HEW appropriation, on which the conferees are ready to report to the Senate and send the bill to the White House tomorrow or Saturday morning, and if foreign aid, as the Senator mentioned, is not ready, that it was not the fault of the Congress of the United States. The President says he is going to veto it.

The President says he is going to veto it.

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

Mr. MAGNUSON. I yield.

Mr. MANSFIELD. Mr. President, if the resolution in the nature of a continuing resolution is adopted tonight, insofar as the conferees are concerned it will make not one bit of difference.

Mr. MAGNUSON. I hope it will not.

Mr. MANSFIELD. It will not, because the conferees will get together, as they had previously decided to do, to try to reach an agreement. Every option is preserved. If they decide, in the light of the President's letter, that they want to bring that bill up on the floor of the Senate tomorrow, it will be brought up.

What we are doing is acceding—if we do—to the request of the President of the United States. That is all. And that does not mean that the bill will not be brought up in this body or the other body, or both bodies, nor that it will not be up before Friday night or Saturday night. Those prerogatives remain.

This action is being proposed at the specific request of the President of the United States. I have some apprehensions, but I am prepared to take my share of the responsibility to face up to this matter and to vote on the resolution tonight. It is not only up to me; it is up to the Senate.

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

Mr. MAGNUSON. I yield.

Mr. SAXBE. I am going to vote against the continuing resolution. It is not the President's fault that this bill is coming out late in the session, when every Senator wants to go home. If we had done our job last summer and had got the bill out at a reasonable time, it seems to me that we would not be fighting against time now.

I think it is our responsibility to do what we are paid to do and to stay here, if we have to be here on Christmas day to work this matter out.

Mr. MAGNUSON. I do not think the bill would be any different if we had brought it out in August than it is today. It contains the right amounts. I do not want to get into an argument about this, because the Bureau of the Budget kept sending items up. As a matter of fact, the last item sent to us was on November 14. I think this results from a combination of many circumstances.

If the Senator from Ohio would ever sit there and listen to the conference on the HEW, he would understand it. It is amazing. One can hardly believe it.

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

Mr. MAGNUSON. I yield.

Mr. HARRIS. Mr. President, what would we gain by passing a continuing resolution tonight? Is there something that would happen between now and 12 that would not be able to happen tomorrow after we had had an opportunity to see the President's message?

Mr. MAGNUSON. Mr. President, I follow the judgment of the leadership. And if we have a continuing resolution, we will have to have it on this particular bill.

Mr. HARRIS. Does the Senator think that the conference committee will meet on the supplemental appropriation bill tonight?

Mr. MAGNUSON. I do not know. I know the HEW conference will meet at 10 o'clock tomorrow morning. And the House and the Senate are not very far apart. This is the amazing thing.

I do not know what will happen in the House. I know what will happen if the President vetoes the HEW bill.

Mr. HARRIS. Mr. President, I do, too.

I do not think there is any reason for the Senate to act in advance. I do not see any reason at all for acting tonight. I do not see any reason for passing the continuing resolution.

Mr. MAGNUSON. Mr. President, I yield the floor.

Mr. HARRIS. I believe we would be well advised to wait.

Mr. MANSFIELD. Mr. President, I have been informed that the letter will be here within the next 20 minutes, hopefully.

I would again emphasize the fact that we are not giving up any of our responsibilities or our prerogatives. We were asked to consider certain factors. We did so. There was much discussion in the consideration of these factors.

And may I say to my colleagues that as far as I am concerned, and I think I have stated this previously, I am prepared to come back at any time—next week, the week after, or next month—to face up to a veto or to attend to the unfinished business of the Senate. What we decide to do here tonight will not change the prospects ahead by a fraction.

I think we have made a reasonable proposal to our colleagues. I think it ought to be acted on tonight. It ought to be decided.

I see nothing to be gained by going over until tomorrow. And as soon as that letter comes up, I want to read it immediately.

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

Mr. MANSFIELD. I yield.

Mr. PASTORE. Mr. President, I think we ought to clear up the point raised by the distinguished Senator from Oklahoma. The decision of the President to

veto the bill does not depend upon the outcome of the conference tomorrow.

Mr. STEVENS. Mr. President, will the Senator speak up? I cannot hear him.

Mr. PASTORE. Mr. President, I am surprised that PASTORE cannot be heard.

Mr. SCOTT. It is a long way from your aisle to Alaska.

Mr. PASTORE. Mr. President, the decision of the President, as I understood the conference this evening, does not depend upon the outcome of the conference tomorrow. The President objects to the amount that was passed by the House, which was increased by the Senate. So insofar as the conference is concerned, that is not the controlling factor.

As I understand it, the President is determined to veto the bill anyway. However, realizing the fact that next Thursday is Christmas Day and realizing the fact that if he vetoes the bill now, we will be compelled to come back soon after Christmas; and if we cannot override a veto, we will have to begin to work on a new bill.

And while we are doing that, we will have to pass a continuing resolution.

At any rate, taking all of those factors into account, the President has said:

I don't care what you do after January 19. I am going to veto the bill if it comes out in the present form.

If he is overridden, we have no problem. On the other hand, if he is not overridden, we will have to sit down and begin to work on a new bill.

And while we are working on the new bill, we will have to have a continuing resolution.

The majority leader is a sensible man. He is not ready to sell out the Democratic Party. Nor is he ready to sell out the Senate of the United States.

The majority leader has looked into this matter very deeply. I have sat in the conference. I believe that this is a fair bill and that in all probability it should be passed and that the President should sign it. However, I am not the President of the United States.

I have been the Governor of a State. I have vetoed bills. I did not have to give my reasons for it. I vetoed bills because I said I did not like the amount.

That is all the President has to say.

As soon as he has said that, our only alternative is to override his veto. If we cannot do that, we will have to begin to formulate a new bill. And in that process we will have to have a continuing resolution.

That is how simple it is. The majority leader has made it plain. If tomorrow, after the conference, we remain insistent that we want to stay here and take our chances, we are not precluded from doing that. However, because we have the last appropriation bill before us, now is the time to add the continuing resolution.

I mean that is the last clear chance that we have. And that is all that the majority leader is asking us to do.

I think we are wasting our time here. Everyone is fussing around and talking about the merits. Let us not talk about the merits. Let us talk about the procedure.

No one is being denied a chance to exercise his judgment on the merits of the bill. One can exercise his judgment tomorrow, the next day, and as long as we are here.

The majority leader is asking us to be reasonable about this. And he has looked into the matter, and made a commitment, and he has said that all the leadership hopes—and some of the members of the Appropriations Committee, including the illustrious chairman—is that we go along with the idea of the President. It is a Presidential request.

We have nothing to lose. So, let us go on with our business and cut out all of this fussing.

[Applause.]

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

The PRESIDING OFFICER. There will be order in the Senate.

Mr. MANSFIELD. Mr. President, if any of our colleagues have any suspicions that there are hidden gimmicks contained in this, I wish to state that if there are, the majority leader, the Senator from Montana, knows nothing about them.

All I know is that we have received a request from the President. That letter should be here shortly. I hope it will explain the situation, at least from the President's point of view.

We have tried to explain it from our point of view. It is not a happy situation but it must be faced up to.

My personal preference would be to face up to the bill, pass it, and take my chances on a veto. But I think any President who makes a request of the Senate is entitled to a reasonable and certainly a respectful consideration of what he requests. Even if the Senate agrees to the request its own prerogatives are preserved in fact.

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

Mr. MANSFIELD. I yield.

Mr. HOLLAND. Mr. President, I should like to mention one other thing, and that is that the conference committees on the HEW bill and this supplemental bill include quite a number of the same Senators from both sides of the aisle. We are going to have a conference in the morning; then we are going to have a conference on HEW. We could not possibly get to the conference on the supplemental bill until tomorrow afternoon at the very earliest, I say to my friend the Senator from Oklahoma.

It seems to me that, considering the practicalities of this matter, we ought to have both of these bills ready to move ahead after the conferences, which will be comprised largely of the same Senators, who cannot sit at the same time in both conferences, obviously.

I think that the thing to do is by all means as the majority leader suggests.

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

Mr. MANSFIELD. I yield.

SEVERAL SENATORS. Vote! Vote!

Mr. MANSFIELD. Mr. President, let us have order. After all, this is a request of the President.

The PRESIDING OFFICER. The Senate will be in order.

Mr. MAGNUSON. I know it is a request from the President, and this is very unusual.

Mr. MANSFIELD. Very unusual.

Mr. MAGNUSON. I have never known this to happen. Usually, the President does not veto a bill until he gets it. This is the most unusual request I have ever known. It is unusual, and perhaps it is a more practical one, because we are in the time situation we find ourselves.

Mr. SCOTT. I think that is the reason.

Mr. MAGNUSON. I have never heard of a President saying that he is going to veto a bill before it is passed or is out of conference. This is the first time in the history of the United States. Usually, a bill is sent down and is vetoed, which is the President's prerogative. Sometimes he will threaten, but this is an unusual situation, and I guess we have to face up to the practicalities of it.

The Senator from Rhode Island said a little earlier that we have nothing to lose.

Mr. PASTORE. That is correct.

Mr. MAGNUSON. I will state what we have to lose, and this is why I want the letter. I hope it shows up. We have to lose this: The people of the United States are quite concerned about every portion of this bill, and they are going to say, "Why didn't Congress pass the bill? Why didn't you just pass it, and if the President wants to veto it, let him veto it?"

As a matter of fact, the bill could be sent down Saturday and he could veto it, and we could meet on Monday and work our will on it.

Mr. SCOTT. If the Senator will yield——

Mr. MANSFIELD. I yield.

Mr. MAGNUSON. Just a moment. We could do that, because we could get through with this conference very quickly and could send it to the White House and he could veto it, and we could vote on it.

The Senator announced that there would be a session on Sunday, did he not?

Mr. MANSFIELD. I raised the possibility, yes.

Mr. MAGNUSON. And I wanted a Lutheran minister. I need one, after this week.

The point is that we have a practical problem here, and I do not want to say that we have nothing to lose. We have a great deal to lose, if we are going to be blamed for not passing an HEW bill.

Mr. SCOTT. Mr. President, will the Senator from Montana yield to me?

Mr. MANSFIELD. I yield.

Mr. SCOTT. For a statement for elucidatory purposes.

I do not think anybody ought to rise after the Senator from Rhode Island has been so clear and so explicit. He has stated the case. But when the President's letter comes here, I think it is a proper and just surmise that, in effect, he is going to make it clear, first of all, that he is not telling the Senate what to do. He has served in the Senate, and he knows better than that. But he is going to say to the Senate, if the Senate agrees, that there are three alternatives, one of which the Senator just finished mentioning, one of which is to send the bill down immediately and receive an immediate veto; and then, in order to

continue the functioning of the HEW and Labor Departments, the Senate will be under the necessity of returning during Christmas week.

Mr. MAGNUSON. No. We could do it on Sunday or Monday. The pen is there. He can use the pen, can he not?

Mr. SCOTT. The alternatives will be, first, the veto and the necessity for returning, unless the Senate has acted to override the veto meanwhile—I will revise it to that extent, although that is not the way it will be in the letter.

Mr. MAGNUSON. Why can we not do it on Monday?

Mr. SCOTT. If the Senator will allow me to finish, in the same spirit in which I allowed him to be heard, I will reply.

I am glad to report that Sheridan has arrived from Winchester, and now I will be able to read the letter and state the alternatives.

May I ask the consideration of the Senate and be permitted to read the letter all the way through, because I want to read it myself.

Mr. MANSFIELD. I am delighted to yield for that purpose, Mr. President.

Mr. SCOTT. In effect, before I read it, three alternatives will be stated, all of which—unless the Senate overrides the veto before adjournment—require a continuing resolution. Does the Senate want a continuing resolution during Christmas week, or does the Senate want it now or on January 19?

Now I should like to read the letter:

THE WHITE HOUSE,
Washington, D.C., December 18, 1969.

Hon. HUGH SCOTT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SCOTT: I feel obliged to inform the Congress, before adjournment, that the development of the HEW-Labor-OEO appropriations has been such as to compel me to veto these appropriations when they arrive on my desk.

I send this advance notice in order to afford the Congress, if it wishes, an opportunity to enact a continuing resolution for these agencies and thereby permit them to operate without the necessity of recalling the Congress in special session.

The HEW appropriations in large part involve mandatory Federal spending. Even the level of appropriations passed by the House of Representatives is more than $1 billion above my budget request. The Senate increased the appropriations further by another $.6 billion. As much as I sympathize with the objectives of some of the programs for which the Congress has voted increased appropriations, I cannot, at this critical point in the battle against inflation, approve so heavy an increase in Federal spending.

The Congress, it appears to me, may meet this situation in one of three ways: first, by sending the Appropriations Act to me for veto, but then to return in special session immediately after Christmas; second, pass a continuing resolution for these three agencies, send the appropriations to me for veto, and then consider the veto after January 19; or, third, defer further action on these appropriations until after January 19, and provide authority to continue the current level of funding for these agencies in the interim.

The choice among these alternatives rests, of course, with Congress. In the interest of affording a respite for Congress, I suggest either of the continuing resolutions approaches. But, of course, should the special session route be preferred, I will cooperate.

Sincerely,

RICHARD NIXON.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

SEVERAL SENATOR. Vote! Vote!

Mr. MANSFIELD. Mr. President, we can vote.

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

Mr. MANSFIELD. I yield.

Mr. HARRIS. Mr. President, I honor the sincerity of the majority leader, as does every other Member of this body. That is not the question, and I think there is still an unanswered question here, and it is this: Why is it possible that 10 minutes after 11, 1 minute following the reading of the message of the President of the United States, perhaps the most important bill considered by Congress this year, we could not lay this matter over until the morning?

May I disrespectfully disagree with the suggestion of the distinguished Senator from Nebraska that it is a question of who will bear the responsibility. That is not the question, Mr. President. The question is, What will become of the people who are served by this bill? I think this is far more a question of what this country is going to do with its priorities than it is a question of whether the President of the United States or Members of the Senate will bear the responsibility for it. I think that has been very well pointed out by the distinguished chairman of the committee as he has raised the question which we have not to this good moment heard the answer to—the question of why it is that the President of the United States desires to veto this bill, and what items in the bill he chooses to disagree with the Senate on. It seems to me this is a very basic kind of matter. I intend to vote against the continuing resolution because I think if the Senate does that it gives up a tremendous leverage it has.

I know no Member of this body will decide the fate of schoolchildren of this country, or the fate of those served by the health appropriations in this bill, or those served by antipollution funds in this bill, as pointed out by the chairman of the committee, on the basis of whether or not we will be inconvenienced. I shall not and I hope we will not take this action.

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

Mr. MANSFIELD. I yield.

Mr. HUGHES. Mr. President, I would like to ask the question. If indeed, as the Senator from Washington stated, this is unprecedented and unknown before in American history, does anyone know if this has been done before?

Mr. MANSFIELD. Not that I know of.

Mr. MAGNUSON. I do not know. It came up so suddenly. I will ask the Library of Congress.

Mr. HUGHES. I do not know that there may not be a possible fourth alternative in light of the fact we are taking unprecedented action in connection with a bill none of us have seen in final form. The President said he is intending to veto the bill, although he has not seen it in final form. Perhaps this body could not consider overriding a veto of a bill none of us know about yet prior to the time that he presents his veto to this body.

Several Senators addressed the Chair.

Mr. MANSFIELD. I yield to the Senator from Delaware.

Mr. WILLIAMS of Delaware. Mr. President, I think this is an unprecedented action, but on the other hand never before to my knowledge has the Senate delayed acting on appropriation bills until the week before Christmas.

I have listened with great interest to the concern of those who feel the amounts should be given to the educational institutions and other agencies. I regret they did not have that same desire before to give them that attention. If they had stayed in this country and done the job we would have had this out of the way.

Mr. STEVENS. Mr. President, I find interesting the comments of the Senator from Oklahoma. I agree 100 percent with the distinguished Senator from Rhode Island.

We are asked to continue the agencies in this bill at the same rate provided under the previous administration and by a Congress under the same leadership as we have here tonight. What was wrong with what was done a year ago that is not good enough to continue until next January 30? I cannot understand not supporting the distinguished majority leader and the distinguished minority leader at 11:15 at night in something everyone realizes must happen in any event. It seems to me the Senator from Rhode Island stated the matter clearly.

I cannot understand partisanship being brought into this matter by the Senator from Oklahoma in challenging the majority leader. I support the position of the majority leader as a courtesy to the President, and I would do the same thing if it were Lyndon B. Johnson.

Mr. KENNEDY. Mr. President, it is only with the greatest reluctance that I am going to vote against the continuing resolution. I think, as has been stated here by the Senator from Oklahoma, the Senator from Ohio, and the Senator from South Dakota, this bill involves many of the most important programs and questions that we have acted on this session.

It seems to me that to a great extent we are abdicating our responsibility by voting for a continuing resolution this evening. It seems to me we have an obligation, a responsibility based on what we have already done with this bill, the significant measures that have been voted upon by this body and sent to conference. We should not run out on that group before the conference, if we are going to accept our responsibility. If, in fact, the President does veto this measure, we will then have time to determine what further we should do as far as our final action is concerned. Even if we have to meet on Christmas Day or New Year's Day, we should not take the action suggested this evening.

We talk about enacting a continuing resolution which will abdicate our responsibility in one area, while at the same time we talk every day about regaining for the Senate its power in the field of foreign policy. I think the Senate will make a mistake if it agrees to this resolution this evening without taking any time to consider and reflect about the implications of our hasty action.

That is just one issue we are confronted with tonight. What we are saying to the American people is that we would rather have our vacation starting Saturday night and not face this problem until we come back January 19. The matters in this bill are much too important to accept that simple solution.

Mr. MANSFIELD. Mr. President, I would like to say a few words. I wish to say to my distinguished colleague from Massachusetts that in my opinion we are not abdicating one whit of our responsibility. I would not stand for it if I thought so. I can say that knowing what I say to be true. I would point out that every alternative remains.

The President has presented us with a suggestion. We do not have to be bound by what any President says because we are a separate and distinct part of this Government. We can, if we wish, meet tomorrow—and we will—and a bill will be reported by the conferees. The House can pass that conference report and so can we, with or without a continuing resolution.

As far as missing a Christmas vacation is concerned, I do not think that has entered into the mind of any Member of this body. I regret that the Senator believes it has. We are paid to work, and if need be, 365 days a year. Sometimes I think we take too much time off and complain because we are worked so hard and so long. Well, let me tell my colleagues that there are thousands of people in all of our States who would like to have this job and put in the long hours and undergo the hardships which it entails.

This resolution is a fair way to face up to such a situation as we are confronted with. It does not bind us in any way. We do not have to accept the resolution on the basis that we will consider a conference report in the latter part of January. We can consider it at any time. And the President can veto it at any time.

I think that what we ought to do is to face up to this matter and try to get a bill. We should leave it up to both Houses to do what they want to do, and act accordingly, and we should do it with or without a letter from the President of the United States.

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

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

Mr. COTTON. Mr. President, as one who has been sweating out this bill for many weeks at the side of the distinguished Senator from Washington (Mr. MAGNUSON), I wish to say that I admire the executive ability, the force, the drive, and the analytical reasoning that he displays. He is a great chairman.

But this is the first year that the Senator from Washington has served as chairman of this particular subcommittee. I have been serving as the ranking minority member of the subcommittee for almost 10 years. I have been sitting in conferences between the Senate and the House for nearly 10 years. Next to the Defense appropriation bill, the Labor, and Health, Education, and Welfare appropriation bill is one of the most complex, complicated, controversial appropriation bills with which we have to deal.

The assumption that we are going to meet at 2 o'clock tomorrow and come back within a few hours with everything settled and ready to put this bill on the President's desk may be true—I hope it is—but unless human nature has changed during my experience in conferences, and unless the distinguished Members of the other body have suddenly ceased to become lions and have become lambs, perhaps it will be—but it may not be—quite the simple performance that is being guaranteed.

Regarding the statement that we should stay until Christmas Day or the day after Christmas or the day before New Year's Eve, we may find ourselves having brought this complicated bill to its final consummation as Santa Claus is just approaching the chimney.

But we are informed by the House that they will not go to conference until 2 o'clock tomorrow afternoon. If this is going to be a simple vesper service, it will be the first one I have ever had the pleasure of attending. I am looking forward to it. Do not be so sure that we do not need to have an ace in the hole as a safeguard to see that those children, those families, those on welfare, and those working in the great Department of HEW receive their benefits and their pay without any cessation.

Let us be sensible. Do this thing now and protect them because we may or we may not be all through tomorrow night.

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

Mr. MANSFIELD. I yield.

Mr. COOK. Mr. President, as a new Member, I have been pleased to listen to all of this discussion tonight, because it has given me a new insight into exactly how the Senate operates when it gets together at 11:20 o'clock at night.

It has amazed me to listen to the remarks of the Senator from Oklahoma and the Senator from Massachusetts, particularly the Senator from Massachusetts, when he said that what we are really trying to do is to preserve our vacations.

Well, Mr. President, I thought that the first day of the fiscal year for these United States began on the 1st of July. I might suggest that when the Senator went home in July, and when he went home in August, there was a continuing resolution; and when he went home in September, and when he went home in October, there was a continuing resolution.

Now we are saying we cannot go home until the 19th of January without a continuing resolution because, somehow or other, Christmas is there and New Year's is there.

I am sorry that the headlines tomorrow will say that the distinguished Senator from Massachusetts blamed the Senate because he wanted a vacation, because that will be the headline.

But the continuing resolution has been there since the first day of July, not starting tonight.

I might suggest again that the first day of the fiscal year for these United States began on the first of July.

The hearings on HEW began on the fourth of August.

Thus, that is what we are faced with. We are faced with reality, gentlemen, not a bunch of demagoguery.

Mr. KENNEDY. Mr. President, will the Senator from Kentucky yield?

Mr. MANSFIELD. I yield. I have the floor.

Mr. KENNEDY. The Senator said something about December 31?

Mr. COOK. I did not say the 31st.

Mr. KENNEDY. We have all next week. We have until the 31st for any kind of continuing resolution.

Mr. COOK. Let me say to the Senator that I said the 19th of January.

Mr. KENNEDY. The point I am making is that we certainly have ample time in the next day or two to pass a continuing resolution if that is our decision. But if we decide to stay in session and wait for the President to sign or veto this bill which we have not even passed yet, we can, at that time, determine whether a continuing resolution would be appropriate. In my opinion, the Congress might very well override a Presidential veto, and we would not need the resolution. Or it may be that we will want to wait to pass this bill after we reconvene in January, and in that case a continuing resolution would be necessary. But I say to my colleagues on this side of the aisle, especially, as the majority party we should take advantage of a night's rest and reflection, and consider this question in our caucus tomorrow morning when we can discuss our responsibility in this matter, and determine what our response should be. But I do not believe in a hurried midnight reaction unless there is some grave urgency, an element which is not present in this situation. We should take time to examine the alternatives and then make our decision.

Mr. COOK. I might suggest that if the Senator really wants to do it—because I intend to vote with him—if he really wants to do it, I suggest he raise a point of order because I think this is legislation on an appropriations bill, and I think that would take care of it.

Mr. MANSFIELD. Mr. President, personally, I think it is up to each individual Senator to decide how he will vote. All I ask is that we be allowed the opportunity to vote. I hope that at this time we can vote on the pending resolution without further discussion.

Mr. SCOTT. We are ready to vote.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Pennsylvania will state it.

Mr. SCOTT. Would the Chair state the issue on which we are about to vote?

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Nebraska which is the continuing resolution amendment.

Mr. SCOTT. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Nebraska, which is the continuing resolution amendment.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. KENNEDY. I announce that the

Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. BIBLE), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), and the Senator from Ohio (Mr. YOUNG), are necessarily absent.

I further announce that, if present and voting, the Senator from Arkansas (Mr. FULBRIGHT) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Tennessee (Mr. BAKER), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from New Jersey (Mr. CASE), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. GOODELL), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from Illinois (Mr. SMITH) are detained on official business.

If present and voting, the Senator from Illinois (Mr. PERCY), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 65, nays 10, as follows:

[No. 264 Leg.]

YEAS—65

Aiken	Fong	Murphy
Allen	Gore	Muskie
Allott	Gravel	Pastore
Bellmon	Griffin	Pell
Bennett	Gurney	Prouty
Boggs	Hansen	Proxmire
Brooke	Hart	Randolph
Burdick	Hatfield	Ribicoff
Byrd, Va.	Holland	Schweiker
Byrd, W. Va.	Hruska	Scott
Cannon	Jackson	Smith, Maine
Church	Javits	Sparkman
Cotton	Jordan, N.C.	Spong
Cranston	Jordan, Idaho	Stennis
Curtis	Long	Stevens
Dodd	Magnuson	Talmadge
Dole	Mansfield	Thurmond
Dominick	Mathias	Williams, N.J.
Eagleton	McClellan	Williams, Del.
Ellender	McGovern	Yarborough
Ervin	Miller	Young, N. Dak.
Fannin	Montoya	

NAYS—10

Bayh	Hughes	Moss
Cook	Kennedy	Saxbe
Harris	Metcalf	
Hartke	Mondale	

NOT VOTING—25

Anderson	Hollings	Percy
Baker	Inouye	Russell
Bible	McCarthy	Smith, Ill.
Case	McGee	Symington
Cooper	McIntyre	Tower
Eastland	Mundt	Tydings
Fulbright	Nelson	Young, Ohio
Goldwater	Packwood	
Goodell	Pearson	

So, Mr. HRUSKA'S amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. BYRD of West Virginia. Mr. President, I ask for third reading.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed for a third reading, and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass?

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, may I announce again that there will be a meeting of Democrats in Room S. 207, but at 10 o'clock rather than 9 o'clock because, beginning tomorrow, we will have nothing but conference reports, insofar as I am aware.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, instead of coming in at 10 o'clock tomorrow morning, when the Senate completes its business tonight it stand in adjournment until 11 o'clock tomorrow morning, at which time the Tasca nomination will be taken up.

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

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. BYRD of West Virginia. I ask unanimous consent to include in the RECORD certain documentary material with respect to section 904 of the bill.

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

[Extract from Senate Report No. 91-616 to accompany the supplemental appropriation bill, 1970]

SECTION 904—THE "PHILADELPHIA PLAN"

The following new language has been included as section 904 of the bill:

"SEC. 904. In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute."

The provision recommended by the committee is to reaffirm the authority of the Comptroller General delegated to him by the Congress when it enacted the Budgeting and Accounting Act of 1921, as amended. Section 304 of this act, 31 U.S.C. 74 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." Section 111 of the act, 31 U.S.C. 65 directs the Comptroller General to determine whether "financial transactions have been consummated in accordance with laws, regulations, or other legal requirements." The Comptroller General has exercised the delegated congressional power over the obligation and expenditure of appropriated funds for almost 50 years without serious challenge from the Attorney General of the United States or any other officer of the executive branch. It has been historic that where serious disagreements have arisen with the holdings of the Comptroller General, the proper recourse has been to the Congress or to the Federal courts. The committee holds that this is still true.

The Comptroller General, by letter dated December 2, 1969 informed the committee that a most serious challenge had been posed to his basic authority to determine the legality of obligations and expenditures by the executive branch.

The committee wishes to emphasize that the basic issue here is the constitutional authority of the Congress itself. It must be further emphasized that the Congress has delegated certain of its constitutional authority to the Comptroller General alone. As long as such delegation exists, it must be complete, and not be allowed to be eroded by the executive branch. Therefore the committee strongly recommends the adoption of section 904.

MEMORANDUM

To: Senator Robert C. Byrd, Chairman, Subcommittee on Deficiencies and Supplementals, Committee on Appropriations.
From: Joseph T. McDonnell, Staff Member.
Subject: Challenge to the authority of the Comptroller General, to determine the legality of the expenditure of appropriated funds (re the "Philadelphia Plan").

The question presented is *not* whether the Philadelphia Plan violates or does not violate the Civil Rights Act of 1964. The real question at issue is whether an opinion of the Comptroller General relative to the legality of the expenditure of appropriated funds is or is not ". . . final and conclusive upon the Executive Branch of the Government." (31 U.S.C. Sections 65(d) and 74.)

While it is true that the basic issue arises from the desire of the Executive Department to encourage, and possibly compel, the hiring of more members of minority groups by Government contractors, and at the same time encourage, and possibly compel, the craft unions to admit to membership more members of minority groups, these objectives are secondary to the basic question presented: Whether the Congress—acting through its agent, the Comptroller General—has or does not have the final authority to determine the legality of obligating or expending appropriated funds.

The question presented must necessarily be answered in the affirmative. To say otherwise is to deny the constitutional authority of Congress over appropriated funds and thus limit the congressional function to simply approving or disapproving budget estimates submitted by the Executive Branch.

That the constitutional authority of the Congress is far broader is amply illustrated by its unchallenged actions when approving appropriations, to impose limitations and conditions on the expenditure of said funds.

The complete authority of Congress over appropriated funds is nowhere better illustrated than by the creation in 1921 and continued existence of the office of Comptroller General, who exercises as the agent of Congress the delegated congressional authority to determine the legality of expenditures of appropriated funds.

Congress has decreed that such determinations will be ". . . final and conclusive upon the Executive Branch of the Government."

By delegating its own constitutional authority to an agent, Congress in no way limits its authority. Thus, to advance the proposition that an advisory opinion of the Attor-

ney General can over-rule an opinion of the Comptroller General is to say that the Executive Branch is the final judge of the legality of the expenditure of appropriated funds. Such a proposition is not supportable by reference to the Constitution, nor by the precedents.

While the President cannot be compelled to spend appropriated funds, this presidential power cannot be turned around to mean that the President, once Congress appropriates funds, can direct that such funds can be spent to carry out any program or to achieve any objective that the President alone determines and do so without further authorization from the Congress.

In the instant case, the Comptroller General has held that the expenditure of funds for the purposes of carrying out the so-called "Philadelphia Plan" or any similar plan is not authorized by law. The Attorney General in an advisory opinion has held contra.

Again it must be emphasized that the basic question at issue is the delegated authority of the Comptroller General to determine the legality of the expenditures of appropriated funds—which determination Congress has decreed by statute shall be "final and conclusive upon the Executive Branch."

It is submitted that the question presented must be resolved in favor of the Comptroller General. If the Executive Branch wishes to pursue the "Philadelphia Plan" or institute "plans" having the same objective, then the President should request enactment by Congress of the necessary legislative authorization. Pending such request—unless the Congress desires to completely abdicate its constitutional authority over the expenditure of appropriated funds, and substitute the Attorney General for the Comptroller General—Congress should enact the language contained in Section 1004 proposed as an amendment to H.R. 15209, making supplemental appropriations for fiscal 1970.

II

The discussion above is intended to emphasize that the basic argument in favor of including the proposed amendment in H.R. 15209 is not the merits or demerits of the "Philadelphia Plan," but rather the need for the Congress itself to re-assert its own broad authority to determine the legality of the expenditure of appropriated funds. Of course, in so doing the delegated authority of the Comptroller General is also re-asserted.

III

The following attachments are submitted for your consideration:

1. *Attachment A:* The amendment to the Mutual Security Appropriation Act for fiscal 1960, mentioned by Mr. Thomas J. Scott, and some comments thereon by GAO.

2. *Attachment B:* Statutory citations re the authority of the Attorney General to issue opinions and some comments by the GAO on their force and effect.

3. *Attachment C:* Some examples of restrictions imposed by Congress on the expenditure of appropriated funds.

4. *Attachment D:* Summary prepared by GAO on your question as to how the "Philadelphia Plan" violates the Civil Rights Act of 1964. Attached to this summary is an extract from the Comptroller General's Opinion, B–163026, August 5, 1969, in which he concludes that the "Philadelphia Plan" is in conflict with the Civil Rights Act of 1964.

5. *Attachment E:* Memorandum from GAO re contracts awarded under the "Philadelphia Plan."

FOREIGN ASSISTANCE APPROPRIATIONS

Section 111(d) of the Mutual Security Appropriation Act, 1960, 73 Stat. 720, provided that:

"(d) None of the funds herein appropriated shall be used to carry out any provision of chapter II, III, or IV of the Mutual Security Act of 1954, as amended, in any country, or with respect to any project or activity, after the expiration of the thirty-five day period which begins on the date the General Accounting Office or any committee of the Congress, or any duly authorized subcommittee thereof, charged with considering legislation or appropriations for, or expenditures of, the International Cooperation Administration, has delivered to the office of the Director of the International Cooperation Administration a written request that it be furnished any document, paper, communication, audit, review, finding, recommendation, report, or other material relating to the administration of such provision by the International Cooperation Administration in such country or with respect to such project or activity, unless and until there has been furnished to the General Accounting Office, or to such committee or subcommittee, as the case may be, (1) the document, paper, communication, audit, review, finding, recommendation, report, or other material so requested, or (2) a certification by the President that he has forbidden its being furnished pursuant to such request, and his reason for so doing."

See also, to similar effect, section 2394 of title 22, United States Code, and section 402 of the Foreign Assistance and Related Agencies Appropriation Act, 1969, 82 Stat. 1144, concerning the Office of the Inspector General and Comptroller.

The legislative history of section 111(d) of the 1960 appropriation act shows clearly that the Congress, in providing for a Presidential certification to avoid operation of the statutory injunction, did not intend to yield its prerogatives over the expenditure of appropriated funds. Senator Robertson in explaining the language of his amendment which was substantially enacted as section 111(d) made the following statements:

"In addition, and I wish to emphasize this, the amendment does not yield one iota of the constitutional right of the Congress to demand information concerning the handling of funds it has appropriated, but it makes this much of a concession to the difference of opinion between Congress and the President.

"* * * That difference is this: If the President, in keeping with the well established principle under the Constitution of the right of the President to handle foreign policy, decides that the disclosure of some phase of foreign policy would be against the public interest, he can so certify, and the Congress will not be able to get the information. But Mr. President, it is inconceivable that any President would invoke that privilege to cover up inefficiency of some minor official in some country in the expenditure of the taxpayers' money.

"I say we are not trying to settle the constitutional issue. At some future time we may have to do it, but we are not trying to do it in this bill. We are trying to arrive at a working formula which will enable Congress to have proper information about a program which costs almost $4 billion a year of the taxpayers' money." CONGRESSIONAL RECORD, volume 105, part 15, page 19256.

While recognition of the constitutional doctrine of executive privilege was thus accorded in connection with the appropriation restriction in question as it related to the withholding of information, it should be recognized that a restriction against use of appropriated funds to implement the "Philadelphia Plan" would not encounter this issue.

By decision of December 8, 1960, B–143777, the Comptroller General advised the Secretary of State that in light of the provisions of section 533A(d) of the Mutual Security Act of 1954 as added by section 401(h) of the Mutual Security Act of 1959, 73 Stat. 253, the failure to provide certain documents requested by the Chairman of the Foreign Operations and Monetary Affairs Subcommittee of the House Government Operations Committee required the conclusion that funds were not available for expenses of the office of the Inspector General and Comptroller. The Attorney General in an opinion dated December 19, 1960, advised the President that he did not agree with the Comptroller General's ruling. The matter was ultimately resolved through arrangements worked out with the Subcommittee in connection with the documents in question.

Although the decision in 1960 concerned interpretation of a statute similar to those referred to, it should be noted that the provisions there in question were not contained in an appropriation act.

ATTORNEY GENERAL OPINIONS

5 U.S.C. 3106

"Except as otherwise authorized by law, the head of an executive department or military department may not employ an attorney or counsel for the conduct of litigation in which the United States, an agency, or employee thereof is a party, or is interested, or for the securing of evidence therefor, but shall refer the matter to the Department of Justice * * *."

28 U.S.C. 511

"The Attorney General shall give his advice and opinion on questions of law when required by the President."

28 U.S.C. 512

"The head of an executive department may require the opinion of the Attorney General on questions of law arising in the administration of his department." (See 28 U.S.C. 513 regarding military departments.)

28 U.S.C. 516

"Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or office thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under direction of the Attorney General."

The Attorney General has himself stated that his opinions are advisory only and that he has no control over the action of the head of department at whose request and to whom an opinion is given. 17 Op. Atty. Gen. 332 (1855). The duty of the Attorney General is to advise, not to decide. A thing is not to be considered as done by the head of a department merely because the Attorney General has advised him to do it; and the Department head may disregard the opinion if he is sure it is wrong. 9 Op. Atty. Gen. 36 (1857).

The courts have held that opinions of the Attorney General construing statutes are not, apparently, given greater weight by courts than is conceded to departmental constructions in general. *Lewis Pub. Co.* v *Morgan*, 229 U.S. 288 (1913); *U.S.* v. *Falk*, 204 U.S. 143 (1907); *Harrison* v. *Vose*, 50 U.S. 384 (1850). Opinions as to a law held and expressed by the Attorney General are persuasive, and such deference should be accorded to them as is given to opinions of other able persons learned in the law but no more. *McDonald* v. *U.S.*, 89 F. 2d 128 (1937), certiorari denied 301 U.S. 697, rehearing denied 302 U.S. 773, rehearing denied 325 U.S. 892.

On the other hand, the Attorney General has held that the head of a department cannot require the Attorney General's opinion as to his powers to do an act unless it is his intention to be guided thereby. 3 Op. Atty. Gen. 39 (1836); 21 Op. Atty. Gen. 174 (1895); 20 Op. Atty. Gen. 724 (1894); 20 Op. Atty. Gen. 609 (1893). Although there is no statutory declaration of the effect to be given to Attorney General advice and opinion, administrative officers should regard the opinions of the Attorney General as law until withdrawn by him or overruled by the courts. 5 Op. Atty. Gen. 97 (1849); 20 Op. Atty. Gen. 719 (1894); 20 Op. Atty. Gen. 648 (1893); 7 Op. Atty. Gen. 692 (1856). See also *Berger* v. *U.S.* 36 Ct. Cl. 247 (1901).

EXAMPLES OF APPROPRIATION RESTRICTIONS

DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1969

"SEC. 509. No appropriation contained in this Act shall be available for expenses of operation of messes (other than organized messes the operating expenses of which are financed principally from nonappropriated funds) at which meals are sold to officers or civilians except under regulations approved by the Secretary of Defense * * *.

"SEC. 514. Notwithstanding any other provision of law, Executive order, or regulation, no part of the appropriations in this Act shall be available for any expenses of operating aircraft under the jurisdiction of the Armed Forces for the purpose of proficiency flying except * * *.

"SEC. 515. No part of any appropriation contained in this Act shall be available for expense of transportation, packing, crating, temporary storage, drayage, and unpacking of household goods and personal effects in any one shipment having a net weight in excess of thirteen thousand five hundred pounds.

"SEC. 517. None of the funds provided in this Act shall be available for training in any legal profession nor for the payment of tuition for training in such profession: *Provided*, That this limitation shall not apply to the off-duty training of military personnel as prescribed by section 521 of this Act.

"SEC. 521. No appropriation contained in this Act shall be available for the payment of more than 75 per centum of charges of educational institutions for tuition or expenses for off-duty training of military personnel, nor for the payment of any part of tuition or expenses for such training for commissioned personnel who do not agree to remain on active duty for two years after completion of such training.

"SEC. 522. No part of the funds appropriated herein shall be expended for the support of any formally enrolled student in basic courses of the senior division, Reserve Officers' Training Corps, who has not executed a certificate of loyalty or loyalty oath in such form as shall be prescribed by the Secretary of Defense."

INDEPENDENT OFFICES AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATION ACT, 1969

"SEC. 301. No part of any appropriation contained in this Act, or of the funds available for expenditure by any corporation or agency included in this Act, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the Congress.

"SEC. 307. None of the funds in this Act shall be available to finance interdepartmental boards, commissions, councils, committees, or similar groups under sec. 214 of the Independent Offices Appropriation Act, 1946 (31 U.S.C. 691) which do not have prior and specific Congressional approval of such method of financial support, except * * *.

DEPARTMENTS OF LABOR, AND HEALTH, EDUCATION, AND WELFARE APPROPRIATION ACT, 1969

"SEC. 409. No part of the funds contained in this Act may be used to force busing of students, abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents or parent in order to overcome racial imbalance.

"SEC. 410. No part of the funds contained in this Act shall be used to force busing of students, the abolishment of any school or the attendance of students at a particular school in order to overcome racial imbalance as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school: *Provided*, That the Secretary shall assign as many persons to the investigation and compliance activities of title VI of the Civil Rights Act of 1964 related to elementary and secondary education in the other States as are assigned to the seventeen Southern and border States to assure that this law is administered and enforced on a national basis, and the Secretary is directed to enforce compliance with title VI of the Civil Rights Act of 1964 by like methods and with equal emphasis in all States of the Union and to report to the Congress by March 1, 1969, on the actions he has taken and the results achieved in establishing this compliance program on a national basis: *Provided further*, That notwithstanding any other provision of law, funds or commodities for school lunch programs or medical services may not be recommended for withholding by any official employed under appropriations contained herein in order to overcome racial imbalance: *Provided further*, That notwithstanding any other provisions of law, moneys received from national forests to be expended for the benefit of the public schools or public roads of the county or counties in which the national forest is situated, may not be recommended for withholding by any official employed under appropriations contained herein."

DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1968, PUBLIC LAW 90–97, 81 STAT. 249

"SEC. 640.

"(b) During the current fiscal year none of the funds available to the Department of Defense may be used to install or utilize any new 'cost-based' or 'expense-based' system or systems for accounting, including accounting results for the purposes prescribed by section 113(a)(4) of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 66a(a)(4)), until forty-five days after the Comptroller General of the United States (after consultation with the Director of the Bureau of the Budget) has reported to the Congress that in his opinion such system or systems are designed to: (1) meet the requirements of all applicable laws governing budgeting, accounting, and the administration of public funds and the standards and procedures established pursuant thereto; (2) provide for uniform application to the extent practicable throughout the Department of Defense; and (3) prevent violations of the antideficiency statute (R.S. 3679; 31 U.S.C. 665)."

FOREIGN ASSISTANCE AND RELATED AGENCIES APPROPRIATION ACT, 1962, PUBLIC LAW 87–329, 75 STAT. 721

"SEC. 602. None of the funds herein appropriated shall be used for expenses of the Inspector General, Foreign Assistance, after the expiration of the thirty-five day period which begins on the date the General Accounting Office or any committee of the Congress, or any duly authorized subcommittee thereof, charged with considering foreign assistance legislation, appropriations, or expenditures, has delivered to the office of the Inspector General, Foreign Assistance, a written request that it be furnished any document, paper, communication, audit, review, finding, recommendation, report, or other material in the custody or control of the Inspector General, Foreign Assistance, relating to any review, inspection, or audit arranged for, directed, or conducted by him, unless and until there has been furnished to the General Accounting Office or to such committee or subcommittee, as the case may be, (A) the document, paper, communication, audit, review, finding, recommendation, report, or other material so requested or (B) a certification by the President, personally, that he has forbidden the furnishing thereof pursuant to such request and his reason for so doing."

INDEPENDENT OFFICES APPROPRIATION ACT, 1952, PUBLIC LAW 82–137, 65 STAT. 286

"No money made available to the Department of Commerce, for maritime activities, by this *or any other Act* shall be used in payment for a vessel the title to which is acquired by the Government either by requisition or purchase, or the use of which is taken either by requisition or agreement, or which is insured by the Government and lost while so insured, unless the price or hire to be paid therefor (except in cases where section 802 of the Merchant Marine Act, 1936, as amended, is applicable) is computed in accordance with subsection 902(a) of said Act, as that subsection is interpreted by the General Accounting Office." (Emphasis supplied.)

All except the last of the foregoing provisions generally are held to be mere restrictions upon the use of appropriations and are not subject to a point of order. Such restrictions applying to "appropriations in this or *any other act*" as in the last-quoted provision are subject to a point of order as being legislation in an appropriation act. The Philadelphia Plan restriction would have to be of the latter type unless it is inserted in each of the pertinent appropriation acts.

SUMMARY OF WHY THE "PHILADELPHIA PLAN" CONFLICTS WITH THE CIVIL RIGHTS ACT OF 1964

The public policy with respect to both employer employment practices and union referral practices is set out in subsections 703 (a) and (c) of the Civil Rights Act of 1964. These provisions of the law clearly spell out that it shall be an unlawful employment practice for an employer to consider race or national origin in hiring or refusing to hire a qualified applicant, and for a labor organization, such as a union, to consider race or national origin in referring, or refusing to refer, a qualified applicant to an employer for employment.

If there were any doubt as to the policy set out in sections 703 (a) and (c), it would be completely dispelled by the provisions of subsection 703(j) which specify that the provisions of Title VII of the act shall not be interpreted to require any employer or labor organization to grant preferential treatment to any individual or group on account of an imbalance which may exist in the employer's work force or the labor organization's membership when the racial or national origin composition of such work force or membership is compared to the total number of persons of such race or national origin in the community or section, or in the available work force in the community or section.

The legislative history of the act is replete with clear indications of the Congressional intent in these areas, and the Comptroller General's opinion of August 5, 1969, quotes more than three pages of such references as examples of such intent.

To the extent that the Philadelphia Plan will require contractors to agree to establish numerical goals of minority group employees, and to exert "every good faith effort" to attain such goals in performing their contracts, the Plan will necessarily require contractors to consider race and national origin in recruiting and hiring employees. And to the extent that the numerical goals and ranges of minority group employees set out in the Plan are directed to correcting imbalances in either, or both, the contractors work force or his union's membership, they must necessarily be considered in violation of the public policy expressed in section 703(j) of the act.

Both the Department of Labor and the Department of Justice appear to recognize that the Plan either will, or may, result in reverse discrimination against non-minority group workers. But they argue that such reverse discrimination is legal if it is necessary to correct that present results of past discrimination. The truth of the matter is that the Departments are relying upon court opinions in school, voting, and housing cases to support their conclusion, and that there are no controlling judicial precedents on the point with respect to employment practices. Not

only is the Executive branch of the Government attempting to legislate in this area, it is also attempting to interpret and apply inapplicable and conflicting opinions of the courts in a manner contrary to the intent of Congress in enacting the Civil Rights Act of 1964, and in a manner clearly not intended by the judiciary. The action of the Departments in implementing the Plan must therefore be construed as a usurpation by the Executive of the functions of both the Legislative and Judicial branches of the Government. If any additional support for this conclusion should be needed, one need only look to the provisions of subsection 706(g) of the act, which authorize the courts to order such "affirmative action" as may be appropriate when an employer or a union, pursuant to the judicial procedures prescribed by the act, has been found by the court to be engaging in unlawful employment practices.

* * * * *

Section 705(a) (42 U.S.C. 2000e–4(a)) creates the Equal Employment Opportunity Commission, and section 713(a), Rules and Regulations (42 U.S.C. 2000e–12(a)), provides that the Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of that title.

The public policy regarding labor organization practices is delineated in section 703(c) (42 U.S.C. 2000e–2(c)) wherein it is stated that it shall be an unlawful employment practice for a labor organization (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin; (2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or (3) to cause or attempt to cause an employer to discriminate against an individual in violation of that section.

Whether the provisions of the Plan requiring a bidder to commit himself to hire—or make every good faith effort to hire—at least the minimum number of minority group employees specified in the ranges established for the designated trades is, in fact, a "quota" system (and therefore admittedly contrary to the Civil Rights Act) or is a "goal" system, is in our view largely a matter of semantics, and tends to divert attention from the end result of the Plan—that contractors commit themselves to making race or national origin a factor for consideration in obtaining their employees.

We view the imposition of such a requirement on employers engaged in Federal or federally assisted construction to be in conflict with the intent as well as the letter of the above provisions of the act which make it an unlawful employment practice to use race or national origin as a basis for employment. Further, we believe that requiring an employer to abandon his customary practice of hiring through a local union because of a racial or national origin imbalance in the local unions and, under the threat of sanctions, to make "every good faith effort" to employ the number of minority group tradesmen specified in his bid from sources outside the union if the workers referred by the union do not include a sufficient number of minority group personnel, are in conflict with section 703(j) of the act (42 U.S.C. 2000e–2(j)) which provides as follows:

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter 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 of 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 of 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, or in the available work force in any area." (Italic added.)

While the legislative history of the Civil Rights Act is replete with statements by sponsors of the legislation that Title VII prohibits the use of race or national origin as a basis for hiring, we believe a reference to a few of such clarifying explanations will suffice to further show the specific intent of Congress in such respect when enacting that title. At page 6549, Volume 110, Part 5, of the Congressional Record, the following explanation by Senator Humphrey is set out:

"* * * As a longstanding friend of the American worker, I would not support this fair and reasonable equal employment opportunity provision if it would have any harmful effect on unions. The truth is that this title forbids discriminating against anyone on account of race. This is the simple and complete truth about title VII.

"The able Senators in charge of title VII (Mr. Clark and Mr. Case) will comment at greater length on this matter.

"Contrary to the allegations of some opponents of this title, 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 *to achieve a certain racial balance.*

"That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion." (Italic added.)

In an interpretative memorandum of Title VII submitted jointly by Senator Clark and Senator Case, floor managers of that legislation in the Senate, it is stated (page 7213, Volume 110, Part 6, Congressional Record):

"With the exception noted above, therefore, section 704 prohibits discrimination in employment because of race, color, religion, sex, or national origin. It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited by section 704 are those which are based on any five of the forbidden criteria: race, color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title.

"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. It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against.

"There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance.

"Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier. (However, where waiting lists for employment or training are, prior to the effective date of the title, maintained on a discriminatory basis, the use of such lists after the title takes effect may be held an unlawful subterfuge to accomplish discrimination.)" (Underscoring added.)

At page 7218 of Volume 110 the following objections, which had been raised during debate to the provisions of Title VII, and answers thereto by Senator Clark are printed:

"Objection: Under the bill, employers will no longer be able to hire or promote on the basis of merit and performance.

"Answer: Nothing in the bill will interfere with merit, hiring, or merit promotion. The bill simply eliminates consideration of color from the decision to hire or promote.

* * * * *

"Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.

"Answer: Quotas are themselves discriminatory."

While, as indicated above, we believe that the provisions of the Plan affecting employers who hire through unions conflict with section 703(j) of Title VII, and that the above statement by Senator Humphrey further indicates that the act was not intended to affect valid collective bargaining agreements, we further believe that the appropriate direction of any administrative action to be taken where it is the policy of a union to refer only white workers to employers on Federal or federally assisted construction is indicated in the following question and answer set forth in the interpretative memorandum by Senator Clark and Senator Case (page 7217, Volume 110):

"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? If he is not, then further safeguards must be provided to protect him from endless prosecution under the authority 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 union hiring halls would be."

We believe it is especially pertinent to note

that the "Findings" stated in section 4 of the order of June 27 as the basis for issuance thereof, consist almost entirely of a recital of practices of *unions*, rather than of contractors or employers. Thus, in attempting to place upon the contractors the burden of overcoming the effects of union practices, the order appears to evince a policy in conflict with the interpretation of the legislation as stated by its sponsors.

In this connection your Solicitor's memorandum contends that the principle of imposing affirmative action programs on contractors for employment of administratively determined numbers of minority group tradesmen, when such programs are for the purpose of correcting the effects of discrimination by unions prior to the Civil Rights Act of 1964, is supported by the decisions in *Quarles* v. *Philip Morris*, 279 F. Supp. 505; *U.S.* v. *Local 189, U.P.P. and Crown Zellerbach Corp.*, 282 F. Supp. 39; and *Local 53 of Heat and Frost Insulators* v. *Vogler*, 407 F. 2d 1047. We find, however, that decisions of the courts have differed materially in such respect; see *Griggs* v. *Duke Power*, 292 F. Supp. 243; *Dobbins* v. *Local 212*, 292 F. Supp. 413; and *U.S.* v. *Porter*, 296 F. Supp. 40.

Additionally, your Solicitor's memorandum cites cases involving affirmative desegregation of school faculties (*U.S.* v. *Jefferson County*, 372 F. 2d 836 (1966), and *U.S.* v. *Montgomery County*, 289 F. Supp. 647, affirmed 37 LW 4461 (1969) in particular). However, there is a clear distinction between the factual and legal situations involved in those cases and the matter at hand. The cited school decisions required reallocation of portions of existing school faculties in implementation of the requirement for desegregation of dual public school systems, which had been established on the basis of race, as such requirement was set out in the 1954 and 1955 decisions of the Supreme Court in the *Brown* v. *Board of Education* cases (347 U.S. 483 and 349 U.S. 294). In the *Brown* cases desegregation of faculties was regarded as one of the keys to desegregation of the schools, and in the *Jefferson County* case the court read Title VI of the Civil Rights Act as a congressional mandate for a change in pace and method of enforcing the desegregation of racially segregated school systems, as required by the *Brown* decisions.

MEMORANDUM FROM GAO RE CONTRACTS AWARDED UNDER "PHILADELPHIA PLAN"

Information on file in the General Accounting Office indicates that four contracts containing the revised Philadelphia Plan have already been awarded. One of these contracts was awarded to Bristol Steel and Iron Works, Inc., in the amount of $3,986,200, as low bidder for furnishing and erecting structural steel at Children's Hospital in Philadelphia.

The remaining three contracts were for general construction work, mechanical work, and electrical work in connection with an addition to the Law School at Villanova University. The contract for general construction work was awarded to Palladino-Fleming Company as low bidder at $988,100. However, the low bids submitted by Kirk Plumbing and Heating Corporation on the mechanical work and by Robinson Electrical Company, Inc., on the electrical work, in amounts of $252,000 and $154,960, respectively, were rejected for failure to offer to comply with the Plan. Contracts for both types of work were thereafter awarded to the second lowest bidder, The Gerngross Corporation, at its bid prices of $168,791 for electrical work and $253,800 for mechanical work, or $15,631 more than the low bids.

Both the Children's Hospital and Villanova University projects are subject to grants of Federal funds by the Department of Health, Education, and Welfare.

QUESTIONS PREPARED BY SENATOR ROBERT C. BYRD AND SUBMITTED TO THE COMPTROLLER GENERAL AND THE ANSWERS THERETO:

Question. Why should we give the Comptroller General all of this power?

Answer. This provision gives the Comptroller General no additional power whatsoever. It is merely a confirmation of the authority given the Comptroller General by the Budget and Accounting Act of 1921. 31 U.S.C. 74 provides, and I quote:

"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."

This very question—that is, the finality of the Comptroller General's decision—came up during the debate preceding the 1921 Act. Let me read two of the statements made by Chairman James W. Good during those 1919 hearings:

"If he (the Comptroller) is allowed to have his decisions modified or changed by the will of an Executive—Mr. Good said—then we might as well abolish the office."

Mr. Good also observed:

"There ought to be an independent body, independent of the Executives, with an official who could say, 'This appropriation can or cannot be used for this purpose'."

Congress took care of this point by enacting the provision of the Budget and Accounting Act I just quoted.

Question. Does this provision give the Comptroller General any additional authority over expenditures which he does not already have today?

Answer. No, it does not. This provision only applies to those activities where the Comptroller General has the authority to settle the accounts of the accountable officers and to make binding decisions. It does not include Government activities which have been excluded from the Comptroller General's authority. Examples of the latter are: jurisdiction over Internal Revenue assessments and refunds, veterans' compensation payments, and the expenditures of Government corporations.

Question. Just what did the Attorney General say which conflicts with the authority of the Comptroller General?

Answer. The Attorney General, in an opinion to the Secretary of Labor, not only upheld the action of the Secretary of Labor but went on to say, and I quote:

"I hardly need to add that the conclusions expressed herein may be relied on by your Department and other contracting agencies and their accountable officers in the administration of Executive Order No. 11246."

This, in effect, tells the agencies to ignore the opinion of the Comptroller General. Now, where will this lead? If this position is allowed to stand, it will be used in other cases, and Congress might as well forget about trying to exercise its Constitutional authority.

Question. Why not let the Comptroller General take a matter to court when there is a difference between his office and the Executive Branch of the Government?

Answer. Congress has only authorized the Department of Justice, and a few other agencies, to handle litigation involving the United States. The Comptroller General has not been granted this authority.

As a result, in any case involving one of his decisions which goes to court, the Comptroller General must be represented by the Attorney General. Obviously, where there is a difference between the Attorney General and the Comptroller General, certainly the views of the Comptroller General would not be advocated by the Attorney General.

Question. What is the legal authority for the "Philadelphia Plan"?

Answer. The "Philadelphia Plan" was issued under the authority of Executive Order No. 11246, which requires affirmative action programs to be taken to assist minority groups. The Executive Order does not spell out the details of the "Philadelphia Plan". That was done by the Secretary of Labor. The Comptroller General has not questioned the authority of the President to issue the Executive Order. He has questioned the implementation of the Executive Order by the Department of Labor through the "Philadelphia Plan".

Question. Isn't what is at issue here is the power of the President to issue Executive Orders relative to the hiring of members of minority groups?

Answer. The power of the President to issue Executive Orders is not at issue. The issue here is the legality of the implementation of an Executive Order and not the Presidential power to issue the Executive Order. In fact, the Comptroller General has recognized the power of the President to issue the order. However, he is of the opinion that the "Plan" issued under the order violates the Civil Rights Act of 1964.

Question. When the Civil Rights Act of 1964 was being considered, was it intended to cover situations such as the "Philadelphia Plan"?

Answer. Section 703(j) of the Civil Rights Act of 1964 provides:

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter 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 of 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." (Emphasis added.)

While the legislative history of the Civil Rights Act is replete with statements by sponsors of the legislation that Title VII prohibits the use of race or national origin as a basis for hiring, we believe a reference to a few of such clarifying explanations will suffice to further show the specific intent of Congress in such respect when enacting that title. At page 6549, Volume 110, Part 5, of the Congressional Record, the following explanation by Senator Humphrey is set out:

"* * * As a longstanding friend of the American worker, I would not support this fair and reasonable equal employment opportunity provision if it would have any harmful effect on unions. The truth is that this title forbids discriminating against anyone on account of race. This is the simple and complete truth about title VII.

"The able Senators in charge of title VII (Mr. Clark and Mr. Case) will comment at greater length on this matter.

"Contrary to the allegations of some opponents of this title, 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 *to achieve a certain racial balance*.

"That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race,

religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion." (Emphasis added.)

In an interpretative memorandum of Title VII submitted jointly by Senator Clark and Senator Case, floor managers of that legislation in the Senate, it is stated (page 7213, Volume 110, Part 6, Congressional Record):

"With the exception noted above, therefore, section 704 prohibits discrimination in employment because of race, color, religion, sex, or national origin. It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited by section 704 are those which are based on any five of the forbidden criteria: race, color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title.

"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. It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against.

"There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance.

"Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier. (However, where waiting lists for employment or training are, prior to the effective date of the title, maintained on a discriminatory basis, the use of such lists after the title takes effect may be held an unlawful subterfuge to accomplish discrimination.)" (Italic added.)

At page 7218 of Volume 110 the following objections, which had been raised during debate to the provisions of Title VII, and answers thereto by Senator Clark are printed:

"Objection: Under the bill, employers will no longer be able to hire or promote on the basis of merit and performance.

"Answer: Nothing in the bill will interfere with merit, hiring, or merit promotion. The bill simply eliminates consideration of color from the decision to hire or promote.

* * * * *

"Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.

"Answer: Quotas are themselves discriminatory."

While, as indicated above, we believe that the provisions of the Plan affecting employers who hire through unions conflict with section 703(j) of Title VII, and that the above statement by Senator Humphrey further indicates that the act was not intended to affect valid collective bargaining agreements, we further believe that the appropriate direction of any administrative action to be taken where it is the policy of a union to refer only white workers to employers on Federal or federally assisted construction is indicated in the following question and answer set forth in the interpretative memorandum by Senator Clark and Senator Case (page 7217, Volume 110):

"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? If he is not, then further safeguards must be provided to protect him from endless prosecution under the authority 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."

Question. What is the real distinction between the word, "quota", and the word, "goals", insofar as the "Philadelphia Plan" is concerned?

Answer. First, let me say that I think everyone agrees that "quotas" are illegal in that they are discriminatory. Now, when you require a contractor to agree to meet a "goal" of minority group workers and threaten a penalty, such as possible contract cancellation and debarment from future Government work unless he can show that he has made every good faith effort to meet his "goal", then the distinction between a "goal" and a "quota" is lost.

As the Comptroller General stated in his opinion of August 5, 1969, the question of whether the "Philadelphia Plan" is a "quota system" or a "goal system" is largely a matter of semantics. This argument tends to divert attention from the end result of the Plan—that contractors commit themselves to making race or national origin a factor for consideration in obtaining their employees.

Question. What is the legal authority for the Attorney General to issue a binding opinion in which the Attorney General states that the Department of Labor and other agencies may rely on his opinion in requiring contractors to meet the hiring provisions of the revised "Philadelphia Plan"?

Answer. The Attorney General is required to give advice to the heads of the Executive departments. However, there is no provision of law that they are binding but, of course, the Executive departments may feel that they should abide by the Attorney General's opinions. With reference to the advice furnished by the Attorney General that his conclusions could be relied on by the Labor Department and other contracting agencies in the administration of Executive Order No. 11246, such advice clearly conflicts with the Budget and Accounting Act of 1921, which gives the Comptroller General authority to decide on the legality of expenditures and makes his decisions final and conclusive upon the Executive Branch of the Government.

Question. The Comptroller General stated that the General Accounting Office was not opposed to equal employment opportunities for minority groups. Since the Civil Rights Act of 1964, Executive Order No. 11246, and the "Philadelphia Plan" all seek to achieve this goal, why is section 904 needed at this time?

Answer. The Comptroller General has made it quite clear that he is not against greater opportunities for minority groups. In fact, none of us here are. The real issue is whether the Executive Branch can take actions to achieve this objective which conflict with laws enacted by the Congress. The Comptroller General, as well as many others, believe that the "Philadelphia Plan" does conflict with Title VII of the Civil Rights Act.

The need for section 904, in my opinion, is best illustrated by a paragraph contained in the Committee report on this provision, and I quote:

"The committee wishes to emphasize that the basic issue here is the constitutional authority of the Congress itself. It must be further emphasized that the Congress has delegated certain of its constitutional authority to the Comptroller General alone. As long as such delegaton exists, it must be complete, and not be allowed to be eroded by the executive branch. Therefore the committee strongly recommends the adoption of section 904."

Question. Since the Civil Rights Act was designed to assist black people and the "Philadelphia Plan" is aimed at that objective, why is there objection to it?

Answer. The Comptroller General has made it quite clear that he is not against greater opportunities for minority groups. However, he believes that actions taken by the Executive Branch in achieving this objective must be in accord with the laws enacted by Congress. He is of the opinion, after careful research of the plan and of the Civil Rights Act of 1964, that the plan is in conflict with Title VII of the Act and is therefore unauthorized. It is not a question of helping the black people, but a question of helping them in a way which does not conflict with the laws passed by Congress and the Constitutional power of Congress itself.

Question. Why can't this matter be put off until early next Session? What would be the adverse effect of delay?

Answer. One of the cases presently involved is the question of the legality of the "Philadelphia Plan." The Comptroller General has found the plan to be in violation of the Civil Rights Act of 1964. The Attorney General thinks otherwise, and has advised the Department of Labor to go ahead with the plan. I understand that four contracts containing the "Philadelphia Plan" have already been awarded in the Philadelphia area. Also, I understand that the Department of Labor plans to extend the plan to other areas. Also, the Secretary of Transportation has adopted the "Philadelphia Plan" procedures in the awarding of highway construction contracts. Any delay in meeting this issue would allow expenditures to be made which the Comptroller General has found to be illegal. The longer Congress waits in acting on this matter, the deeper we become involved, and a precedent is being firmed up for the Executive Branch, acting on advice of the Attorney General, to in effect "call the shots" on Government expenditures, rather than the Comptroller General, the agent of Congress, exercising his clear authority under the Budget and Accounting Act of 1921.

LETTER TO SENATOR ROBERT C. BYRD FROM COMPTROLLER GENERAL AND ATTACHMENTS THERETO

DECEMBER 2, 1969.

HON. ROBERT C. BYRD,
Chairman, Subcommittee on Deficiencies and Supplementals, Committee on Appropriations, U.S. Senate.

DEAR MR. CHAIRMAN: I want to bring a matter to your attention which I think is of utmost importance to the Congress and to the General Accounting Office. This involves

the "Philadelphia Plan" promulgated by the Department of Labor to increase the number of minority group workers in certain construction trades.

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

On the basis of the Attorney General's Opinion, the Department of Labor has proceeded with the Plan in the Philadelphia area, and it is planning to go ahead in several other metropolitan areas. Also, we understand that the Secretary of Transportation has adopted the "Philadelphia Plan" procedures in the awarding of highway construction contracts.

Senator Ervin, as Chairman of the Subcommittee on Separation of Powers of the Senate Judiciary Committee, held hearings on this controversy in October of this year, and I understand he is sending a letter to the Senate Appropriations Committee suggesting to the Committee that it consider an appropriation bill limitation to prevent the Plan from being carried out in the Philadelphia area and from being placed in effect in other areas.

I want to make it clear that the General Accounting Office is not against greater opportunities for minority groups. However, we believe that actions taken by the Executive Branch in achieving this objective, must be in accord with the laws enacted by the Congress. As stated in our opinion of August 5, 1969, we believe that the "Philadelphia Plan" is in conflict with Title VII of the Civil Rights Act of 1964 and is therefore unauthorized.

The Attorney General in his opinion of September 22, 1969, concluded with a statement that the contracting agencies and their accountable officers could rely on his opinion. Considering 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.

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 groups involved (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 view of the situation I have outlined, I urge that the Senate Appropriations Committee give serious consideration to including in the Supplemental Appropriation Bill, 1970, which is now pending before the Committee, a limitation on the use of funds to finance any contract requiring a contractor or subcontractor to meet, or to make every effort to meet, specified goals of minority group employees. Language to accomplish this request is enclosed for your consideration.

I am also enclosing a copy of my decision of August 5, 1969; a copy of the Attorney General's opinion of September 22, 1969; a copy of Senator Ervin's statement of October 27, 1969; a copy of my statement of October 28, 1969, before the Subcommittee on Separation of Powers of the Senate Judiciary Committee; a copy of an article by James E. Remmert, which appeared in the November 1969, issue of the American Bar Association Journal, entitled "Executive Order 11246: Executive Encroachment," and copies of recent letters to me from Senator Ervin, Senator Russell, Senator McClellan, Senator Randolph, Senator Jordan, and Congressman Cramer. In connection with the latter expression of views, I would point out that there are other members of the Senate and of the House who support the Plan.

We are available to discuss this problem with you or the Appropriations Committee at any time.

Sincerely,

ELMER B. STAATS,
Comptroller General of the United States.

OPINION OF COMPTROLLER GENERAL RE PHILADELPHIA PLAN

AUGUST 5, 1969.

DEAR MR. SECRETARY: We refer to an order issued June 27, 1969, to the heads of all agencies by the Assistant Secretary for Wage and Labor Standards, Department of Labor. The order announced a revised Philadelphia Plan (effective July 18, 1969) to implement the provisions of Executive Order 11246 and the rules and regulations issued pursuant thereto which require a program of equal employment opportunity by contractors and subcontractors on both Federal and federally assisted construction projects.

Questions have been submitted to our Office by members of Congress, both as to be propriety of the revised Philadelphia Plan and the legal validity of Executive Order 11246 and of various implementing regulations issued thereunder both by your Department and by other agencies. In view of possible conflicts between the requirements of the Plan and the provisions of Titles VI and VII of the Civil Rights Act of 1964, Pub. L. 88-352, discussions have been held between representatives of our Office, your Department, and the Department of Justice, and your Solicitor has furnished to us a legal memorandum in support of the authority for issuance of the Executive Order as well as the revised Philadelphia Plan promulgated thereunder.

The memorandum presents the following points in support of the legal propriety of **the Plan:**

I. The Executive has the authority and the duty to require employers who do business with the Government to provide equal employment opportunity.

II. The passage of the Civil Rights Act of 1964 did not deprive the President of the authority to regulate, pursuant to Executive Orders, the employment practices of Government contractors.

III. The revised Philadelphia Plan is lawful under the Federal Government's procurement policies, is authorized under Executive Order 11246 and the implementing regulations, and is lawful under Title VII of the Civil Rights Act of 1964.

Without conceding the validity of all of the arguments advanced under points I and II, we accept the authority of the President to issue Executive Order 11246, and the contention that the Congress in enacting the Civil Rights Act did not intend to deprive the President of all authority to regulate employment practices of Government contractors.

The essential questions presented to this Office by the revised Philadelphia Plan, however, are (1) whether the Plan is compatible with fundamentals of the competitive bidding process as it applies to the awarding of Federal and federally assisted construction contracts, and (2) whether impositions of the specific requirements set out therein can be regarded as a legally proper implementation of the public policy to prevent discrimination in employment, which is declared in the Civil Rights Act and is inherent in the Constitution, or whether those requirements so far transcend the policy of nondiscrimination, by making race or national origin a determinative factor in employment, as to conflict with the limitations expressly imposed by the act or with the basic constitutional concept of equality.

Our interest and authority in the matter exists by virtue of the duty imposed upon our Office by the Congress to audit all expenditures of appropriated funds, which necessarily involves the determination of the legality of such expenditures, including the legality of contracts obligating the Government to payment of such funds. Authority has been specifically conferred on this Office to render decisions to the heads of departments and agencies of the Government, prior to the incurring of any obligations, with respect to the legality of any action contemplated by them involving expenditures of appropriated funds, and this authority has been exercised continuously by our Office since its creation whenever any question as to the legality of a proposed action has been raised, whether by submission by an agency head, or by complaint of an interested party, or by information coming to our attention in the course of our other operations.

The incorporation into the terms of solicitations for Government contracts of conditions or requirements concerning wages and other employment conditions or practices has been a frequent subject of decisions by this Office, many of which will be found enumerated in our decision at 42 Comp. Gen. 1. The rule invariably applied in such cases has been that any contract conditions or stipulations which tend to restrict the full and free competition required by the procurement laws and regulations are unauthorized, unless they are reasonably requisite to the accomplishment of the legislative purposes of the appropriation involved or other law. Furthermore, where the Congress in enacting a statute covering the subject matter of such conditions has specifically prohibited certain actions, no administrative authority can lawfully impose any requirements the effect of which would be to contravene such prohibitions.

It is within the framework of these principles that we consider the order promulgating the revised Philadelphia Plan.

The Assistant Secretary's order states the policy of the Office of Federal Contract Compliance (OFCC) that no contracts or subcontracts shall be awarded for Federal and federally assisted construction in the Philadelphia, Pennsylvania, area (including the counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia) on projects whose cost exceeds $500,000 unless the bidder submits an acceptable affirmative action program which shall include specific goals of minority manpower utilization, meeting the standards included in the invitation or other solicitations for bids, in trades utilizing the seven classifications of employees specified therein.

The order further relates that enforcement of the nondiscrimination and affirmative action requirements of Executive Order 11246 has posed special problems in the construction trades; that contractors and subcontractors must hire a new employee complement for each construction job and out of necessity or convenience they rely on the construction craft unions as their prime or sole source of their labor; that collective bargaining agreements and/or established custom between construction contractors and subcontractors and unions frequently provide for, or result in, exclusive hiring halls; that even where the collective bargaining agreement contains no such hiring hall provisions or the custom is not rigid, as a practical matter, most people working the specified classifications are referred to the jobs by the unions; and that because of these hiring arrangements, referral by a union is a virtual necessity for obtaining employment in union construction projects, which constitute the bulk of commercial construction.

It is also stated that because of the exclusionary practices of labor organizations, there traditionally have been only a small number of Negroes employed in the seven trades, and that unions in these trades in the Philadelphia area still have only about 1.6 percent minority group membership and they continue to engage in practices, including the granting of referral priorities to union members and to persons who have work experience under union contracts, which result in few Negroes being referred for employment. The OFCC found, therefore, that special measures requiring bidders to commit themselves to specific goals of minority manpower utilization were needed to provide equal employment opportunity in the seven trades.

Section 7 of the Assistant Secretary's order of June 27 indicates that the revised Plan is to be implemented by including in the solicitation for bids a notice substantially similar to one labeled "Appendix" which is attached to the order. Such notice would state the ranges of minority manpower utilization (as determined by the OFCC Area Coordinator in cooperation with the Federal contracting or administering agencies in the Philadelphia area) which would constitute an acceptable affirmative action program, and would require the bidder to submit his specific goals in the following form:

Identification of trade

Est. total employment for the trade on the contract

Number of minority group employees

Participation in a multi-employer program approved by OFCC would be acceptable in lieu of a goal for the trade involved in such program.

The notice also provides that the contractor will obtain similar goals from his subcontractors who will perform work in the involved trades, and that "Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 6 of the Order * * *." Since Section 6 of the order contains nothing relative to "failure," we assume the intended reference is to Section 8, which reads as follows:

"Post-award compliance

"a. Each agency shall review contractors' and subcontractors' employment practices during the performance of the contract. If the goals set forth in the affirmative action program are being met, the contractor or subcontractor will be presumed to be in compliance with the requirements of Executive Order 11246, as amended, unless it comes to the agency's attention that such contractor or subcontractor is not providing equal employment opportunity. In the event of failure to meet the goals, the contractor shall be given an opportunity to demonstrate that he made every good faith effort to meet his commitment. In any proceeding in which such good faith performance is in issue, the contractor's entire compliance posture shall be reviewed and evaluated in the process of considering the imposition of sanctions. Where the agency finds that the contractor or subcontractor has failed to comply with the requirements of Executive Order 11246, the implementing regulations and its obligations under its affirmative action program, the agency shall take such action and impose such sanctions as may be appropriate under the Executive Order and the regulations. Such noncompliance by the contractor or subcontractor shall be taken into consideration by Federal agencies in determining whether such contractor or subcontractor can comply with the requirements of Executive Order 11246 and is therefore a 'responsible prospective contractor' within the meaning of the Federal procurement regulations.

"b. It is no excuse that the union with which the contractor has a collective bargaining agreement failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964. It is the longstanding uniform policy of OFCC that contractors and subcontractors have a responsibility to provide equal employment opportunity if they want to participate in Federally-involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246, as amended, or the implementing rules, regulations and orders."

It is our opinion that the submission of goals by the successful bidder would operate to make the requirement for "every good faith effort" to attain such goals a part of his contractual obligation upon award of a contract. The provisions of Section 8 of the order would therefore become a part of the contract specifications against which the contractor's performance would be judged in the event he fails to attain his stated goals, just as much as his stated goals become a part of the contract specifications against which his performance will be judged in the event he does attain his stated goals.

As indicated at page 4 of the order, the original Philadelphia Plan was suspended because it contravened the principles of competitive bidding. Such contravention resulted from the imposition of requirements on bidders, after bid opening, which were not specifically set out in the solicitation. The present statement of a specific numerical range into which a bidder's affirmative action goals must fall is apparently designed to meet, and reasonably satisfies, the requirement for specificity.

However, we have serious doubts covering the main objective of the Plan, which is to require bidders to commit themselves to make every good faith effort to employ specified numbers of minority group tradesmen in the performance of Federal and federally assisted contracts and subcontracts.

The pertinent public policy with respect to employment practices of an employer which may be regarded as constituting unlawful discrimination is set out in Titles VI and VII of the Civil Rights Act, Title VI, concerning federally assisted programs, provides in section 601 (42 U.S.C. 2000d) that no person in the United States 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.

Section 703(a) (42 U.S.C. 2000e–2(a)) of Title VII states the public policy concerning employer employment practices by declaring it to be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. Section 705(a) (42 U.S.C. 2000e–4(a)) creates the Equal Employment Opportunity Commission, and section 713(a), Rules and Regulations (42 U.S.C. 2000e–12(a)), provides that the Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of that title.

The public policy regarding labor organization practices is delineated in section 703(c) (42 U.S.C. 2000e–2(c)) wherein it is stated that it shall be an unlawful employment practice for a labor organization (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin; (2) to limit, segregate, or classify its membership or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or (3) to cause or attempt to cause an employer to discriminate against an individual in violation of that section.

Whether the provisions of the Plan requiring a bidder to commit himself to hire—or make every good faith effort to hire—at least the minimum number of minority group employees specified in the ranges established for the designated trades is, in fact, a "quota" system (and therefore admittedly contrary to the Civil Rights Act) or is a "goal" system, is in our view largely a matter of semantics, and tends to divert attention from the end result of the Plan—that contractors commit themselves to making race or national origin a factor for consideration in obtaining their employees.

We view the imposition of such a requirement on employers engaged in Federal or federally assisted construction to be in conflict with the intent as well as the letter of the above provisions of the act which make it an unlawful employment practice to use race or national origin as a basis for employment. Further, we believe that requiring an employer to abandon his customary practice of hiring through a local union because of a racial or national origin imbalance in the local unions and, under the threat of sanc-

tions, to make "every good faith effort" to employ the number of minority group tradesmen specified in his bid from sources outside the union if the workers referred by the union do not include a sufficient number of minority group personnel, are in conflict with section 703(j) of the act (42 U.S.C. 2000e–2(j)) which provides as follows:

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter 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 of 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." (Italic added.)

While the legislative history of the Civil Rights Act is replete with statements by sponsors of the legislation that Title VII prohibits the use of race or national origin as a basis for hiring, we believe a reference to a few of such clarifying explanations will suffice to further show the specific intent of Congress in such respect when enacting that title. At page 6549, Volume 110, Part 5, of the Congressional Record, the following explanation by Senator Humphrey is set out:

"* * * As a longstanding friend of the American worker, I would not support this fair and reasonable equal employment opportunity provision if it would have any harmful effect on unions. The truth is that this title forbids discriminating against anyone on account of race. This is the simple and complete truth about title VII.

"The able Senators in charge of title VII (Mr. Clark and Mr. Case) will comment at greater length on this matter.

"Contrary to the allegations of some opponents of this title, 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 *to achieve a certain racial balance.*

"That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion." (Italic added.)

In an interpretative memorandum of Title VII submitted jointly by Senator Clark and Senator Case, floor managers of that legislation in the Senate, it is stated (page 7213, Volume 110, Part 6, Congressional Record):

"With the exception noted above, therefore, section 704 prohibits discrimination in employment because of race, color, religion, sex, or national origin. It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited by section 704 are those which are based on any five of the forbidden criteria: race, color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title.

"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. It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against.

"There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance.

"Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier. (However, where waiting lists for employment or training are, prior to the effective date of the title, maintained on a discriminatory basis, the use of such lists after the title takes effect may be held an unlawful subterfuge to accomplish discrimination.)" (Italic added.)

At page 7218 of Volume 110 the following objections, which had been raised during debate to the provisions of Title VII, and answers thereto by Senator Clark are printed:

"Objection: Under the bill, employers will no longer be able to hire or promote on the basis of merit and performance.

"Answer: Nothing in the bill will interfere with merit, hiring, or merit promotion. The bill simply eliminates consideration of color from the decision to hire or promote.

* * * * *

"Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.

"Answer: Quotas are themselves discriminatory."

While, as indicated above, we believe that the provisions of the Plan affecting employers who hire through unions conflict with section 703(j) or Title VII, and that the above statement by Senator Humphrey further indicates that the act was not intended to affect valid collective bargaining agreements, we further believe that the appropriate direction of any administrative action to be taken where it is the policy of a union to refer only white workers to employers on Federal or federally assisted construction is indicated in the following question and answer set forth in the interpretative memorandum by Senator Clark Case (page 7217, Volume 110):

"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 white males is the employer guilty of discrimination within the meaning of this title? If he is not, then further safeguards must be provided to protect him from endless prosecution under the authority 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 believe it is especially pertinent to note that the "Findings" stated in section 4 of the order of June 27 as the basis for issuance thereof, consist almost entirely of a recital of practices of *unions,* rather than of contractors or employers. Thus, in attempting to place upon the contractors the burden of overcoming the effects of union practices, the order appears to evince a policy in conflict with the interpretation of the legislation as stated by its sponsors.

In this connection your Solicitor's memorandum contends that the principle of imposing affirmative action programs on contractors for employment of administratively determined numbers of minority group tradesmen, when such programs are for the purpose of correcting the effects of discrimination by unions prior to the Civil Rights Act of 1964, is supported by the decisions in *Quarles* v. *Philip Morris,* 279 F. Supp. 505; *U.S.* v. *Local 189, U.P.P. and Crown Zellerbach Corp.,* 282 F. Supp 39; and *Local 53 of Heat and Frost Insulators* v. *Vogler,* 407 F. 2d 1047. We find, however, that decisions of the courts have differed materially in such respect; see *Griggs* v. *Duke Power,* 292 F. Supp. 243; *Dobbins* v. *Local 212,* 292 F. Supp. 413; and *U.S.* v. *Porter,* 296 F. Supp. 40.

Additionally, your Solicitor's memorandum cites cases involving affirmative desegregation of school faculties (*U.S.* v. *Jefferson County,* 372 F. 2d 836 (1966), and *U.S.* v. *Montgomery County,* 289 F. Supp. 647, affirmed 37 LW 4461 (1969) in particular). However, there is a clear distinction between the factual and legal situations involved in those cases and the matter at hand. The cited school decisions required reallocation of portions of existing school faculties in implementation of the requirement for desegregation of dual public school systems, which had been established on the basis of race, as such requirement was set out in the 1954 and 1955 decisions of the Supreme Court in the *Brown* v. *Board of Education cases* (347 U.S. 483 and 349 U.S. 294). In the *Brown* cases desegregation of faculties was regarded as one of the keys to desegregation of the schools, and in the *Jefferson County* case the court read Title VI of the Civil Rights Act as a congressional mandate for a change in pace and method of enforcing the desegregation of racially segregated school systems, as required by the *Brown* decisions.

The requirements of the revised Philadelphia Plan do not involve a comparable situation. Even if the present composition of an employer's work force or the membership of a union is the result of past discrimination, there is no requirement imposed by the Constitution, by a mandate of the Supreme Court, or by the Civil Rights Act for an employer or a union to affirmatively desegregate its personnel or membership. The distinction becomes more apparent when it is recognized that the order of June 27 pertains to *hiring* practices of an employer. Hiring was not at issue in the school cases, and those cases do not purport to hold that a school district must, or even may, correct a racial imbalance in its faculty by affirmatively requiring that a stated proportion of its teachers shall be hired on

the basis of race. To the contrary, the court recognized in its decision in the *Jefferson County* case (page 884) that the "mandate of Brown * * * forbids the discriminatory consideration of race in faculty selection," and such consideration is expressly prohibited by section VIII of the court's decree in Appendix A of that case.

The recital in section 6b.2 of the order (and in the prescribed form of notice to be included in the invitation) that the contractor's commitment "is not intended and shall not be used to discriminate against any qualified applicant or employee" is in our opinion the statement of a practical impossibility. If, for example, a contractor requires 20 plumbers and is committed to a goal of employment of at least five from minority groups, every nonminority applicant for employment in excess of 15 would, solely by reason of his race or national origin, be prejudiced in his opportunity for employment, because the contractor is committed to make every effort to employ five applicants from minority groups.

In your Solicitor's memorandum it is argued that the "straw man" sometimes used in opposition to the Plan is that it "would require a contractor to discriminate against a better qualified white craftsman in favor of a less qualified black." We believe this obscures the point involved, since it introduces the element of skill or competence, whereas the essential question is whether the Plan would require the contractor to select a black craftsman over an *equally* qualified white one. We see no room for doubt that the contractor in the situation posed above would believe he would be expected to employ the black applicant, at least until he had reached his goal of five nonminority group employees, and that if he failed to achieve that goal his employment of a white craftsman when an equally qualified black one was available could be considered a failure to use "every good faith effort." In our view such preferential status or treatment would constitute discrimination against the white worker solely on the basis of color, and therefore would be contrary to the express prohibition both of the Civil Rights Act and of the Executive order.

It is also contended in your Solicitor's memorandum that substantial judicial support for administrative affirmative action programs requiring commitments for contractors for employment of specified numbers of minority group tradesmen is contained in the decision of the Ohio Supreme Court in *Weiner* v. *Cuyahoga Community College District*, 19 Ohio St. 2d — (July 2, 1969). That decision upheld the award of a federally assisted construction contract to the second low bidder, as a proper action in implementation of the policies of the Civil Rights Act of 1964, after approval of award to the low bidder was withheld by the Federal agency involved for failure of the low bidder to submit an affirmative action program (including manning tables for minority group tradesmen) which was acceptable to that agency pursuant to an OFCC plan established for Cleveland, Ohio.

While the decision in *Weiner* case (which was a majority opinion by five of the justices with dissenting opinions by two) has some bearing on the issues here involved, since the decision appears to be based in substantial part on the conflicting opinions of Federal courts cited earlier we do not believe the decision can be considered as controlling precedent for the validity of the revised Philadelphia Plan.

In support of the required procedure, which is admitted at page 33 of the Solicitor's memorandum to require contractors to take actions which are based on race, the memorandum relies upon the acceptance by the courts, in school, housing and voting cases, of the use of race as a valid consideration in fashioning relief to overcome the effects of past discrimination. Aside from other distinctions, we believe there is a material difference between the situation in those cases, where enforcement of the rights of the minority individuals to vote or to have unsegregated educational or housing facilities does not deprive any member of a majority group of his rights, and the situation in the employment field, where the hiring of a minority worker, as one of a group whose number is limited by the employer's needs, in preference to one of the majority group precludes the employment of the latter. In other words, in those cases there is present no element of reverse discrimination, but only the correction of the illegal denial of minority rights, leaving the majority in the full exercise and enjoyment of their corresponding rights.

In addition it may be pointed out that in those cases the judicial relief ordered is directed squarely at the parties responsible for the denial of rights, and we therefore do not consider them as supporting requirements to be complied with by contractors who, under the findings of the Plan, are themselves more the victims than the instigators of the past discriminatory practices of the labor unions. Moreover, in the court cases the remedies are applied after judicial determination that effective discrimination is in fact being practiced or fostered by the defendants, whereas the Plan is a blanket administrative mandate for remedial action to be taken by all contractors in an attempt to cure the evils resulting from union actions, without specific reference to any past or existing actions or practices by the contractors.

While it may be true, as stated in the Plan, "that special measures are required to provide equal employment opportunity in these seven trades," it is our opinion that imposition of a responsibility upon Government contractors to incur additional expenses in affirmative action programs which are directed to overcoming the present effects of past discrimination by labor unions, would require the expenditure of appropriated funds in a manner not contemplated by the Congress. If, as stated in the Plan, discrimination in referral is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, it is our opinion that the remedies provided by the Congress in those acts should be followed. See also in this connection section 207 of Executive Order 11246.

While, as indicated in the foregoing opinions and in your Solicitor's memorandum, the President is sworn to "preserve, protect and defend the Constitution of the United States," we question whether the executive departments are required, in the absence of a definitive and controlling opinion by the Supreme Court of the United States, to assess the relative merits of conflicting opinions of the lower courts, and embark upon a course of affirmative action, based upon the results of such assessment, which appears to be in conflict with the expressed intent of the Congress in duly enacted legislation on the same subject.

In this connection, it should be noted that, while the phrase "affirmative action" was included in the Executive order (10925) which was in effect at the time Congress was debating the bills which were 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, and we therefore do not think it can be successfully contended 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 your Department now proposes to impose upon contractors.

We recognize that both your Department and the Department of Justice have found the Plan to be legal and we have given most serious consideration to their positions. However, until the authority for any agency to impose or require conditions in invitations for bids on Federal or federally assisted construction which obligate bidders, contractors, or subcontractors, to consider the race or national origin of their employees or prospective employees for such construction, is clearly and firmly established by the weight of judicial precedent, or by additional statutes, we must conclude that conditions of the type proposed by the revised Philadelphia Plan are 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 expenditures of appropriated funds for Federal or federally assisted construction projects.

In this connection it is observed that by section 705(d) of the act, Congress charges 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. That provision, we believe, not only prescribes the procedure for correcting any deficiencies in the Civil Rights Act, but also shows the intent of Congress to reserve for its own judgment the establishment of any additional unlawful employment practice categories or nondiscrimination requirement, or the imposition upon employers of any additional requirements for assuring equal employment opportunities.

We realize that our conclusions as set out above may disrupt the programs and objectives of your Department, and may cause concern among members of minority groups who may believe that racial balance or equal representation on Federal and federally assisted construction projects is required under the 1964 act, the Executive order, or the Constitution. Desirable as these objectives may be, we cannot agree to their attainment by the imposition of requirements on contractors, in their performance of Federal or federally-assisted contracts, which the Congress has specifically indicated would be improper or prohibited in carrying out the objectives and purposes of the 1964 act.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

[Opinion of Attorney General re Philadelphia plan]

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 22, 1969.

The HONORABLE, THE SECRETARY OF LABOR:

MY DEAR MR. SECRETARY: You have requested my opinion as to the legality of the Department of Labor's order of June 27, 1969, the Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction.

The Philadelphia Plan has been issued to implement Executive Order 11246 of September 24, 1965, as amended (30 F.R. 12319, 32 F.R. 14303, 34 F.R. 12986), in which the President has directed that Federal Government contracts and federally-assisted construction contracts contain specified language obligating the contractor and his subcontractors not to discriminate in employment because of race, color, religion, sex, or national origin.[1] The Secretary of Labor is responsible

[1] The essential part of the contractor's obligation under this order is:

"The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their

for the administration of Executive Order 11246 and is authorized to "adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof." E.O. 11246, § 201.

Among the undertakings required of contractors by Executive Order 11246 is to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin." E.O. 11246, § 202(1). The obligation to take "affirmative action" imports something more than the merely negative obligation not to discriminate contained in the preceding sentence of the standard contract clause. It is given added definition by the Secretary's regulations, which require that contractors develop written affirmative action plans which shall "provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of specific goals and time tables for the prompt achievement of full and equal employment opportunity." 41 C.F.R. 60–1.40.

The Department of Labor order of June 27th is based upon stated findings relating to the enforcement of the nondiscrimination and affirmative action requirements of Executive Order 11246 with respect to the construction trades in the Philadelphia area. The Department of Labor has found that contractors must ordinarily hire a new employee complement for each construction job and that whether by contract, custom, or convenience this hiring usually takes place on the basis of referral by the construction craft unions. The Department of Labor has found further that exclusionary practices on the part of certain of these unions, including a refusal to admit Negroes to membership in unions or in apprenticeship programs, and a preference in work referrals to union members and to those who have worked under union contracts, have resulted in the employment of only a small number of Negroes in the six construction trades in the area affected by the Philadelphia Plan. Accordingly, the Department of Labor has found that special measures were required in the Philadelphia area to provide equal employment opportunity in these six specified construction trades.[2]

The Revised Philadelphia Plan requires that with respect to construction contracts in the Philadelphia area which are subject to Executive Order 11246 and where the estimated total cost of the construction project exceeds $500,000, each bidder must, in the affirmative action program submitted with his bid, "set specific goals of minority manpower utilization which meet the definite standard" included in the invitation for bids. This standard will be a range of minority manpower utilization for the trades covered by the Plan and will be determined prior to the invitation for bids by the Department's area coordinator on the basis of the extent of minority group participation in the trade, the availability of minority group persons for employment in such trade, and other stated factors. As an alternative to setting such specific goals, the bidder may agree to participate in a multi-employer affirmative action program which has been approved by the Department of Labor's Office of Federal Contract Compliance.

The Plan provides that the contractor's commitment to specific goals "is not intended and shall not be used to discriminate against any qualified applicant or employee," (§ 6(b)(2)). Furthermore, the obligation to meet the goals is not absolute. "In the event of failure to meet the goals, the contractor shall be given an opportunity to demonstrate that he made every good faith effort to meet his commitment. In any proceeding in which such good faith performance is in issue, the contractor's entire compliance posture shall be reviewed and evaluated in the process of considering the imposition of sanctions," (§ 8(a)).

In response to Congressional inquiries the Comptroller General has, in his letter to you of August 5, 1969, expressed the opinion that the provision of the Philadelphia Plan for commitment to specific goals for minority group participation is in conflict with Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, and consequently unlawful, and he has indicated further that such illegality may affect the lawfulness of expenditures of appropriated funds under contracts entered into under the terms and procedures of the Philadelphia Plan. *Cf.* 42 Comp. Gen. 1 (1962).

I have reached a contrary result, and conclude that the Revised Philadelphia Plan is not in conflict with any provision of the Civil Rights Act, that it is a lawful implementation of the provisions of Executve Order 11246, and that it may be enforced in accordance with its terms in the award of Government contracts.

Before undertaking detailed analysis of the contentions involved, it is important to consider the functions of the Executive order and the Philadelphia Plan, as well as the provisions of the Plan itself. Executive Order 11246 is a lawful exercise of the Federal Government's authority to determine the terms and conditions on which it is willing to enter into contracts.[3] That order lays down a rule which governs only those employers who enter into contracts with the United States, construction contracts financed with Federal assistance, or subcontracts arising under such Federal or federally-assisted contracts. Neither the order nor the Philadelphia Plan, which implements the order with respect to certain construction contracts, regulates the practices of employers generally. While 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, the existence of such power does not depend on an affirmative legislative enactment. In evaluating the Comptroller General's challenge to the Philadelphia Plan on the basis of conflict with Title VII of the Civil Rights Act, it is important to distinguish between those things *prohibited* by Title VII as to all employers covered by that act, and those things which are merely *not required* of employers by that act. The United States as a contracting party may not require an employer to engage in practices which Congress has prohibited. It does not follow, however, that the United States may not require of those who contract with it certain employment practices which Congress has not seen fit to require of employers generally.

The requirements which the Plan would impose on contractors may be briefly summarized.[4] The contractor must

(a) in his proposal set specific goals for minority group hiring within certain skilled trades, which goals must be within the range previously determined to be appropriate by the Secretary;

(b) he must make "every good faith effort" to meet these goals;

(c) but he may not, in so doing, discriminate against any qualified applicant or employee on grounds of race, color, religion, sex or national origin.

If a plan such as this conflicts with Title VII of the Civil Rights Act, its validity concededly cannot be sustained. But in my view no such conflict exists. Section 703(a) of the Civil Rights Act makes it an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

"(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

Nothing in the Philadelphia Plan requires an employer to violate section 703(a). The employer's obligation is to make every good faith effort to meet his goals. A good faith effort does not include any action which would violate section 703(a) or any other provision of Title VII. If the provisions of the Plan were ambiguous on this point, its interpretation would be governed by the principle that "where two constructions of a written contract are possible preference will be given to that which does not result in violation of law," *Great Northern Ry. Co.* v. *Delmar Co.*, 283 U.S. 686, 691 (1931). However, to remove any doubt the Plan specifies that the contractor's commitment shall not be used to discriminate against any qualified applicant or employee.

Nevertheless, it might be argued—and the Comptroller General appears to take this position—that the obligation to make good faith efforts to achieve particular goals is meaningless if it does not contemplate deliberate efforts on the part of the contractor to affect the racial composition of his work force, that this necessarily involves a commitment "to making race or national origin a factor for consideration in obtaining [his] employees," and that any such action would violate Title VII.

It is not correct to say that Title VII prohibits employers from making race or national origin a factor for consideration at any stage in the process of obtaining employees. The legal definition of discrimination is an

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race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. * * *." E.O. 11246, § 202(1).

In addition the contractor agrees to furnish required information and reports, to comply with orders and regulations implementing the Executive order, and to include these contractual provisions in subcontracts.

[2] The order of June 27, issued by the Assistant Secretary for Wage and Labor Standards, is reprinted at 115 Cong. Rec. S 8837–39. All of the findings summarized above appear in section 4 of the order, 115 Cong. Rec. S 8838. The order originally extended to seven construction trades, but one trade has been removed from coverage.

[3] The order is generally similar to its predecessor, Executive Order 10925 of March 6, 1961, which, in 42 Ops. A.G. No. 21 (1961), was held to be a valid exercise of presidential authority. See also 40 Comp. Gen. 592 (1961); *Farkas* v. *Texas Instrument, Inc.*, 375 F. 2d 629, 632 (C.A. 5, 1967). The contract compliance program under these Executive orders has received legislative recognition in the Civil Rights Act of 1964, § 709(d), 42 U.S.C. 2000e–8(d), and in subsequent appropriations legislation. The Comptroller General does not challenge the validity of Executive Order 11246, as such, but concludes that the Revised Philadelphia Plan is not a permissible implementation of the order because of an asserted conflict with Title VII of the Civil Rights Act.

[4] I put to one side the bidder's option of participating in an OFCC-approved multi-employer program, since the details of such programs have yet to be worked out and the legality of such programs has not been called into question.

evolving one, but it is now well recognized in judicial opinions that the obligation of nondiscrimination, whether imposed by statute or by the Constitution, does not require and, in some circumstances, may not permit obliviousness or indifference to the racial consequences of alternative courses of action which involve the application of outwardly neutral criteria. *Gaston County* v. *United States*, 395 U.S. 285 (1969) (*voting*); *Offermann* v. *Nitkowski*, 378 F. 2d 22 (C.A. 2, 1967) (*schools*); *Local 189, United Papermakers, etc.* v. *United States*, F. 2d —, 60 L.C. ¶9289 (C.A. 5, 1969) (*employment*).

There is no inherent inconsistency between a requirement that each qualified employee and applicant be individually treated without regard to race, and a requirement that an employer make every good faith effort to achieve a certain range of minority employment. The hiring process, viewed realistically, does not begin and end with the employer's choice among competing applicants. The standards he sets for consideration of applicants, the methods he uses to evaluate qualifications, his techniques for communicating information as to vacancies, the audience to which he communicates such information, are all factors likely to have a real and a predictable effect on the racial composition of his work force. Title VII does not prohibit some structuring of the hiring process, such as the broadening of the recruitment base, to encourage the employment of members of minority groups. *Local 189, etc.* v. *United States, supra* at ; see *Offermann* v. *Nitkowski, supra* at 24. The obligation of "affirmative action" imposed pursuant to Executive Order 11246 may require it. 41 C.F.R. 5–12.805–51(b), (c); Matter of Allen-Bradley Co., CCH Empl. Prac. Svce. ¶ 8065 (1968).

Viewed in this light, the example cited in the Comptroller General's opinion is not an argument against the legality of the Plan. The Comptroller General poses the example of a contractor requiring twenty plumbers, with a specified "goal" that five of these plumbers be from minority groups. If the contractor has filled fifteen of these posts with nonminority plumbers, says the Comptroller General, the next white applicant for one of the five vacancies will inevitably be discriminated against by reason of the fact that he is not a member of a minority group. Doubtless a part of the good faith effort required of the contractor to achieve the stated goals would have been to avail himself of manpower sources which might be expected to produce a representative number of minority applicants, so that the situation posed in the Comptroller General's example would arise but infrequently. Yet, quite clearly, if notwithstanding the good faith efforts of the employer such a situation does arise, the qualified nonminority employee may be hired. The fact that the minority employment goal was to this extent not reached would not in itself be sufficient ground for concluding that the contractor had not exerted good faith efforts to reach it.

The Philadelphia Plan addresses itself to a situation in which, according to the Department of Labor's findings, the contractors have in the past delegated an important part of the hiring function to labor organizations by selecting their work force on the basis of union referrals. The referral practices of certain unions, whether or not amounting to violations of Title VII, have in fact contributed to the virtual exclusion of Negroes from employment in certain trades in the Philadelphia area. Continued reliance by contractors on established hiring practices may reasonably be expected to result in continued exclusion of Negroes. The purpose of the Philadelphia Plan is to place squarely upon the contractor the burden of broadening his recruitment base whether within or without the existing union referral system, as he shall determine. The contractor's obligation is phrased primarily in terms of goals; the choice of methods is his, provided only that he does not discriminate against qualified employees or applicants. Unless it can be demonstrated that the hiring goals *cannot* be achieved without unlawful discrimination,[5] I fail to see why the Government is not permitted to require a pledge of good faith efforts to meet them as a condition for the award of contracts.

The Comptroller General argues that inasmuch as Title VII does not require labor organizations to achieve a racial balance in their memberships or in referrals (§ 703(j)), Executive Order 11246 cannot be used to require an employer "to abandon his customary practice of hiring through a local union" even though experience has demonstrated that the union refers very few members of minority groups. I confess I find this argument difficult to follow. Since, as stated above, the obligation of affirmative action comprehends more than bare compliance with Title VII and may under proper circumstances include an obligation on the part of the employer to broaden his recruitbase, the order would be an exercise in futility if the employer may evade this obligation by contracting away his power to perform it. Whether or not the law permits him to accept referrals only from unions which are or may be discriminating,[6] the law does not require him to do so. To comply with his affirmative action obligation an employer may be forced to depart from his customary reliance on union referrals (though this will depend to a great extent on the unions' own response to the Plan), but since the law permits an employer to obtain employees from additional sources, I see no reason why the Government is not free to bargain for his assurance to do so. In other words, the employer may have a right to refuse to abandon his customary hiring practices, but he has no right to contract with the Government on his own terms. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113 (1940); *Copper Plumbing & Heating Co.* v. *Campbell*, 290 F. 2d 368, 370–71 (C.A. D.C. 1961). Accordingly, I conclude that the Philadelphia Plan is not inconsistent with any provision of Title VII of the Civil Rights Act.

Another argument might be urged against the legality of the Philadelphia Plan. Let it be conceded, this argument runs, that the Government may lawfully require a contractor to take certain forms of affirmative action to increase employment of members of minority groups, and conceded further that on its face the Philadelphia Plan requires no more than legally permissible forms of affirmative action to achieve the goals set by the contractor in response to the bidding invitation. Nevertheless, by stating the contractor's primary obligation in terms of a numerical result, by failing to specify what "good faith efforts" will be acceptable in lieu of the achievement of such result, and by placing upon the contractor who has failed to achieve his "goal" the burden of proving that, in effect, he did all that was legally permissible to meet it, the Government so weights the procedural scales against the nonachieving contractor as to coerce him in fact, if not in law, into discriminating. In other words, although the substance of the contractor's obligation under the Philadelphia Plan may be permissible, the Plan does not provide a fair method for resolving questions regarding compliance. *Cf. Speiser* v. *Randall*, 357 U.S. 513, 520–26 (1958).

This argument appears to me to be premature and speculative at this time. It is true that the Philadelphia Plan might be clearer if it were to state what good faith efforts are expected of contractors. But the general requirements of affirmative action, particularly in the area of recruitment, have been stated elsewhere in regulations, 41 C.F.R. 5–12.805–51(b), (c), and other publications, and there is no reason to believe that the Department of Labor officials administering the Plan would be unwilling to describe to any interested contractor the kind of actions expected of him. In short, I cannot assume that any contractor who desires to participate in good faith in the Philadelphia Plan will be forced, as a practical matter, to choose between noncompliance with his affirmative action obligation and violation of Title VII. If unfairness in the administration of the Plan should develop, it cannot be doubted that judicial remedies are available. *Cf. Copper Plumbing & Heating Co.* v. *Campbell, supra.*

Finally, the Comptroller General appears to suggest that although Title VII contemplated the continued operation of the contract compliance program under Executive orders, nevertheless the substantive provisions of Title VII somehow limit and preempt those of the order. The basis for this conclusion is nowhere explained. There is no question that the Executive order cannot require what Title VII forbids, but as has been pointed out above, the Philadelphia Plan does not seek to do so. The Comptroller General argues further, in effect, that the Executive order can neither require nor forbid actions or practices which Title VII declines to interfere with. This is the inference which must be drawn from the Comptroller General's references to expression in the legislative history of the Civil Rights Act regarding what Title VII would *not* do.[7] But Title VII is not and was not understood by Congress to be the exclusive remedy for racially discriminatory practices in employment, *Local Union No. 12* v. *NLRB*, 368 F. 2d 12, 24 (C.A. 5, 1966), *cert. denied*, 389 U.S. 837 (1967), *rehearing denied*, 389 U.S. 1060 (1968). Nothing in the language or legislative history of that statute suggests that "affirmative action" may not be required of Government contractors under the Executive order above and beyond what the statute requires of employers generally.[8]

It is, therefore, my view that the Revised Philadelphia Plan is legal and that your Department is authorized to require Federal contracting and administering agencies to implement the Plan in accordance with its terms in the award of contracts in the Philadelphia area. E. O. 11246, § § 201, 205. Where a contractor submits a bid which does not comply with the invitation for bids issued pursuant to the Plan, such a bid may be rejected as not responsive. 38 Ops. A. G. 555 (1937); *Graybar Electric Co.* v. *United States*, 90 C. Cls. 232, 244 (1940). I hardly need add that the conclusions expressed herein may be relied on by your Department and other contracting agencies and their accountable

[5] The Plan provides that the goals will be determined with particular attention to the factual situation in each affected trade. Accordingly, there is every reason to assume that the goals will represent an informed administrative judgment of what an effective affirmative action plan may be expected to achieve.

[6] On the facts before me it is impossible to determine whether the present practices of the unions affected by the Philadelphia Plan are in violation of Title VII and such a determination is not necessary to the resolution of the question of the legality of the Plan.

[7] On the view I take of the question before me, it is not necessary to consider the correctness of all the Comptroller General's conclusions regarding the scope of Title VII, and my failure to do so implies neither agreement nor disagreement with such conclusions.

[8] In the one instance where the statute deals with the overlap of Title VII and the Executive order, reporting requirements, it is the order and not the statute which is accorded priority. § 709(d).

officers in the administration of Executive Order 11246. 28 U.S.C. 512, 516; 37 Ops. A. G. 562, 563 (1934); 38 Ops. A. G. 176, 178–81 (1935); *Smith* v. *Jackson*, 241 Fed. 747, 773 (C.A. 5, 1917), *aff'd*, 246 U.S. 388 (1918).

Sincerely,

JOHN N. MITCHELL,
Attorney General.

OPENING STATEMENT OF SENATOR SAM J. ERVIN, JR., CHAIRMAN, SUBCOMMITTEE ON SEPARATION OF POWERS OF THE COMMITTEE ON THE JUDICIARY, HEARINGS ON ADMINISTRATIVE AGENCIES: THE DEPARTMENT OF LABOR'S "PHILADELPHIA PLAN," OCTOBER 27, 1969

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 to 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*, perpared 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."

Throughout 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 against 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, vol. 110, pt. 6, p. 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 of 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 per cent 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 Philadelphia 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 quota, 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." That 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 frittered 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.

[From the United States General Accounting Office, Washington, D.C.]

STATEMENT OF ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES, BEFORE THE SUBCOMMITTEE ON SEPARATION OF POWERS, SENATE COMMITTEE ON THE JUDICIARY, ON THE PHILADELPHIA PLAN, OCTOBER 27, 1969

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 contracts 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 ro 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 contended 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 condemning 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 expenditures 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 contention that the Executive has atuhority 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 Generals' 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, however, 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 not 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 (1963)). 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 situations 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 service 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 resulting 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 or 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 to 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 appropriated 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.

[Extract from American Bar Journal, November 1969]

Executive Order 11,246: Executive Encroachment

(By James E. Remmert)

(Section VII of the Civil Rights Act of 1964, forbidding discriminatory employment practices, was the product of legislative compromise. Executive Order 11,246, issued by President Johnson in 1965 and applicable to Government contractors, was the product of unlateral Executive judgment and consequently not only forbids discriminatory employment practices but requires employers to take affirmative action to ensure against them. Will the Executive always be serving a good cause when he uses the contract power to skirt the legislative process?)

The Civil Rights Act of 1964 was made the law of the land amidst great controversy, extended debate and considerable compromise. With far less controversy or compromise and with no Congressional debate, President Johnson on September 24, 1965, signed Executive Order 11,246, the latest in a series that has played at least as significant a role in implementing the objective of equal employment opportunity as has Title VII of the 1964 Civil Rights Act.[1] Section 202(1) of this executive order, as amended, requires that every employer who is awarded a Government contract or subcontract that is not exempted by the Secretary of Labor must contractually undertake the obligation not to "discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin".

Footnotes at end of article.

Since Title VII of the 1964 Civil Rights Act had to endure the rigors of passing both houses of Congress, it is the product of compromise attendant upon the legislative process. Executive Order 11,246, by comparison, was the responsibility of only the President. Consequently, it imposes much broader substantive obligations, and the procedure adopted for its enforcement conveys to the enforcing agency significantly more authority than was given to the Equal Employment Opportunity Commission by the 1964 Civil Rights Act.

Evidence of the broader substantive obligation imposed by Executive Order 11,246 is the fact that Title VII imposes only the obligation not to do that which is prohibited, *i.e.*, discriminate on the basis of race, color, religion, sex or national origin. By comparison, Executive Order 11,246 not only requires that Government contractors and subcontractors not discriminate but also that they "take *affirmative action* to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin [Section 201(1); emphasis supplied]". Regulations issued by Secretary of Labor Willard Wirtz under authority of Executive Order 11,246 further require that Government contractors and subcontractors develop a "written affirmative action compliance program"[2] documenting the steps they have taken and setting goals and timetables for additional steps to fulfill the "affirmative action" obligation. The submission of these written programs has also been imposed as a prerequisite to the award of some Government contracts. However, on November 16, 1968, Comptroller General Elmer B. Staats ruled that "until provision is made for informing bidders of definite minimum requirements to be met by the bidder's program and any other standards or criteria by which the acceptability of such program would be judged",[3] contract awards must be made to the lowest eligible bidder without reference to the affirmative action program.

President simply took power that Congress wouldn't give

That the Executive was willing to assume by executive order significantly greater enforcement authority than Congress was willing to convey to it can be seen by comparing the adjudicatory processes under Title VII and Executive Order 11,246. If an employer disagrees with the Equal Employment Opportunity Commission over the legal requirements imposed by Title VII, or if the employer is unable to comply with the remedies proposed by the commission to rectify a discriminatory practice, he may have traditional recourse through the judicial process before any sanction is imposed. To the contrary, however, the regulations issued by Secretary of Labor Wirtz for the administration of Executive Order 11,246 provide that upon request for a hearing to adjudicate a contractor's or subcontractor's compliance with the executive order, the Secretary of Labor's designee may suspend all contracts or subcontracts held by the employer pending the outcome of the hearing.[4] In addition, as a part of the adjudicatory process, the agency responsible for investigating or supervising the investigation of a contractor's compliance and prosecuting those contractors alleged to be in noncompliance is also responsible for imposing the sanctions of cancellation and suspension from participation in Government contracts.[5] In other words, the chief investigator, prosecutor and final judge with respect to cancellation and suspension of Government contracts is the Department of Labor.

With the contract power, who needs Congress?

These substantive and procedural contrasts between Title VII of the 1964 Civil Rights Act and Executive Order 11,246 illustrate the considerable power that the Executive can acquire by pursuing a social objective through the use of the contract power in addition to or in place of legislation. Such broad and sweeping powers are premised on the concept that the Federal Government has the "unrestricted power . . . to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases".[6] This power is founded on the premise that in the absence of a Congressional prohibition or directive the Executive branch is free to enter into contracts on whatever conditions and provisions are deemed to promote the best interests of the Government.[7]

Without question, Executive Order 11,246 has done much to advance the cause of equal employment opportunity, because the Federal Government's bargaining position enables the Executive to require such terms as are found in this order as a condition to a United States Government contract. Once such a broad and sweeping obligation is accepted, the accepting contractor or subcontractor is in an untenable position to oppose steps that are required by the administering agency with respect to the conditions covered by the contract.

To illustrate the impact of this use of the Executive's contract power, one need only consider a list of the top 100 corporations and institutions holding Defense Department contracts.[8] These corporations are understandably some of the largest in the United States and collectively employ well over ten million persons. Even though the list does not include contractors with any department other than Defense or the many subcontractors involved in Defense Department prime contracts, it aptly illustrates the significant indirect control which the Executive can exert over the private sector of the economy by use of the contract power.

There is very little case law deciding the extent to which the President may by executive order impose ancillary conditions to Government contracts. Some have questioned the validity of Executive Order 11,246 on the ground that the Executive does not have the authority to impose conditions that are unrelated to the purposes for which Congress appropriated funds[9] and on the basis that the affirmative action obligation conflicts with provisions in the 1964 Civil Rights Act. These provide that preferential treatment on the basis of race, color, religion, sex or national origin is not required to correct an imbalance.[10] However, at least one federal district court[11] and two United States courts of appeals[12] have said that Executive Order 11,246 has the full force and effect of statutory law. If these courts are correct and the order is a valid exercise of the Executive's contract power, then some examination of the potential extension of this power is in order.

Although the writer is unaware of any publication listing all firms holding competitively bid or negotiated United States Government contracts or subcontracts, it is the writer's belief that the vast majority of the major commercial enterprises in this country and a great many not-for-profit institutions and smaller commercial enterprises hold one or more Government contracts or subcontracts. Consider, for example, the diverse scope of the organizations holding Government research grants, the utilities and communications services used by federal installations, the dependence of such industries as automotive, aircraft, shipbuilding and munitions on Government contracts, the heavy reliance of the construction industry on such programs as urban renewal and highway construction sponsored by federal funding, and the entrenchment of United States Government financing and deposits as a factor in the financial institutions throughout the country.

WHERE DOES THIS PRECEDENT LEAD?

Consideration should also be given to some of the possible future applications of the concept behind Executive Order 11,246. The contract power could be used to circumvent the intrastate-interstate dichotomy that has to some extent precluded complete preeminence of the Federal Government in such fields as air and water pollution control, regulation of common carriers and labor relations. One extension already suggested by the AFL–CIO is the debarment of Government contractors found to have committed flagrant unfair labor practices.

Another avenue for extension of the Executive's contract power is in areas within federal jurisdiction but which Congress has left unregulated or has regulated only to a lesser extent than that deemed desirable by the Executive. An example of this use of the contract power is found in Executive Order 11,246. In enacting Title VII of the 1964 Civil Rights Act, the Congressional consensus was that the prohibition against discrimination on the basis of race, color, religion, sex and national origin was sufficient to accomplish the objective of eliminating employment discrimination on such bases.

The Executive, however, felt that the then-existing executive order prohibiting discrimination by Government contractors did not go far enough in dealing with the objective of equal employment opportunity, and thus the affirmative action obligation was added to place a greater responsibility on Government contractors.

By using the contract power, the Executive could accomplish many objectives deemed desirable without using the legislative process so long as the particular contract clause does not conflict directly with a federal statute. Thus, this technique affords the Executive a limited bypass of the legislative process and gives it the power to give its objective "the force and effect given to a statute enacted by Congress"[13] without the concurrence of Congress.

Several questions should be answered before this procedure proliferates. The first is whether the concentration of this power in the hands of the Executive is desirable in view of the fact that it allows the President to carry an objective into effect without resort to the legislative process established by the Constitution. In this connection, it is significant to note that Congress considered sanctioning the Executive's use of the contract power to achieve equal employment opportunity but rejected the idea. The original House bill (H.R. 7152) that eventually became the 1964 Civil Rights Act, after numerous amendments, contained a Section 711(b), which read as follows:

"The President is authorized to take such action as may be appropriate to prevent the committing or continuing of an unlawful employment practice by a person in connection with the performance of a contract with an agency or instrumentality of the United States."

During the consideration of H.R. 7152 by the House, Congressman Emanuel Celler (D. N.Y.) sponsored an amendment to eliminate this section of the bill. The amendment was accepted by the House, and in the course of the discussion Congressman John Dowdy (D. Tex.) voiced the view that, "Many of us felt section 711 to be a highly dangerous section of the bill and accordingly much of our debate has been predicated upon the fact that this language should be removed."[14]

With reference to Executive Order 11,246, it has been argued that although this use of the contract power is extraordinary the need for equal employment opportunity justifies this departure from traditional concepts. Those who would rush to the conclusion that the cause of equal employment opportunity does justify a departure from the legislative process would do well to remember that the sword of Executive power cuts in two directions. Thus, the first question that should be considered in connection with Executive Order 11,246 is not whether equal employment opportunity should be pursued but whether this means is consistent with the basic framework and power balance with which our form of government has successfully endured innumerable crises over the last two centuries.

HISTORY THAT SHOULD BE REPEATED

At another time in our nation's history, the Supreme Court had occasion to consider whether a crisis of similar magnitude justified an expansion of Executive power. In holding that President Truman's executive order seizing the steel mills during the Korean conflict was unconstitutional despite the pending emergency, Justice Douglas in a concurring opinion gave the sage advice that:

"The language of the Constitution is not ambiguous or qualified. It places not *some* legislative power in the Congress; Article 1, Section 1 says "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

* * * * *

"Today a kindly President uses the seizure power to effect a wage increase and to keep the steel furnaces in production. Yet tomorrow another President might use the same power to prevent a wage increase, to curb trade-unionists, to regiment labor as oppressively as industry thinks it has been regimented by this seizure.[15]"

In a separate concurring opinion in the same case, Justice Jackson expressed a similar view concerning the overreaching use of Executive power that is highly relevant and appropriate to the concept behind Executive Order 11,246:

"The opinions of judges, no less than executives and publicists, often suffer the infirmity of confusing the issue of a power's validity with the cause it is invoked to promote, of confounding the permanent executive office with its temporary occupant. The tendency is strong to emphasize transient results upon policies—such as wages or stabilization—and lose sight of enduring consequences upon the balanced power structure of our Republic.[16]"

CONGRESS DOES NOT BELONG ON THE SIDELINES

Congress should give thoughtful consideration to and develop a considered national policy on the use of the contract power exemplified by Executive Order 11,246 rather than stand on the sidelines and allow its proliferation without Congressional guidance. Congress should decide the kind of contracts and the kind of ancillary obligations that it will allow the Executive to impose in disbursing the funds that Congress appropriates. A mechanism should be established that will insure a legislative watchdog over the Executive's use of the contract power and will allow the Executive sufficient flexibility to administer efficiently the disbursement of Congressional appropriations.

With specific reference to Executive Order 11,246, Congress should eliminate the double standard that now exists between employers generally, who are required not to discriminate by Title VII of the 1964 Civil Rights Act, and employers who, as Government contractors, are subject to a different standard and a different enforcement procedure in measuring their compliance with the obligation. The identical obligation imposed by Title VII of the 1964 Civil Rights Act should apply, procedurally, substantively and with equal vigor to Government contractors without reference to the extraordinary obligation to take "affirmative action". There is no justification for the multiplicity of government agencies enforcing Title VII of the 1964 Civil Rights Act and Executive Order 11,246. At present, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance and every agency that awards Government contracts are all involved in enforcement activities. This duplication has produced inconsistent enforcement standards, confusion and a wasteful use of Government manpower and resources.

Congress should immediately take appropriate steps properly to realign Congressional and Executive authority, and in doing so it might well consider some further words from Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Company* v. *Sawyer*. In referring to the overextended use of the executive order, Justice Jackson said:

"Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction."

* * * * *

"With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.[17]"

FOOTNOTES

[1] 42 U.S.C. § 2000c.
[2] 41 C.F.R. § 60–1.40.
[3] Comptroller General's Letter B–163026.
[4] 41 C.F.R. § 60–1.26(b)(2)(iii).
[5] 41 C.F.R. § 60–1.24 and 41 C.F.R. § 60–1.27.
[6] *Perkins* v. *Lukens Steel*, 310 U.S. 113, at 127 (1940).
[7] *Kern-Limerick* v. *Scurlock*, 347 U.S. 110 (1954).
[8] TIME, June 28, 1968, at 72.
[9] See Pasley, *The Nondiscrimination Clause in Government Contracts*, 43 VA. L. REV. 837 (1957)
[10] 42 U.S.C. § 200e–2(j).
[11] *United States* v. *Local 189, United Papermakers & Paperworkers*, 282 F. Supp. 39, 43 (E.D. La. 1968).
[12] *Farkas* v. *Texas Instrument*, 375 F. 2d 629, 632 (5th Cir. 1967), and *Farmer* v. *Philadelphia Electric Company*, 329 F. 2d 3, 8 (3d Cir. 1964).
[13] *Farkas* v. *Texas Instrument*, 375 F. 2d at 632.
[14] 110 CONG. REC. 2575 (February 8, 1964).
[15] *Youngstown Sheet & Tube Company* v. *Sawyer*, 343 U.S. 579, at 630, 633–634 (1952).
[16] 343 U.S. at 634.
[17] 343 U.S. at 653, 655.

U.S. SENATE,
Washington, D.C., November 14, 1969.

Hon. ELMER B. STAATS,
Comptroller General of the United States, Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: Permit me to acknowledge your letter of November 12, 1969, with which you enclosed a copy of your statement to the Subcommittee on Separation of Powers, Senate Committee on the Judiciary, concerning the revised "Philadelphia Plan" of the Department of Labor.

I share your opinion that the action of certain officials of the Executive Branch with respect to implementation of this plan without regard to your decision of August 5, 1969, constitutes a threat to Legislative Branch control of Federal expenditures.

I want to assure you that you will have my support in your efforts to preclude the expenditure of appropriated funds under contracts subject to the revised "Philadelphia Plan" until its legality has been established by judicial decision or Congressional action.

With best wishes, I am

Sincerely,

RICHARD B. RUSSELL.

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
Washington, D.C., November 25, 1969.

Hon. ELMER B. STAATS,
Comptroller General of the United States, Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: Thank you for your letter of November 12, 1969 en-

closing a copy of your statement before the Subcommittee on Separation of Powers of the Senate Judiciary Committee setting forth your views and recommendations on the Department of Labor "Philadelphia Plan".

As you are doubtless aware, the subject of equal employment has been of special concern to me and the members of the Committee on Public Works because of the problem situations that have arisen in the area of highway construction. Therefore, I am sure that your statement will be of even greater interest and will be most helpful to us in future consideration of the problems of equal employment.

With warm personal regards,

Truly,

JENNINGS RANDOLPH,
Chairman.

U.S. SENATE, COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., November 13, 1969.

Hon. ELMER B. STAATS,
Comptroller of the United States,
Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: I have your letter of November 12, with enclosure, and concur in the statement you submitted to the Subcommittee on Separation of Powers on the "Philadelphia Plan."

Please be assured of my continued support.

With kindest personal regards, I am

Sincerely yours,

JOHN L. MCCLELLAN,
Chairman.

U.S. SENATE,
Washington, D.C., November 13, 1969.

Hon. ELMER B. STAATS,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: Thank you for your November 12 letter and the attached copy of your October 28 statement to the Senate Judiciary Subcommittee on Separation of Powers reaffirming your conclusion that the so-called "Philadelphia Plan" is illegal and indicating that you will use the power of your office to bar spending of federal funds for contracts which include the plan's provisions in the absence of a court or Congressional ruling to the contrary.

I appreciate your letting me know of your position, and I think it is a sound one.

I feel as you do that the plan clearly goes beyond the intent of Congress in attempting to establish required levels of racial employment in a manner not authorized by the civil rights law.

With all best regards,

Sincerely,

B. EVERETT JORDAN.

HOUSE OF REPRESENTATIVES,
Washington, D.C., November 24, 1969.

Hon. ELMER B. STAATS,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. STAATS: I commend you for the forthright and compelling statement you forwarded to me concerning the revised Philadelphia Plan.

Time and again I have stressed my own reservations to the approach of the Plan. While equalization of employment opportunity for all may be a commendable aim, it should not be pursued in a manner calculated to either thwart the will of Congress or erode the separation of powers and responsibilities which has been the genius and high art of our system of Government.

Whatever the question, whatever the merits, a democratic society should never allow desirable short-term goals to obfuscate or override faithful adherence to principles and institutions which have made the country great and, more importantly, free.

When Congress, as the representative of the people, speaks, the Executive should listen. What kind of Government have we if it does not!

With kindest personal regards, I am,

Sincerely,

WILLIAM C. CRAMER.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., November 17, 1969.

The Hon. ELMER B. STAATS,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: I want to commend you for holding fast to your position on the Department of Labor's revised Philadelphia Plan. I agree with you entirely; the Philadelphia Plan is in patent conflict with the Civil Rights Act of 1964, and its continuation does constitute a threat to maintenance of legislative control over budget expenditures by the Executive branch of government.

Several days ago, I contacted the Department of Labor and requested that the Department amplify its views on two questions: whether a contractor would be absolved of responsibility if union exclusion were responsible for his failure to meet his goal, and how the Department can justify disregarding a "final and conclusive" decision of the Comptroller General. I have been promised an answer within the next few days, and I will inform you immediately of what the Department says.

Be assured that I will continue to give you active support in your efforts.

With all kind wishes, I am

Sincerely yours,

SAM J. ERVIN, Jr.,
Chairman, Subcommittee on
Separation of Powers.

MEMORANDUM OF U.S. DEPARTMENT OF LABOR,
JUNE 27, 1969

To: Heads of all agencies.

From: Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards.

Subject: Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction.

1. PURPOSE

The purpose of this Order is to implement the provisions of Executive Order 11246, and the rules and regulations issued pursuant thereto, requiring a program of equal employment opportunity by Federal contractors and subcontractors and Federally-assisted construction contractors and subcontractors.

2. APPLICABILITY

The requirements of this Order shall apply to all Federal and Federally-assisted construction contracts for projects the estimated total cost of which exceeds $500,000, in the Philadelphia area, including Bucks, Chester, Delaware, Montgomery and Philadelphia counties in Pennsylvania.

3. POLICY

In order to promote the full realization of equal employment opportunity on Federally-assisted projects, it is the policy of the Office of Federal Contract Compliance that no contracts or subcontracts shall be awarded for Federal and Federally-assisted construction in the Philadelphia area on projects whose cost exceeds $500,000 unless the bidder submits an acceptable affirmative action program which shall include specific goals of minority manpower utilization, meeting the standards included in the invitation or other solicitation for bids, in trades utilizing the following classifications of employees: Iron workers, plumbers, pipefitters, steamfitters, sheetmetal workers, electrical workers, roofers and water proofers, and elevator construction workers.

4. FINDINGS

Enforcement of the nondiscrimination and affirmative action requirements of Executive Order 11246 has posed special problems in the construction trades. Contractors and subcontractors must hire a new employee complement for each construction job and out of necessity or convenience they rely on the construction craft unions as their prime or sole source of their labor. Collective bargaining agreements and/or established custom between construction contractors and subcontractors and unions frequently provide for, or result in, exclusive hiring halls; even where the collective bargaining agreement contains no such hiring hall provisions or the custom is not rigid, as a practical matter, most people working in these classifications are referred to the jobs by the unions. Because of these hiring arrangements, referral by a union is a virtual necessity for obtaining employment in union construction projects, which constitute the bulk of commercial construction.

Because of the exclusionary practices of labor organizations, there traditionally has been only a small number of Negroes employed in these seven trades. These exclusionary practices include: (1) unfair to admit Negroes into membership and into apprenticeship programs. At the end of 1967, less than one-half of one percent of the membership of the unions representing employees in these seven trades were *Negro*, although the population in the Philadelphia area during the past several decades included substantial numbers of *Negroes*. As of April 1965, the Commission on Human Relations in Phildelphia found that unions in five trades (plumbers, steamfitters, electrical workers, sheet metal workers and roofers) were "discriminatory" in their admission practices. In a report by the Philadelphia Local AFL–CIO Human Relations Committee made public in 1964, virtually no *Negro* apprentices were found in any of the building trades classes; [1] (2) failure of the unions to refer *Negroes* for employment, which has resulted in large measure from the priorities in referral granted to union members and to persons who had work experience under union contracts.

On November 30, 1967, the Philadelphia Federal Executive Board put into effect the Philadelphia Pre-Award Plan. The Federal Executive Board found that [2] the problem of compliance with the requirements of Executive Order 11246 was most apparent in Philadelphia in eight construction trades: electrical, sheetmetal, plumbing and pipefitting, steamfitting, roofing and waterproofing, structural iron work, elevator construction and operating engineers; and that local unions representing employees in these trades in the Philadelphia area had few minority group members and that few minority group persons had been accepted in apprenticeship programs. In order to assure equal employment opportunity on Federal and Federally-assisted construction in the Philadelphia area, the plan required that each apparent low bidder, to qualify for a construction contract or subcontract, must submit a written affirmative action program which would have the results of assuring that there will be minority group representation in these trades.

Since the Philadelphia Plan was put into effect, some progress has been made. Several groups of contractors and Local 543 of the International Union of Operating Engineers have developed an area program of affirma-

[1] Marshall and Briggs, *Negro Participation in Apprenticeship Programs* (Dec. 1966), pg. 91.

[2] These findings were based on a detailed examination of available facts relating to building trades unions, area construction volume and demographic data.

tive action which has been approved by OFCC in lieu of other compliance procedures, but subject to periodic evaluation. The original Plan was suspended because of an Opinion by the Comptroller General that it violated the principles of competitive bidding. * * *

6. SPECIFIC GOALS AND DEFINITE STANDARDS

a. General

The OFCC Area Coordinator, in cooperation with the Federal contracting or administering agencies in the Philadelphia area, will determine the definite standards to be included in the invitation for bids or other solicitation used for every Federally-involved construction contract in the Philadelphia area, when the estimated total cost of the construction project exceeds $500,000. Such definite standards shall specify the range of minority manpower utilization expected for each of the designated trades to be used during the performance of the construction contract. To be eligible for the award of the contract, the bidder must, in the affirmative action program submitted with his bid, set specific goals of minority manpower utilization which meet the definite standard included in the invitation or other solicitation for bids unless the bidder participates in an affirmative action program approved by OFCC.

b. Specific goals

1. The setting of goals by contractors to provide equal employment opportunity is required by Section 60–1.40 of the Regulations of this Office (41 CFR § 60–1.40). Further, such voluntary organization of businessmen as Plans for Progress have adopted this sound approach to equal opportunity just as they have used goals and targets for guiding their other business decisions (See the Plans for Progress booklet Affirmative Action Guidelines on page 6.)

2. The purpose of the contractor's commitment to specific goals is to meet the contractor's affirmative action obligations and is not intended and shall not be used to discriminate against any qualified applicant or employee.

c. Factors used in determining definite standards

A determination of the definite standard of the range of minority manpower utilization shall be made for each better-paid trade to be used in the performance of the contract. In determining the range of minority manpower utilization that should result from an effective affirmative action program, the factors to be considered will include, among others, the following:

1. The current extent of minority group participation in the trade.

2. The availability of minority group persons for employment in such trade.

3. The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.

4). The impact of the program upon the existing labor force.

7. INVITATION FOR BIDS OR OTHER SOLICITATIONS FOR BIDS

Each Federal agency shall include, or require the applicant to include, in the invitation for bids, or other solicitation used for a Federally-involved construction contract, when the estimated total cost of the construction project exceeds $500,000, a notice stating that to be eligible for award, each bidder will be required to submit an acceptable affirmative action program consisting of goals as to minority group participation for the designated trades to be used in the performance of the contract—whether or not the work is subcontracted. Such notice shall include the determination of the range of minority group utilization (described in Section 6 above) that should result from an effective affirmative action program based on an evaluation of the factors listed in Section 6c. The form of such notice shall be substantially similar to the one attached as an appendix to this Order. To be acceptable, the affirmative action program must contain goals which are at least within the range described in the above notice. Such goals must be provided for each designated trade to be used in the performance of the contract except that goals are not required with respect to trades covered by an OFCC approved multi-employer program.

8. POST-AWARD COMPLIANCE

a. Each agency shall review contractors' and subcontractors' employment practices during the performance of the contract. If the goals set forth in the affirmative action program are being met, the contractor or subcontractor will be presumed to be in compliance with the requirements of Executive Order 11246, as amended, unless it comes to the agency's attention that such contractor or subcontractor is not providing equal employment opportunity. In the event of failure to meet the goals, the contractor shall be given an opportunity to demonstrate that he made every good faith effort to meet his commitment. In any proceeding in which such good faith performance is in issue, the contractor's entire compliance posture shall be reviewed and evaluated in the process of considering the imposition of sanctions. Where the agency finds that the contractor or subcontractor has failed to comply with the requirements of Executive Order 11246, the implementing regulations and its obligations under its affirmative action program, the agency shall take such action and impose such sanctions as may be appropriate under the Executive Order and the regulations. Such noncompliance by the contractor or subcontractor shall be taken into consideration by Federal agencies in determining whether such contractor or subcontractor can comply with the requirements of Executive Order 11246 and is therefore a "responsible prospective contractor" within the meaning of the Federal procurement regulations.

b. It is no excuse that the union with which the contractor has a collective bargaining agreement failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964. It is the longstanding uniform policy of OFCC that contractors and subcontractors have a responsibility to provide equal employment opportunity if they want to participate in Federally-involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246, as amended, or the implementing rules, regulations and orders.

9. EXEMPTIONS

a. Requests for exemptions from this Order must be made in writing, with justification, to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C., 20210, and shall be forwarded through and with the endorsement of the agency head.

b. The procedures set forth in the Order shall not apply to any contract when the head of the contracting or administering agency determines that such contract is essential to the national security and that its award without following such procedures is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within thirty days.

c. Nothing in this Order shall be interpreted to diminish the present contract compliance review and complaint programs.

10. AUTHORITY

This Order is issued pursuant to Executive Order 11246 (30 F.R. 12319, Sept. 28, 1965) Parts II and III; Executive Order 11375 (32 F.R. 14303, Oct. 17, 1967); and 41 CFR Chapter 60.

11. EFFECTIVE DATE

The provisions of this Order will be effective with respect to transactions for which the invitations for bids or other solicitations for bids are sent on or after July 18, 1969.

APPENDIX

(For Inclusion in the Invitation or Other Solicitation for Bids for a Federally-Involved Construction Contract When the Estimated Total Cost of the Construction Project Exceeds $500,000.)

Notice of requirement for submission of affirmative action plan to ensure equal employment opportunity:

1. It has been determined that in the performance of this contract an acceptable affirmative action program for the trades specified below will result in minority manpower utilization within the ranges set forth next to each trade:

Identification of trade

Range of minority group employment

2. The bidder shall submit, in the form specified below, with his bid an affirmative action program setting forth his goals as to minority manpower utilization in the performance of the contract in the trades specified below, whether or not the work is subcontracted.

The bidder submits the following goals of minority manpower utilization to be achieved during the performance of the contract:

Identification of trade

Estimated total employment for the trade on the contract

Number of minority group employees

(The bidder shall insert his goal of minority manpower utilization next to the name of each trade listed.)

3. The bidder also submits that whenever he subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he will obtain from such subcontractor an appropriate goal that will enable the bidder to achieve his goal for that trade. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

4. No bidder will be awarded a contract unless his affirmative action program contains goals falling within the range set forth in paragraph 1 above, provided, however, that participation by the bidder in multi-employer program approved by the Office of Federal Contract Compliance will be accepted as satisfying the requirements of this Notice in lieu of submission of goals with respect to the trades covered by such multi-employer program. In the event that such multi-employer program is applicable, the bidder need not set forth goals in paragraph 2 above for the trades covered by the program.

5. For the purpose of this Notice, the term minority means Negro, Oriental, American Indian and Spanish Surnamed American. Spanish Surnamed American includes all persons of Mexican, Puerto Rican, Cuban or Spanish origin or ancestry.

6. The purpose of the contractor's commitment to specific goals as to minority manpower utilization is to meet his affirmative action obligations under the equal opportunity clause of the contract. This commitment is not intended and shall not be used to discriminate against any qualified applicant or employee.

7. Nothing contained in this Notice shall

relieve the contractor from compliance with the provisions of Executive Order 11246 and the equal opportunity clause of the contract with respect to matters not covered in this Notice, such as equal opportunity in employment in trades not specified in this Notice.

8. The bidder agrees to keep such records and to file such reports relating to the provisions of this Order as shall be required by the contracting or administering agency.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D.C., September 23, 1969.

ORDER

To: Heads of all agencies.

From: Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards; John L. Wilks, Director, Office of Federal Contract Compliance.

Subject: Establishment of Ranges for the Implementation of the Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction.

1. PURPOSE

The purpose of this Order is to implement Section 6 of the Order issued on June 27, 1969 by Assistant Secretary of Labor Arthur A. Fletcher to the Heads of Agencies outlining a "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction." Section 6 of the June 27 Order provides for the determination of definite standards in terms of ranges of minority manpower utilization. This Order also affirms and in certain respects amends the Order of June 27.

2. BACKGROUND

The June 27 Order requires a bidder on Federal or Federally-assisted construction in the Philadelphia area on projects whose cost exceeds $500,000 to submit an acceptable affirmative action program which shall include specific goals of minority manpower utilization within the ranges to be established by the Department of Labor, in cooperation with the Federal contracting and administering agencies in the Philadelphia Area, within the following 7 listed classifications:

Iron workers; Plumbers, pipefitters; Steamfitters; Sheetmetal workers; Electrical workers; Roofers and water proofers; and Elevator construction workers.

Since that time the Department has determined that minority craftsmen may be adequately represented in the classification and title "roofers and water proofers". For this reason, such classification is hereby temporarily excepted from the provisions of the "Revised Philadelphia Plan," subject to further examination of that trade.

Pursuant to a notice of hearing issued on August 16, 1969, representatives of the Department of Labor conducted a public hearing in Philadelphia on August 26, 27, and 28, 1969 for the purpose of obtaining information and data relevant to the establishment of ranges for the purpose of effectuating the above-referred to June 27, 1969 Order. Section 6 of such Order provides that the following factors, among others, will be used in establishing these ranges:

(a) The current extent of minority group participation in the trade.

(b) The availability of minority group persons for employment in such trade.

(c) The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.

(d) The impact of the program upon the existing labor force.

Having reviewed the record of that hearing and additional relevant data gathered and compiled by the Department of Labor, the following findings and Order are made as contemplated by the Order of June 27, 1969.

3. FINDINGS

(a) *Minority Participation in the Specified Trades:* The over-all construction industry in the five county Philadelphia area has a current minority representation of employees of 30%. Comparable skilled trades, excluding laborers, have a minority representation of approximately 12%. The construction trades in the Philadelphia area have grown and developed under similar conditions concerning manpower availability and under identical economic and cultural circumstances. Despite that fact, there are few minorities in the above-designated six trades. The evidence adduced at the public hearing indicates that the minority participation in such trades is approximately 1%. In the June 27 Order, it was found that such a low rate of participation is due to the traditional exclusionary practices of these unions in admission to membership and apprenticeship programs and failure to refer minorities to jobs in these trades. The most reliable data available relates to minority participation in membership in the unions representing employees in the six trades. That data reveals the following:

(1) *Iron Workers:* The total union membership in this craft in the Philadelphia area in 1969 is 850, 12 of whom (1.4%) are minority group representatives.

(2) *Steamfitters:* Total union membership in the Philadelphia area in 1969 stands at 2,308, 13 of whom (.65%) are minority group representatives.

(3) *Sheetmetal Workers:* Total union membership in the Philadelphia area in 1969 stands at 1,688, 17 of whom (1%) are minority group representatives.

(4) *Electricians:* Total union membership in the Philadelphia area in 1969 stands at 2,274, 40 of whom (1.76%) are minority group representatives.

(5) *Elevator construction workers:* Total union membership in the Philadelphia area in 1969 stands at 562, 3 of whom (.54%) are minority group representatives.

(6) *Plumbers & Pipefitters:* Total union membership in the Philadelphia area in 1969 stands at 2,335, 12 of whom (.51%) are minority group representatives.

Based upon these figures it is found and determined that the present minority participation in the six named trades is far below that which should have reasonably resulted from participation in the past without regard to race, color and national origin and, further, that such participation is too insignificant to have any meaningful bearing upon the ranges established by this Order.

(b) *Availability of Minority Group Persons for Employment:* The nonwhite unemployment rate in the Philadelphia area is approximately twice that for the labor force as a whole and the total number of nonwhite persons unemployed is approximately 21,000. There is also a substantial number of persons in the nonwhite labor force who are underemployed. Testimony adduced at the hearing indicates that there are between 1,200 and 1,400 minority craftsmen presently available for employment in the construction trades who have been trained and/or had previous work experience in the trades. In addition it was revealed at the hearing that there is a pool of 7,500 minority persons in the Laborers Union who are working side by side with journeymen in the performance of their crafts in the construction industry. Many of these persons are working as helpers to the journeymen in the designated trades. Also, testimony at the hearings established that between 5,000 and 8,000 prospective minority craftsmen would be prepared to accept training in the construction crafts within a year's time if they would be assured that jobs were available to them upon completion of such training.

Surveys conducted by agencies of the U.S. Department of Labor have provided additional information relative to the availability of minority group persons for employment in the designated trades.

Based upon the number of minority group persons employed in the designated trades for all industries (construction and nonconstruction) and those minority group persons who are unemployed but qualified for employment in the designated trades, a survey by the Manpower Administration indicated that minority group persons are now in the area labor market as follows:

Identification of trades and number available:	
Ironworkers	302
Plumbers, pipefitters and steamfitters	797
Sheetmetal workers	250
Electrical workers	745

A survey by the Office of Federal Contract Compliance indicated that the following number of minority persons are working in the designated trades and those who will be trained by 1970 by major Philadelphia recruitment and training agencies and those working in related occupations in non-construction industries who would be qualified for employment in the designated trades with some orientation or minimal training:

Identification of trades and number available:	
Ironworkers	75
Plumbers, pipefitters	500
Steamfitters	300
Sheetmetal workers	375
Electrical workers	525
Elevator constructors	43

Based upon this information it is found that a substantial number of minority persons are presently available for productive employment.

(c) *The Need for Training:* Testimony at the public hearing revealed that there is a need for training programs for willing minority group persons at various levels of skill. Such training must necessarily range from pre-apprenticeship training programs through programs providing incidental training for skilled craftsmen who are near the of full journeyman status.[1] As discussed above, between 5,000 and 8,000 minority group persons are in a position to be recruited for such training within a year's time.

Testimony at the public hearings revealed the existence of several training programs which have operated successfully to train a number of craftsmen many of whom are now prepared to enter the trades in the construction industry. In order to further assure the availability of necessary training programs, the Manpower Administration of this Department has committed substantial funds for the development of additional apprenticeship outreach programs and journeyman training programs in the Philadelphia area. It plans to double the present apprenticeship outreach program with the Negro Union Leadership Council in Philadelphia. Presently, this program is funded for $78,000 to train seventy persons. An additional $80,000 is being set aside to expand this program. In addition, immediate exploration of the feasibility of a journeyman-training program for approximately 180 trainees will be undertaken. Both these programs will be directed specifically to the designated trades.[2]

(d) *The Impact of the Program Upon the Existing Labor Force:* A national survey of the Bureau of Labor Statistics indicates that

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[1] Testimony adduced at the hearings indicates that the traditional duration of training to develop competent workmen in the crafts may be longer than necessary to successfully perform substantial amounts of craft level work.

[2] Memorandum from Arnold R. Weber, Assistant Secretary for Manpower to Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards, dated September 18, 1969.

the present annual attrition rate of construction trade membership due to retirement is 2.5% per year based upon a total working life of 44 years per employee in each of the above-designated trades.

Based on national actuarial rates for the construction industry published by the National Safety Council, the average disability occurrence rate resulting from death or injury is 1% per year. A conservative estimate of the average rate at which employees leave construction crafts for all reasons other than death, disability and retirement is 4% per year.

Therefore, each construction craft should have approximately 7.5% new job openings each year without any growth in the craft. The annual growth in the number of employees in each craft designated under this "Revised Philadelphia Plan" has been and is projected to be as follows:

(1) *Iron Workers.* The average annual growth rate since 1963 has been approximately 10%. It is projected that an average annual growth rate in employment will be 3.69% in the near future.[3]

(2) *Plumbers and Pipefitters.* The average annual growth rate since 1963 has been approximately 7.38%. It is projected that an average annual growth rate in employment will be 2.9% in the near future.

(3) *Steamfitters.* The average annual growth rate since 1963 has been approximately 2.63% and is projected to be approximately 2.5% for each of the next four years.

(4) *Sheetmetal workers.* The average annual growth rate since 1963 has been approximately 2.06% and is projected to be approximately 2.0% for each of the next four years.

(5) *Electricians.* The average annual growth rate since 1963 has been approximately 4.98%. It is projected that an average annual growth rate in employment will be 2.2% in the near future.

(6) *Elevator Construction Workers.* The average annual growth rate since 1963 has been approximately 2.41% and is projected to be approximately 2.1% for each of the next four years.

Adding the rate of jobs becoming vacant due to attrition to the rate of new jobs due to growth, the total rate of new jobs projected for each craft is as follows:

Percentage of annual vacancy rate

Identification of trade:	
Ironworkers	11.2
Plumbers and pipefitters	10.4
Steamfitters	10
Sheetmetal workers	9.5
Electrical workers	9.7
Elevator construction workers	9.6

Therefore, it is found and determined that a contractor could commit to minority hiring up to the annual rate of job vacancies for each trade without adverse impact upon the existing labor force.

(e) *Timetable:* In an effort to provide practical ranges which can be met by employers in hiring productive trained minority craftsmen, this Order should be developed to cover an extended period of time.

The average length of Federally-involved construction projects in the Area is between 2 and 4 years. Testimony at the hearing indicated that a 4 year duration for the "Plan" is proper.

[3] Projections of the annual growth rate in employment in the designated trades is based on a study by the Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Employment Security, entitled *1960 Census and 1970, 1975 Projected Total Employment.*

Therefore, it is found and determined that in order for this Order to effect equal employment to the fullest extent, the standards of minority manpower utilization should be determined for the next four years.

(f) *Conclusion of Findings:* It is found that present minority participation in the designated trades is far below that which should have reasonably resulted from participation in the past without regard to race, color, or national origin and, further, that such participation is too insignificant to have any meaningful bearing upon the ranges established by this Order.

It is found that a significant number of minority group persons is presently available for employment as journeymen, apprentices, or other trainees.

It is found that there is a need for training programs for willing minority group persons at various levels of skills. There exist several training programs in the Philadelphia area which have operated successfully to train craftsmen prepared to enter the construction industry and, in addition, the Manpower Administration of this Department has committed substantial funds for the development of other apprenticeship outreach programs and journeyman training programs in the Philadelphia area.

Finally, it is found that a contractor could commit himself to hiring minority group persons up to the annual rate of job vacancies for each trade without adverse impact upon the existing labor force in the designated trades.

Based upon these findings, a range shall be established by this Order which shall require contractors to establish employment goals between a low range figure which could result in approximately 20% of the workforce in each designated trade being minority craftsmen at the end of the fourth year covered by this Order.[4]

In addition, trained and trainable minority persons are or shall be available in numbers sufficient to fill the number of jobs covered by these ranges, there being 1200 to 1400 minority persons who have had training and 5000 to 8000 prepared to accept training within a year.

Such minority representation can be accomplished without adversely affecting the present work force. Based upon the projected Annual Vacancy Rate, the lower range figure may be met by filling vacancies and new jobs approximately on the basis of one minority craftsman for each non-minority craftsman.[5]

4. ORDER

Therefore, after full consideration and in light of the foregoing, be it *ORDERED:* That the Order of June 27, 1969 entitled "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction" is hereby implemented, affirmed, and in certain respects amended, this Order to constitute a supplement thereto as required and contemplated by said Order of June 27, 1969.

Further ordered: That the following ranges are hereby established as the standards for minority manpower utilization for each of the designated trades in the Philadelphia area for the next four years:

[4] Assuming the same proportion of minorities are employed on private construction projects as Federally-involved projects, the lower range should result in 2,000 minority craftsmen being employed in the construction industry in the Philadelphia area by the end of the fourth year.

[5] The one for one ratio in hiring has been judicially recognized as a reasonable, if not mandatory, requirement to remedy past exclusionary practices. *Vogler* v. *McCarty, Inc.*, 294 F. Supp. 368 (E.D. La. 1967).

Range for minority group employment until Dec. 31, 1970

[Percent]

Identification of trade:	
Ironworkers	[1] 5–9
Plumbers and pipefitters	5–8
Steamfitters	4–8
Sheetmetal workers	4–8
Electrical workers	4–8
Elevator construction workers	4–8

Range of minority group employment for the calendar year 1971 [2]

[Percent]

Identification of trade:	
Ironworkers	11–15
Plumbers and pipefitters	10–14
Steamfitters	11–15
Sheetmetal workers	9–13
Electrical workers	9–13
Elevator construction workers	9–13

[1] The percentage figures have been rounded.

[2] After December 31, 1970 the standards set forth herein shall be reviewed to determine whether the projections on which these ranges are based adequately reflect the construction labor market situation at that time. Reductions or other significant fluctuations in federally involved construction shall be specifically reviewed from time-to-time as to their effect upon the practicality of the standards. In no event, however, shall the standards be increased for contracts after bids have been received.

Range of minority group employment for the calendar year 1972

[Percent]

Identification of trade:	
Ironworkers	16–20
Plumbers and pipefitters	15–19
Steamfitters	15–19
Sheetmetal workers	14–18
Electrical workers	14–18
Elevator construction workers	14–18

Range of minority group employment for the calendar year 1973

[Percent]

Identification of trade:	
Ironworkers	22–26
Plumbers and pipefitters	20–24
Steamfitters	20–24
Sheetmetal workers	19–23
Electrical workers	19–23
Elevator construction workers	19–23

The above ranges are expressed in terms of man hours to be worked on the project by minority personnel and must be substantially uniform throughout the entire length of the project for each of the designated trades.

Further ordered: That the form attached hereto as an Appendix is hereby made a part of this Order and in accordance with the findings specified above, amends the Appendix of the Order of June 27, 1969.

Each Federal agency shall include, or require the applicant to include, this form, or one substantially similar, in the invitation for bids or other solicitations used for a Federally-involved construction contract where the estimated total cost of the construction project exceeds $500,000.

5. CRITERIA FOR MEASURING GOOD FAITH

Section 8 of the June 27 Order provides that a contractor will be given an opportunity to demonstrate that he has made *every good faith effort* to meet his goal of minority manpower utilization in the event he fails to meet such goal. If the contractor has failed to meet his goal, a determination of *"good faith"* will be based upon his efforts to broaden his recruitment base through at least the following activities:

(a) The OFCC Area Coordinator will maintain a list of community organizations

which has agreed to assist any contractor in achieving his goal of minority manpower utilization by referring minority workers for employment in the specified trades. A contractor who has not met his goals may exhibit evidence that he has notified such community organizations of opportunities for employment with him on the project for which he submitted such goals as well as evidence of their response.

(b) Any contractor who has not met his goal may show that he has maintained a file in which he has recorded the name and address of each minority worker referred to him and specifically what action was taken with respect to each such referred worker. If such worker was not sent to the union hiring hall for referral or if such worker was not employed by the contractor, the contractor's file should document this and the reasons therefor.

(c) A contractor should promptly notify the OFCC Area Coordinator in order for him to take appropriate action whenever the union with whom the contractor has a collective bargaining agreement has not referred to the contractor a minority worker sent by the contractor or the contractor has other information that the union referral process has impeded him in his efforts to meet his goal.

(d) The contractor should be able to demonstrate that he has participated in and availed himself of training programs in the area, especially those funded by this Department referred to in Section 3(c) of this Order, designed to provide trained craftsmen in the specified trades.

6. SUBCONTRACTORS

Whenever a prime contractor subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he shall include his goals in such subcontract and those goals shall become the goals of his subcontractor who shall be bound by them and by this Order to the full extent as if he were the prime contractor. The prime contractor shall not be accountable for the failure of his subcontractor to meet such goals or to make every good faith effort to meet them. However, the prime contractor shall give notice to the Area Coordinator of the Office of Federal Contract Compliance of the Department of Labor of any refusal or failure of any subcontractor to fulfill his obligations under this Order. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

7. EXEMPTIONS

a. Requests for exemptions from this Order must be made in writing, with justification, to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210, and shall be forwarded through and with the endorsement of the agency head.

b. The procedures set forth in the Order shall not apply to any contract when the head of the contracting or administering agency determines that such contract is essential to the national security and that its award without following such procedures is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within thirty days.

c. Nothing in this Order shall be interpreted to diminish the present contract compliance review and complaint programs.

8. EFFECT OF THIS ORDER

In the case of any inconsistency between this Order and the June 27, 1969 Order prescribing a "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction", this Order shall prevail.

9. AUTHORITY

This Order is issued pursuant to Executive Order 11246 (30 F.R. 12319, September 28, 1965) Parts II and III; Executive Order 11375 (32 F.R. 14303, Oct. 17, 1967); and 41 CFR Chapter 60.

10. EFFECTIVE DATE

The provisions of this Order will be effective with respect to transactions for which the invitations for bids or other solicitations for bids are sent on or after _____, 1969.

APPENDIX

(For inclusion in the Invitation or Other Solicitation for Bids for a Federally-Involved Construction Contract When the Estimated Total Cost of the Construction Project Exceeds $500,000.)

NOTICE OF REQUIREMENT FOR SUBMISSION OF AFFIRMATIVE ACTION PLAN TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. It has been determined that in the performance of this contract an acceptable affirmative action program for the trades specified below will result in minority manpower utilization within the ranges set forth next to each trade:

Range of minority group employment until December 31, 1970

[Percent]

Identification of trade:	
Ironworkers	5–9
Plumbers and pipefitters	5–8
Steamfitters	5–8
Sheetmetal workers	4–8
Electrical workers	4–8
Elevator construction workers	4–8

Range of minority group employment for the calendar year 1971

[Percent]

Identification of trade:	
Ironworkers	11–15
Plumbers and pipefitters	10–14
Steamfitters	11–15
Sheetmetal workers	9–13
Electric workers	9–13
Elevator construction workers	9–13

Range of minority group employment for the calendar year 1972

[Percent]

Identification of trade:	
Ironworkers	16–20
Plumbers and pipefitters	15–19
Steamfitters	15–19
Sheetmetal workers	14–18
Electrical workers	14–18
Elevator construction workers	14–18

Range of minority group employment for the calendar year 1973

[Percent]

Identification of trade:	
Ironworkers	22–26
Plumbers and pipefitters	20–24
Steamfitters	20–24
Sheetmetal workers	19–23
Electrical workers	19–23
Elevator construction workers	19–23

2. The bidder shall submit, in the form specified below, with his bid an affirmative action program setting forth his goals as to minority manpower utilization in the performance of the contract in the trades specified below, whether or not the work is subcontracted.

The bidder submits the following goals of minority manpower utilization to be achieved during the performance of the contract:

Identification of trade	Estimated total employment for the trade on the contract until Dec. 31, 1970	Number of minority group employees until Dec. 31, 1970
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1971	Number of minority group employees for the calendar year 1971
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1972	Number of minority group employees for the calendar year 1972
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1973	Number of minority group employees for the calendar year 1973
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

(The bidder shall insert his goal of minority manpower utilization next to the name of each trade listed for those years during which it is contemplated that he shall perform any work or engage in any activity under the contract.)

3. The bidder also submits that whenever he subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he shall include his goals in such subcontract and those goals shall become the goals of his subcontractor who shall be bound by them to the full extent as if he were the prime contractor. The prime contractor shall not be accountable for the failure of his subcontractors to meet such goals or to make every good faith effort to meet them. However, the prime contractor shall give notice to the Area Coordinator of the Office of Federal Contract Compliance of the Department of Labor of any refusal or failure of any subcontractor to fulfill his obligations under this Order. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

4. No bidder will be awarded a contract unless his affirmative action program contains goals falling within the range set forth

in paragraph 1 above, provided, however, that participation by the bidder in multi-employer programs approved by the Office of Federal Contract Compliance will be accepted as satisfying the requirements of this Notice in lieu of submission of goals with respect to the trades covered by such multi-employer program. In the event that such multi-employer program is applicable, the bidder need not set forth goals in paragraph 2 above for the trades covered by the program.

5. For the purpose of this Notice, the term minority means Negro, Oriental, American Indian and Spanish Surnamed American. Spanish Surnamed American includes all persons of Mexican, Puerto Rican, Cuban or Spanish origin or ancestry.

6. The purpose of the contractor's commitment to specific goals as to minority manpower utiliaztion is to meet his affirmative action obligations under the equal opportunity clause of the contract. This commitment is not intended and shall not be used to discriminate against any qualified applicant or employee. Whenever it comes to the bidder's attention that the goals are being used in a discriminatory manner, he must report it to the Area Coordinator of the Office of Federal Contract Compliance of the U.S. Department of Labor in order that appropriate sanction proceedings may be instituted.

7. Nothing contained in this Notice shall relieve the contractor from compliance with the provisions of Executive Order 11246 and the Equal Opportunity Clause of the contract with respect to matters not covered in this Notice, such as equal opportunity in employment in trades not specified in this Notice.

8. The bidder agrees to keep such records and to file such reports relating to the provisions of this Order as shall be required by the contracting or administering agency.

OPPORTUNITY

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 102. The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SEC. 103. The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment opportunity in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, creed, color, or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 105. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

PART II—NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

SUBPART A—DUTIES OF THE SECRETARY OF LABOR

SEC. 201. The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

SUBPART B—CONTRACTORS' AGREEMENTS

SEC. 203. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided,* That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will

affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest, so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section, also exempt certain classes of contracts, tract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

Sec. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

SUBPART D—SANCTIONS AND PENALTIES

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the non-discrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modification of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a)(5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

SEC. 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209(a)(6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

SUBPART E—CERTIFICATES OF MERIT

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III—NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant,

contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303. (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

PART IV—MISCELLANEOUS

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *September 24, 1965.*

EXECUTIVE ORDER 11375—AMENDING EXECUTIVE ORDER NO. 11246, RELATING TO EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246[1] of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

It is desirable that the equal employment opportunity programs provided for in Executive Order No. 11246 expressly embrace discrimination on account of sex.

Now, therefore, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered that Executive Order No. 11246 of September 24, 1965, be amended as follows:

(1) Section 101 of Part I, concerning nondiscrimination in Government employment, is revised to read as follows:

"SEC. 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice."

(2) Section 104 of Part I is revised to read as follows:

"SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission."

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin."

(4) Section 203 (d) of Part II is revised to read as follows:

"(d) The contracting agency or the Secretary of Labor may direct that any bidder or

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[1] 30 F.R. 12319; 3 CFR, 1964–1965 Comp., p. 339.

prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *October 13, 1967.*

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. BIBLE), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), and the Senator from Ohio (Mr. YOUNG) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. BIBLE), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), and the Senator from Ohio (Mr. YOUNG) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Tennessee (Mr. BAKER), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from New Jersey (Mr. CASE), the Senator from Arizona (Mr. FANNIN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from New York (Mr. GOODELL), the Senator from Illinois (Mr. SMITH), and the Senator from Kansas (Mr. PEARSON) are detained on official business.

If present and voting, the Senator from Illinois (Mr. PERCY), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 74, nays 0, as follows:

[No. 265 Leg.]

YEAS—74

Aiken	Gravel	Montoya
Allen	Griffin	Moss
Allott	Gurney	Murphy
Bayh	Hansen	Muskie
Bellmon	Harris	Pastore
Bennett	Hart	Pell
Boggs	Hartke	Prouty
Brooke	Hatfield	Proxmire
Burdick	Holland	Randolph
Byrd, Va.	Hruska	Ribicoff
Byrd, W. Va.	Hughes	Saxbe
Cannon	Jackson	Schweiker
Church	Javits	Scott
Cook	Jordan, N.C.	Smith, Maine
Cotton	Jordan, Idaho	Sparkman
Cranston	Kennedy	Spong
Curtis	Long	Stennis
Dodd	Magnuson	Stevens
Dole	Mansfield	Talmadge
Dominick	Mathias	Thurmond
Eagleton	McClellan	Williams, N.J.
Ellender	McGovern	Williams, Del.
Ervin	Metcalf	Yarborough
Fong	Miller	Young, N. Dak.
Gore	Mondale	

NAYS—0

NOT VOTING—26

Anderson	Goodell	Pearson
Baker	Hollings	Percy
Bible	Inouye	Russell
Case	McCarthy	Smith, Ill.
Cooper	McGee	Symington
Eastland	McIntyre	Tower
Fannin	Mundt	Tydings
Fulbright	Nelson	Young, Ohio
Goldwater	Packwood	

So the bill (H.R. 15209) was passed.

Mr. GRIFFIN. Mr. President, I move to reconsider the vote by which the supplemental appropriation bill was passed.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD of West Virginia. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes 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. BYRD of West Virginia, Mr. PASTORE, Mr. HOLLAND, Mr. ELLENDER, Mr. MCCLELLAN, Mr. MAGNUSON, Mr. STENNIS, Mr. YOUNG of North Dakota, Mrs. SMITH of Maine, Mr. HRUSKA, and Mr. ALLOTT the conferees on the part of the Senate.

Mr. MANSFIELD. Mr. President, the overwhelming approval of this measure by the Senate speaks better than any words of praise for this magnificent achievement of the distinguished Senator from West Virginia (Mr. BYRD). Having assumed the chairmanship of the Subcommittee on Deficiencies and Supplementals just this year, Senator BYRD rose quickly to the task making certain that all phases of Government activity are—in the final analysis—being properly and adequately funded. It is a difficult task; one that requires the highest degree of care and diligence. Surely no Member of this body exceeds Senator BYRD in those capacities. The Senate is deeply grateful.

The Senate is grateful as well to the able and distinguished Senator from Nebraska (Mr. HRUSKA) for his outstanding cooperation and support. As the ranking minority member of the subcommittee, he applied the full measure of his efforts to assure the expeditious and efficient disposition of this funding proposal.

To the many other Senators joining the discussion I wish to pay particular tribute. So to Senator JAVITS, to Senator GRIFFIN, to Senator BAKER, Senator ERVIN, Senator HOLLAND, and the many others, I extend the commendation of the Senate for their outstanding contributions to the discussions.

Mr. YARBOROUGH. Mr. President, I was unfortunately called away from the Chamber at the time of the vote on the amendment of the distinguished Senator from Oklahoma adding $2 million to this bill for medical care for the Indians. I desire that the RECORD show that, had I been present, I would have voted "yea" on that amendment.

Mr. BYRD of West Virginia. Mr. President, I wish to take just a brief moment to express appreciation to the members of the staff of the Appropriations Committee for the exemplary work which they have performed in bringing this bill to the floor; and I want to say that I should not have done the poor job that I was able to do without their assistance.

So often their work is overlooked, and I think we ought to recognize the work that was done by the very, very able staff of the Appropriations Committee. Special praise perhaps is due Mr. Tom Scott and Mr. Joe T. McDonnell. So to them and the others I extend my gratitude.

I also want to express appreciation to the ranking minority member (Mr. HRUSKA) for the fine support he gave all along the way, and to the various Members who conducted hearings because of the fact that I had to be on the floor, and was unable to attend and conduct the hearings myself at times. I thank the other members of the subcommittee for their forbearance, patience, and assistance in this regard.

Mr. President, I thank all Senators for the patience they have shown, and for the fine spirit in which they have conducted the debate on this difficult measure. I think it has been a good day for the Republic.

Mr. GRIFFIN. Mr. President, particularly because the Senator from West Virginia has described his participation and leadership in connection with this bill in a very modest way, I would not want the record not to reflect that Senators on both sides of the aisle have commented about the excellent job that the Senator from West Virginia has done in chairing and providing leadership in connection with this bill. I think the record should show that the whole Senate is indebted to him.

Mr. BYRD of West Virginia. Mr. President, I thank the Senator. He is very gracious; I am extremely grateful.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PAN AMERICAN RAILWAYS CONGRESS ASSOCIATION

A letter from the Acting Assistant Secretary for Congressional Relations, Department of State, transmitting a draft amendment to the joint resolution providing for membership and participation by the United States in the Pan American Railways Congress Association (with accompanying papers); to the Committee on Foreign Relations.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on opportunities for more effective use of an automated procuremnet system for small purchases, Department of the Navy, dated December 17, 1969 (with an accompanying report); to the Committee on Government Operations.

REPORT ON DISPOSITION OF FOREIGN EXCESS PERSONAL PROPERTY

A letter from the Assistant Secretary of Defense, transmitting, pursuant to law, a report relative to the Department's disposition of foreign excess personal property located in areas outside of the United States, Puerto Rico and the Virgin Islands (with an accompanying report); to the Committee on Government Operations.

MIDDLE RIO GRANDE PROJECT, NEW MEXICO

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, their determinations relating to deferment of the February 1 and August 1, 1970, construction payments due the United States from the Middle Rio Grande Conservancy District, Middle Rio Grande Project, New Mexico; to the Committee on Interior and Insular Affairs.

FINANCIAL REPORT OF VETERANS OF WORLD WAR I OF THE U.S.A., INC.

A letter from the National Quartermaster-Adjutant, Veterans of World War I of the U.S.A., Inc., transmitting, pursuant to law, a financial report as of September 30, 1969 (with an accompanying report); to the Committee on the Judiciary.

DISPOSITION OF EXECUTIVE PAPERS

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

The ACTING PRESIDENT pro tempore appointed Mr. MCGEE and Mr. FONG members of the committee on the part of the Senate.

PETITIONS AND MEMORIALS

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

By the ACTING PRESIDENT pro tempore:

A letter, in the nature of a petition, from Mary C. Gordon, of Utica, N.Y., praying for the enactment of legislation to extend the Voting Rights Act of 1965; to the Committee on the Judiciary.

HOUSE BILL REFERRED

The bill (H.R. 15095) to amend the Social Security Act to provide a 15-percent across-the-board increase in benefits under the old-age, survivors, and disability insurance program, was read twice by its title and referred to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. YARBOROUGH, from the Committee on Labor and Public Welfare, with amendments:

S. 2660. A bill to extend and otherwise amend certain expiring provisions of the Public Health Service Act for migrant health services (Rept. No. 91-618).

By Mr. HARTKE, from the Committee on Commerce, with amendments:

S. 1933. A bill providing for Federal railroad safety (Rept. No. 91-619).

By Mr. TYDINGS, from the Committee on the District of Columbia, with an amendment:

S. 2981. A bill to revise the laws of the District of Columbia on juvenile court proceedings (Rept. No. 91-620).

By Mr. JAVITS, from the Committee on Government Operations, without amendment:

H.J. Res. 764. A joint resolution to authorize appropriations for expenses of the President's Council on Youth Opportunity (Rept. No. 91-621).

BILLS INTRODUCED

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

By Mr. STEVENS:

S. 3254. A bill to amend title 5, United States Code, in order to establish certain requirements with respect to air traffic controllers; to the Committee on Post Office and Civil Service, by unanimous consent.

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

By Mr. HATFIELD:

S. 3255. A bill to amend the Federal Aviation Act of 1958 to require the Secretary of Transportation to prescribe regulations under which air carriers will be required to reserve a section of each passenger-carrying aircraft for passengers who desire to smoke; to the Committee on Commerce.

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

By Mr. EAGLETON:

S. 3256. A bill for the relief of Dr. Pacelli Escondo Brion; and

S. 3257. A bill for the relief of Maria Badalamenti; to the Committee on the Judiciary.

By Mr. STEVENS:

S. 3258. A bill to confer jurisdiction on the United States District Court for the District of Alaska to hear and determine the claim of the State of Alaska for a refund of a sum paid to the United States for firefighting services; to the Committee on the Judiciary.

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

By Mr. KENNEDY (for himself, Mr. BROOKE, Mr. COTTON, Mr. MCINTYRE, Mr. DODD, and Mr. RIBICOFF):

S. 3259. A bill to authorize the Secretary of the Interior to establish the Bunker Hill National Historic Site in the city of Boston, Mass., and for other purposes; to the Committee on Interior and Insular Affairs.

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

By Mr. CASE:

S. 3260. A bill to make it a criminal offense to travel in interstate commerce to avoid service of process or appearing before a crime investigation agency; to the Committee on the Judiciary.

By Mr. BURDICK:

S. 3261. A bill to amend title 18 of the United States Code to authorize the Attorney General to admit to residential community treatment centers persons who are placed on probation, released on parole, or mandatorily released; to the Committee on the Judiciary.

S. 3254—INTRODUCTION OF AIR TRAFFIC CONTROLLERS BILL

Mr. STEVENS. Mr. President, the problems besetting air traffic control and the hard working men who man the air traffic control facilities have been brought to light in the many newspaper and magazine articles on the subject that have recently appeared. The Senate Post Office and Civil Service has held hearings on the proposed early retirement of air traffic controllers, and other bills dealing with the problem of air traffic control have been introduced.

Today, I am introducing at the request of the Anchorage professional air traffic controller employee organization a bill which was drafted by a representative of the air traffic controller of my State.

The bill provides for the formal classification of air traffic controllers into four groups based on training and experience and provides for compensation according to these classifications. It separates management and administrative tasks from air traffic control functions and provides that air traffic controllers shall not be burdened with tasks not directly related to the control of aircraft. Flight familiarization would be required of all air traffic controllers under this bill to assure that the men who control the planes are familiar with the conditions on board the aircraft they are controlling. The bill provides for premium pay and early retirement for controllers in high density facilities.

I am happy to have the opportunity to introduce this bill because it contains provisions drafted on behalf of air traffic controllers and is designed to provide the administration of the air traffic control program that the men who work in it would like to have. I think it is important for the Senate to have the opportunity to examine a bill which is a reflection of the desires of the men whom the bill is designed to assist.

I ask unanimous consent that the bill be referred to the Committee on Post Office and Civil Service, and that the bill be printed in the RECORD.

The PRESIDING OFFICER. The bill will be received and, without objection, the bill will be referred to the Committee on Post Office; and, without objection, the bill will be printed in the RECORD.

The bill (S. 3254) to amend title 5, United States Code, in order to establish certain requirements with respect to air traffic controllers, introduced by Mr. STEVENS, was received, read twice by its title, referred to the Committee on Post

Office and Civil Service, by unanimous consent, and ordered to be printed in the RECORD, as follows:

A bill to amend title 5, United States Code, in order to establish certain requirements with respect to air traffic controllers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part III of title 5, United States Code, is amended by inserting at the end thereof the following new subpart:

"SUBPART H—AIR TRAFFIC CONTROLLERS

"CHAPTER 91—AIR TRAFFIC CONTROLLERS

"Sec.
"9101. Definitions.
"9102. Limitations on the performance of air traffic control functions.
"9103. Rating.
"9104. Management and administrative functions.
"9105. Flight familiarization.
"9106. Classification and compensation.
"9107. Premium pay and work schedule.
"9108. Sick leave.
"9109. Retirement.

"§ 9101. Definitions

"For the purpose of this subpart—

"(1) 'Secretary' means the Secretary of Transportation;

"(2) 'air traffic controller' means an employee of the Federal Aviation Administration whose duty is the control of aircraft, or who provides airport advisory inflight or preflight services to aircraft on or in the vicinity of an airport or along the airways and certain oceanic control areas, for the purpose of assuring proper separation between aircraft, minimizing delays arising from traffic congestion, and otherwise promoting the safe and efficient operation of aircraft;

"(3) 'certified air traffic controller' means an air traffic controller who has passed oral and written examinations, as prescribed by the Secretary, and who has had at least 4 years of experience in the functions of air traffic control, including such experience under supervision, or who is currently certified under section 9103 of this title;

(4) 'associate air traffic controller' means an air traffic controller who is currently rated in accordance with Federal Aviation Administration requirements for an air traffic control facility or position and who has at least 2 years of experience in air traffic control functions, including such experience under supervision, but who does not meet the requirements of paragraph (3) of this section;

"(5) 'assistant air traffic controller' means a person who—

"(A) is not more than 28 years of age when designated as an assistant air traffic controller (except that the requirement relating to age may be waived by the Secretary);

"(B) is beginning to perform the functions of air traffic control under the direct and singular supervision of—

"(i) an associate air traffic controller, in those functions which an associate air traffic controller may perform without the direct supervision of a certified air traffic controller; or

"(ii) a certified air traffic controller; and

"(C) has successfully completed a course in air traffic control at an institution of higher learning, as approved by the Secretary, or who has successfully completed the air traffic control course at the Federal Aviation Administration Academy; and

"(6) 'air traffic controller trainee' means a person employed by the Federal Aviation Administration who is attending the Federal Aviation Administration Academy and receiving instruction in air traffic control or who is receiving such instruction at an institution of higher learning approved by the Secretary.

"§ 9102. Limitation on the performance of air traffic control functions

"(a) The function of a certified air traffic controller, as defined by the Secretary, shall include all those aspects necessary for air traffic control.

"(b) The functions of an associate air traffic controller, as defined by the Secretary, shall be carried out only by a certified air traffic controller or an associate air traffic controller.

"(c) An assistant air traffic controller may perform the functions of air traffic control only if such functions are performed under the direct and singular supervision of (1) an associate air traffic controller, in those functions which an associate air traffic controller may perform without direct supervision of a certified air traffic controller, or (2) a certified air traffic controller.

"(d) An air traffic controller trainee shall not perform actual air traffic control except at the Federal Aviation Administration Academy or at certain airports with limited traffic, as determined by the Secretary.

"(e) No air traffic controller shall be required to carry out any management or administrative function (1) unless specifically appointed to perform any such function and (2) while performing functions relating to air traffic control.

"(f) All qualified air traffic controllers assigned to an air traffic control facility shall be certified or associate air traffic controllers. Therefore, the Secretary shall—

"(1) establish guidelines and procedures for rating controllers as certified or associate air traffic controllers wherever appropriate; and

"(2) assure that the guidelines and procedures guarantee that an air traffic controller shall have the opportunity to apply for either such rating when he has established minimum time-in-grade requirements in accordance with section 910 (3) and (4) of this title.

"§ 9103. Rating

"(a) Every certified or associate air traffic controller shall be required to pass an annual proficiency check by a proficiency check controller, and if found properly proficient in the duties of his position, rated as a certified or associate air traffic controller, as the case may be.

"(b) The Secretary shall prescribe the requirements for the proficiency check controllers and shall appoint such controllers from those certified controllers eligible for the position. Service as a proficiency check controller shall be considered to be service as an air traffic controller for the purpose of this subpart.

"§ 9104.

Management and administrative functions

"(a) The Secretary shall specify management and administrative positions within each air traffic control facility.

"(b) The Secretary shall appoint—

"(1) as required, management and administrative personnel within each air traffic control facility; and

"(2) watch supervisors whenever 3 or more controllers are required to perform air traffic contol duties while assigned to the same work shift or overlapping work shifts of 6 or more hours. A watch supervisor appointed under this subsection shall have complete authority over the performance of the duties carried out during the work shift to which he is assigned.

"§ 9105.

Flight familiarization

"(a) An air traffic controller shall—

"(1) be encouraged to participate in at least 2 hours each month of flight familiarization training sponsored by the Federal Aviation Administration; and

"(2) be required, for the purpose of reviewing and maintaining safety standards, to participate in a training program once each year that shall include at least 2 days of familiarization with another air traffic control facility.

"§ 9106.

Classification and compensation

"(a) Except as otherwise provided in this section, the classifications and rates of basic pay for positions of air traffic controllers shall be established by the Civil Service Commission in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of this title within the following limitations:

"(1) a certified air traffic controller shall be classified as a GS–13, GS–14, or GS–15;

"(2) an associate air traffic controller shall be classified as a GS–11, GS–12, or GS–13;

"(3) an assistant air traffic controller shall be classified as a GS–8 or GS–9; and

"(4) an air traffic controller trainee shall be classified as a GS–7.

"(b) (1) An air traffic controller shall receive pay, in addition to that authorized by subsection (a), in an amount not to exceed $3,000 each year for duties performed by him at a high density air traffic control facility as determined by the Secretary. Such pay shall be computed according to an equitable formula prescribed by the Secretary, after consultation with a cross-section of employee representatives. The formula shall take into consideration the air traffic controller complement and traffic volume as it relates to speed and usable airspace in proportion to situations of air traffic complexity.

"(2) The amount of additional pay paid under this section shall be adjusted as workload situations changes.

"(c) The provisions of this section shall not reduce the basic pay of any air traffic controller.

"(d) The classification of each air traffic controller and watch supervisor position shall be reevaluated annually and reclassified equitability. The reevaluation shall include consideration of increased modernization, increased responsibilities, and other influencing factors.

"§ 9107. Premium pay and work schedule

"(a) (1) Except as otherwise provided in subsection (d) of this section, hours of work officially ordered or approved in excess of 40 hours in any work week, or more than 8 hours in any 24-hour period, and performed by an air traffic controller are overtime work and shall be paid for in premium pay at the following rates:

"(A) For all hours in excess of 40 hours in any work week but not in excess of 48 hours, or in excess of an 8-hour work day but not in excess of 10 hours, the overtime hourly rate shall be equal to one and one-half times the hourly rate of basic pay of the air traffic controller.

"(B) For all hours in excess of 48 hours in any work week or 10 hours in any work day or any hours worked by an air traffic controller on a second scheduled day off of the work week, the overtime hourly rate of pay shall be equal to 2 times the hourly rate of such basic pay.

"(2) An air traffic controller shall be paid for a minimum of 4 hours of overtime in all instances of unscheduled overtime where the actual time is less than 4 hours but more than 15 minutes.

"(3) An air traffic controller who works less than 4 hours of scheduled overtime during any one work week shall be paid for a minimum of 4 hours for that work week.

"(4) Except as provided in paragraph (5) of this subsection, an air traffic controller must work at least 15 minutes overtime to be compensated under the provisions of this subsection.

"(5) An air traffic controller who reports for duty to perform scheduled or unscheduled overtime work, and finds that such work has

been canceled, shall be paid for a full day's overtime in accordance with paragraph (1) of this subsection.

"(6) The provisions of this subsection shall apply to air traffic controllers in lieu of the provisions of section 5542 of this title.

"(b) For the purpose of determining night differential for air traffic controllers under section 5545 of this title, and in lieu of the hours provided for in subsection (a) of such section, the Secretary shall, by regulation, establish the 8 hours determined by him to be the normal daytime hours for employees generally.

"(c) (1) Notwithstanding any other provision of this title, work performed by air traffic controller between the hours of 11:00 p.m. and before 7:00 a.m. shall be considered mid-shift work.

"(2) Mid-shift premium pay shall be paid at the rate of 25 percent of the employee's basic pay and shall be paid for the total number of hours worked during such hours. If mid-shift work performed is less than one hour but 15 minutes or more, the controller shall be paid one hour of mid-shift premium pay.

"(d) Any air traffic controller required to work on a legal public holiday shall be paid at the rate of 3 times his basic pay.

"§ 9108. Sick leave.

"An air traffic controller shall be entitled to sick leave with pay, in addition to such sick leave provided under section 6307 of this title, for such reasonable periods as may be authorized by the Secretary, if the Secretary determines that the air traffic controller is temporarily unable, based on sufficient medical evidence that is supplied by a flight surgeon and two medical doctors, to perform such duties.

"§ 9109. Retirement

"(a) Notwithstanding the provisions of section 8336 (a) and (b) of this title, an air traffic controller who is separated from the service—

"(1) after completing 30 years of service;

"(2) after becoming 55 years of age;

"(3) after serving at least 5 years as an air traffic controller in a high density air traffic control facility, as determined by the Secretray under section 9106(b) of this title, and completing 25 years of service or becoming 52 years of age; or

"(4) after serving at least 10 years as an air traffic controller in a high density facility, as determined by the Secretary under section 9106(b) of this title, and completing 20 years of service or becoming 50 years of age; is entitled to an annuity.

"(b) In the computation of an annuity under section 8339(a) of this title for an employee with respect to time served as an air traffic controller, 2.2 percent of his average pay shall be multiplied by the employee's total number of years as an air traffic controller.

"(c) Notwithstanding the provisions of section 8333(a) of this title, an air traffic controller may be retired for disability, without regard to length of civilian service, if he is found by the Civil Service Commission, in consultation with the Secretary, no longer able to carry out the duties of an air traffic controller. A finding of disability under the provisions of this section shall not preclude any individual from serving as an employee other than as an air traffic controller."

(b) The table of contents of part III of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBPART H—AIR TRAFFIC CONTROLLERS

"91—Air Traffic Controllers ..... 9101".

SEC. 2. Within 90 days following the date of enactment of this Act, the Secretary of Transportation shall designate any person performing air traffic control functions on such date, as a certified air traffic controller, an associate air traffic controller, an assistant air traffic controller, or an air traffic controller trainee, as the case may be, in accordance with regulations promulgated by the Secretary, which, wherever appropriate, need not conform to the provisions of section 9101 of title 5, United States Code, as added by the first section of this Act.

SEC. 3. (a) The amendments made by the first section of this Act shall be effective on the ninety-first day following the date of enactment of this Act, except that subsection (b) of section 9106 of title 5, United States Code, as added by the first section of this Act, shall be effective upon enactment.

(b) The Secretary of Transportation shall prescribe the formula provided under such subsection not later than six months after the date of enactment of this Act.

S. 3255—INTRODUCTION OF A BILL RESTRICTING SMOKING ABOARD AIRCRAFT

Mr. HATFIELD. Mr. President, I am introducing a bill which would restrict smoking on passenger aircraft to certain designated sections of the plane. This bill would allow those who wish to smoke to do so, but it would assure that the many nonsmokers could travel in comfort.

When we debated the Cigarette Labeling Act recently, evidence relating directly to the relationship of smoking and health was introduced. I will not revive that subject now, but refer my colleagues to the RECORD of Friday, December 12, 1969. I think we owe the distinguished Senator from Utah (Mr. Moss) our thanks for leading the discussion in such an able manner.

The purpose of this bill is very simple: it calls for the Secretary of the Department of Transportation to promulgate reasonable rules and regulations for carriers certified by the Civil Aeronautics Board so that passengers who wish to smoke would do so only in a particular section or area of the plane.

I would point out, Mr. President, one example where the nonsmokers already are given fair treatment. In most theaters, no smoking is permitted, so that nonsmokers are not annoyed by the smoke of people next to them. No mandate exists stating that those who want to should be able to light up whenever and wherever they choose to do so. On the other hand, this bill would not ban smoking completely, so that those who need to smoke still can do so.

I am sure that my colleagues here today have noticed the considerable publicity surrounding the arrival of the jumbo jets. This serves as the trigger for my action today. In the huge planes, separate compartments already are provided, and it would be simple to designate a smoking area. Mr. President, those planes seat over 450 people and, if many were smoking at once, it could be very discomforting to those who do not smoke. The rights of the nonsmokers to fly free from the danger and irritating effects of smoke must be protected. Perhaps, when the airlines see the support for such a seating arrangement, they will institute such a plan voluntarily.

On existing aircraft, even such a minor change as allowing smoking only in seats on one side of the aisle and not on the other would be a step toward alleviating the discomfort of the many nonsmokers.

In addition to the comfort of the nonsmokers, two additional benefits would be realized by enactment of this bill. First, there is a segment of people who react violently to the presence of cigarette smoke, and they would be able to fly for the first time. Second, there is some indication that cigarette tar buildup on the exhaust-overflow ducts might be a potential safety hazard. Limiting smoking to certain areas of the plane would enable the airlines more easily to keep clean those ducts in the smoking area.

Mr. President, I want to point out that this action of mine is not alone. Congressman ANDREW JACOBS, of Indiana, has introduced a similar bill in the House and he reports a favorable reaction from his constituency.

In addition, a petition was filed yesterday with the Department of Transportation and the Federal Aviation Administration calling for promulgation of a rule requiring separation of smoking and nonsmoking passengers on all commercial domestic air carriers. This petition was filed by Action on Smoking and Health—ASH—its project group: Citizens to Restrict Airline Smoking Hazards—CRASH—and John F. Banzhaf. Earlier, Mr. Banzhaf filed a petition which resulted in the nonsmoking messages on television. ASH was responsible for seeing that the FCC decision requiring the messages was enforced.

Action on Smoking and Health is a responsible group, listing such prominent sponsors as Paul Dudley White, M.D., Leona Baumgartner, M.D., and Howard law professor, Louis L. Jaffe, Esq. Many other sponsors are people whose names are familiar to us. Roger O. Egeberg, M.D. was a sponsor before he became Assistant Secretary for Health and Scientific Affairs of the Department of Health, Education, and Welfare. Mr. President, at this point in my remarks, I ask unanimous consent that all the sponsors of Action on Smoking and Health be listed. They serve as individuals and their affiliation is noted only for purposes of identification.

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

Paul Dudley White, M.D., Professor of Medicine, Harvard Medical School.

Leona Baumgartner, M.D., Visiting Professor, Harvard Medical School.

Louis L. Jaffe, Esq., Bryne Prof. of Admin. Law, Harvard Law School.

Theodore L. Badger, M.D., Prof. of Medicine, Harvard Medical School.

Charles R. Baker, Executive Director, Institute for American Democracy.

Edward Bernays, Public Relations, Boston.

A. R. T. Denues, Ph. D., President, CANCIRO, Inc., New York City.

Frederick H. Epstein, M.D., Prof., School of Public Health, U. of Michigan.

Charles A. Evans, M.D., Ph. D., Chairman, Dept. of Microbiology, U. of Washington School of Medicine.

Emmanuel Farber, M.D., Ph. D., Chairman, Dept. of Pathology, U. of Pittsburgh Medical School.

Louis F. Fieser, Ph. D., Chemical Laboratory, Harvard University.

Dwight Emary Harken, M.D., Clinical Professor of Surgery, Harvard Medical School.

Franz J. Ingelfinger, M.D., Editor, New England Journal of Medicine.

Hollis Ingraham, M.D., Commissioner of Health, New York State.

George James, M.D., Dean, Mt. Sinai Medical School, New York City.

Edward I. Koch, U.S. Congressman, New York.

Charles W. Lantz, President, Citizens National Bank, Hollywood, Fla.

Louis Lasagna, M.D., Prof., the Johns Hopkins U., School of Medicine.

Mrs. Thomas Witt Leach, President, North American Royalties, Inc., N.D.

Walsh McDermott, M.D., Livingston Farrand, Prof. of Public Health, Cornell Medical School.

Joseph L. Melnick, M.D., Prof., Baylor U. College of Medicine.

Francis D. Moore, M.D., Moseley Prof of Surgery, Harvard Medical School.

Maurine B. Neuberger, Former U.S. Senator, State of Oregon.

Alton Ochsner, M.D., Founder, the Ochsner Clinic, New Orleans.

Richard H. Overholt, M.D., Founder, the Overholt Thoracic Clinic, Boston.

Joseph F. Ross, M.D., Prof., U. of California School of Medicine.

Arthur T. Roth, Chairman of the Board, Franklin National Bank, N.Y.C.

David Rutstein, M.D, Ridley Watts Prof. of Preventive Medicine, Harvard Medical School.

Howard R. Sacks, Esq., Dean, U. of Connecticut School of Law.

Silvan S. Tomkins, Ph. D., Professor of Medicine, City University of New York.

Ann Landers, Newspaper Columnist.

Mr. HATFIELD. Mr. President, I also want to call attention to the work done in this field by Dr. John Keshishian, a thoracic surgeon who also teaches at George Washington Medical School. Dr. Keshishian is the incoming chairman of the Committee on Smoking and Health of the Medical Society of the District of Columbia. He has done much work on his own in this area, and has indicated that his committee will be a force in this matter of smoking on passenger aircraft.

Yesterday, a news conference was held at which time the DOT-FAA petition, Dr. Keshishian's actions, and this bill and that of Representative JACOBS all were discussed. Because of my colleagues' interest in this subject, I ask unanimous consent that at this point in my remarks, the statement of John Banzhaf, Esq., and Dr. John Keshishian be printed in the RECORD.

There being on objection, the statements were ordered to be printed in the RECORD, as follows:

BANZHAF STATEMENT

Mr. BANZHAF. As soon as this press conference concludes, a formal petition will be filed with the F.A.A. and the Dept. of Transportation requesting them to promulgate a rule which would require all domestic air carriers to provide non-smoking sections for passengers who do not wish to be forced to breathe cigarette smoke. The petition is filed by Action on Smoking and Health, otherwise known as ASH, the organization primarily responsible for getting the anti-smoking messages on radio and television.

The petition is filed on our own behalf as a legal action organization concerned about the problem of smoking and as the informal legal action arm of the anti-smoking community. It is also filed on behalf of many of our contributing members and non-members who have written to us to complain about the problem of being forced to breathe air polluted by cigarette smoke, and on behalf of all other people who are concerned about or affected by the problem.

We believe that cigarette smoke in a confined area presents a health hazard to every non-smoker and an annoyance or discomfort to most. We also believe that it presents a clear and present danger to the safety and health of an estimated 30 million Americans who have a preexisting susceptibility to cigarette smoke. Finally we believe that every person has the right to breathe air unpolluted by cigarette smoke, at least in public places, and this action today is only the first in a series of steps to establish and secure the right for all non-smokers.

In our petition we show that the Administrator of the F.A.A. is required to regulate so that passengers are accorded the "highest possible degree of safety in the public interest," and that he shall be guided by the public interest and by a duty to promote the development of air commerce. We cite a large number of regulations he has issued for the purpose of safeguarding the passengers within the plane, in some cases from risks created by other passengers—thus showing that he himself has recognized this duty and that our proposed rule would be consistent with his past exercise of power. We also cite cases indicating that it may be possible for non-smokers to sue the airlines or the FAA for failing to regulate cigarette smoking.

We point out that as many as 30 million people with various pre-existing medical conditions such as asthma and emphysema are particularly sensitive to cigarette smoke and that the harm done to them by being forced to come in contact with it has been clearly established. We also cite a number of studies indicating that smoke in a confined area—that is a kind of involuntary smoking—is a health hazard to non-smokers and may cause, among other things, eye irritation, nasal symptoms, headache, coughing, sneezing, sore throat, nausea, hoarseness, and dizziness. There are also studies that show that children are adversely affected by being in a smokey environment and that an estimated 15 million children has a pre-existing susceptibility to smoke caused by a medical problem.

We have asked not for a ban on smoking but rather for the separation of smokers and non-smokers because we believe that such a separation will be effective and because it can be done without any cost to the airlines and without any inconvenience to anyone. We have spelled out at least three plans by which this can be done. We expect that the FAA will act favorably on our petition and also hope that some of the airlines will act voluntarily in view of the evidence we present in the petition. If not we are prepared to take further steps if necessary to secure this goal.

KESHISHIAN STATEMENT

Dr. KESHISHIAN. I am Dr. John Keshishian, incoming Chairman of the Committee on Smoking and Health of the Medical Society of the District of Columbia.

The purpose of this Conference is to inform you and interested parties of some proposed action to be taken concerning the practice of smoking tobacco aboard commercial aircraft within the jurisdiction of the federal regulatory bodies.

Disturbed by pernicious smoking by my fellow passengers, convinced that smoking per se is harmful to passenger and aircraft and mindful that these constitute potential health and safety hazards, I and others began to accumulate data over the past year which has convinced us that the former statements are valid; namely, that smoking constitutes a health hazard to passengers and a safety hazard to the aircraft.

John F. Banzhaf, Executive Director of ASH (Action on Smoking and Health), and his associates have also been working in this field. Their research has brought them to the same conclusion. They have promulgated a petition to the FAA which we personally endorse and which carries the approval of the Medical Society of the District of Columbia.

Certain Members of Congress and several outstanding health authorities, as well as hundreds of physicians in the United States have indicated a willingness to help in anyway possible to ameliorate this problem of smoking.

Mr. HATFIELD. Mr. President, I wish to remind my colleagues that this action would not be costly to the various airlines involved. On the other hand, I think that if one airline took the initiative in this area, the increased good will and patronage by nonsmokers would offset any slight additional costs incurred.

I believe that this is a most appropriate time for such action to be taken. Recently, we considered the relationship between cigarette smoking and health as we debated the Cigarette Labeling Act. I hope we will act with dispatch on this proposal, while those sobering statistics are fresh in our minds. While it is true that this bill does not relate directly to smoking and the health of the smoker, I do hope we will consider the safety and comfort of the many nonsmokers in the country as we study this bill.

In closing, Mr. President, I ask that at the close of these remarks may be printed, first, the wording of the bill, second, the statement of Action on Smoking and Health, and third, the Action on Smoking and Health petition to the Department of Transportation and Federal Aviation Administration.

I will be contacting the various aircraft manufacturers and airline officials about this problem and, as I hear from them, I will add their letters and comments to the RECORD.

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

The bill (S. 3255) to amend the Federal Aviation Act of 1958 to require the Secretary of Transportation to prescribe regulations under which air carriers will be required to reserve a section of each passenger-carrying aircraft for passengers who desire to smoke, introduced by Mr. HATFIELD, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

A bill to amend the Federal Aviation Act of 1958 to require the Secretary of Transportation to prescribe regulations under which air carriers will be required to reserve a section of each passenger carrying aircraft for passengers who desire to smoke.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) title XI of the Federal Aviation Act of 1958 (49 U.S.C. 1501–1511) is amended by adding at the end thereof the following new section:

"SMOKING ABOARD CERTAIN AIRCRAFT

"SEC. 1112. The Secretary of Transportation shall prescribe such reasonable rules and regulations as may be necessary to require that each air carrier certificated by the Civil Aeronautics Board shall designate a portion of the seating capacity of every aircraft operated by it in the carriage of passengers in air transportation as the only place abroad such aircraft where passengers will be permitted to smoke."

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "TITLE XI—MISCELLENEOUS" is amended by adding at the end thereof the following:

"Sec. 1112. Smoking aboard certain aircraft."

FAA ASKED TO REQUIRE NONSMOKING SECTIONS; ASH FILES PETITION CITING RIGHT TO BREATHE UNPOLLUTED AIR

In a petition filed Wednesday, December 17 the Federal Aviation Administration and the Department of Transportation were asked to require airlines to establish nonsmoking sections to guarantee non-smokers "the right to breathe unpolluted air."

The petition charged that cigarette smoke constituted a health hazard to all non-smokers, and particularly to an estimated 30 million with pre-existing medical problems. It was filed on behalf of Action on Smoking and Health (ASH) by John Banzhaf, whose petition to the F.C.C. led to a ruling requiring free time for anti-smoking messages.

The organization charged that "unregulated cigarette smoking on airlines creates a significant health hazard for all nonsmoking passengers" and a "clear and present danger to the safety, health, and very lives of as many as 30 million people with pre-existing medical conditions." It cited a number of medical studies showing the effects of ambient cigarette smoke on nonsmokers.

One study showed that non-smokers suffered eye irritation, nasal symptoms, headache, cough, wheezing, sore throat, nausea, hoarseness, and dizziness, and that the percentage affected increased greatly for those with various particular susceptibilities. The petition estimated that over 30 million Americans suffering from chronic bronchitis, emphysema, chronic sinusitus, asthma, hay fever, and other conditions are particularly susceptible to cigarette smoke which in them can bring on a serious attack. Among other studies were those showing that children are adversely affected by cigarette smoke in confined areas, and that an estimated 15 million children are particularly susceptible because of particular medical conditions.

The petitioners asked for non-smoking sections rather than for an outright ban on smoking because they felt that the airlines could provide effective separation between smokers and non-smokers, and because such a rule would cost nothing to implement and would not inconvenience anyone. They cited three possible proposals which would meet these requirements. Under one, the two groups would be seated on opposite sides of the aircraft. Under a second, one group would be seated from the front and the other from the back. Under a third, flexible non-smoking sections would be marked before the passengers boarded.

The petition argued that the airlines owe the passenger the "highest possible degree of safety in the public interest" and that the Administrator is bound by statute to follow these standards. They cited numerous F.A.A. regulations controlling passenger conduct for the safety and comfort of other passengers. Their legal analysis suggested that private suits by non-smokers could be brought against the airlines and the F.A.A. if they permitted unrestricted smoking.

It was argued that where there is doubt as to the safety of a practice that it must be resolved in favor of the public health, particularly where this can be done without inconvenience to others. It cited the recent decision of the Secretary of Health, Education, and Welfare to restrict the sale of products containing cyclamates based upon only preliminary indications of their possible danger.

Action on Smoking and Health, which describes itself as the legal action arm of the anti-smoking community, claimed that it was bringing this action on behalf of all persons who object to being forced to breathe smoke on commercial airlines, and that it had received a large number of letters from such people. It has previously brought actions concerning the problem of smoking before the F.C.C. and the F.T.C.

The logical next step in the proceedings would be for the Administrator to publish the proposed rule in the Federal Register and invite comments from interested persons. ASH announced that it also hoped to persuade the airlines to adopt non-smoking sections voluntarily, and that this action was only an opening gun in a series of legal actions to establish the legal right of the nonsmoker to breathe air unpolluted by cigarette smoke in public places.

[Before the Department of Transportation and the Federal Aviation Administration]

PETITION FOR PROMULGATION OF A RULE REQUIRING SEPARATION OF SMOKING AND NONSMOKING PASSENGERS ON ALL COMMERCIAL DOMESTIC AIR CARRIERS

To: Honorable JOHN A. VOLPE, Secretary, Department of Transportation; Honorable JOHN H. SHAFFER, Administrator, Federal Aviation Administration.

Petitioners: John F. Banzhaf III, 530 'N' Street, S.W., Washington, D.C. 20024. (202) 554–5799; Action on Smoking and Health (ASH), 2000 H Street NW., Washington, D.C. 20006, (202) 659–4310; C.R.A.S.H. (Citizens to Restrict Airline Smoking Hazards): Steven I. Bellman, Joseph M. Chomski, Chairman, James R. Coleman, Richard Emanuel, Michael D. Grabow.

Counsel: John F. Banzhaf III, 2000 H Street NW., Washington, D.C. 20006, (202) 659–4310.

Now comes Action on Smoking and Health (ASH), Project C.R.A.S.H. (Citizens to Restrict Airline Smoking Hazards), and John F. Banzhaf III, and pursuant to 5 U.S.C. 553 (e) and 14 C.F.R. 11.25(a) petition the Administrator of the Federal Aviation Administration, and in so far as is appropriate under Department of Transportation Act, 49 U.S.C. 1651 et seq., the Secretary of Transportation, to promulgate a rule requiring all domestic air carriers to effectively separate smoking passengers from non-smoking passengers so as to prevent non-smoking passengers from being subjected to the health hazards and annoyance of being forced to breathe tobacco smoke.

Petitioners move the promulgation of the above rule for the following reasons which will be hereinafter more fully explained and developed in the body of the petition:

(1) Unregulated cigarette smoking on airlines creates a clear and present danger to the safety, health, and very lives of as many as 30 million people (30,000,000) with pre-existing medical conditions.

(2) Unregulated cigarette smoking on airlines creates a significant health hazard for all non-smoking passengers who are thereby forced to inhale the smoke created by other passengers.

(3) Unregulated cigarette smoking on airlines creates a severe annoyance for many non-smoking passengers, infringing on their rights and deterring many from flying, and may also deter courteous smokers from enjoying their flights, thus discouraging the development of civil air commerce.

I. INTERESTS OF THE PETITIONERS IN THE ACTION REQUESTED

Petitioner Action on Smoking and Health (ASH) is a national non-profit charitable, scientific, and educational organization which serves as the legal action arm of the antismoking community by utilizing legal action against the problems of smoking. ASH has in excess of 8000 individual contributing members who support its activities and whose interests in the problems of smoking ASH seeks to further. In addition, ASH is supported and sponsored by a wide variety of health, educational and social welfare organizations, and a distinguished panel of individual Sponsors including leading figures in the fields of medicine and public health, as well as other nationally known public figures. Attached and hereby made a part of this petition is a report more fully describing ASH, its supporting organizations, and its Board of Sponsors. ASH is also assisted in its work by numerous individuals and organizations such as Citizens to Restrict Airline Smoking Hazards (C.R.A.S.H.), a special project of ASH and an organization of five George Washington University Law School students who often fly and who are concerned about the problems of smoking on airlines. ASH has initiated and engaged in numerous proceedings involving antismoking messages before the Federal Communications Commission which were largely responsible for enforcement of the Commission's ruling requiring an estimated 75 million dollars a year worth of free broadcasting time for messages about the health hazards of smoking. ASH has filed a number of complaints relating to cigarette advertising and promotion with the Federal Trade Commission, and has testified and appeared through a petition for the amendment of a role in the Commission's rule making proceedings. Thus its standing to initiate and participate in actions before such agencies on behalf of the interests of its contributing members, supporting organizations, project groups, and individual sponsors has been clearly established.

Action on Smoking and Health has received numerous letters from individuals, both contributors and non-contributors, about the health hazard and annoyance created by being forced to breathe the cigarette smoke of others in confined areas. Many of these are from people with an allergy or other preexisting health problem which additionally makes smoking a clear and present danger to their immediate health and welfare. Action on Smoking and Health (ASH) therefore petitions the Secretary of Transportation and the Administrator of the Federal Aviation Administration on behalf of itself as an organization devoted to serving the public interest in the area of smoking, on behalf of its contributing members, supporting organizations, project group C.R.A.S.H., and individual sponsors who are vitally concerned and interested in the problems of smoking, on behalf of its contributing members and non-members who have specifically complained and are adversely affected by the problem of cigarette smoke in confined areas; and on behalf of all other persons similarly situated who are interested in and/or affected by the problem of cigarette smoke on commercial domestic air carriers. [See, e.g., *Associated Industries* v. *Ickes*, 134 F.2d 694 (2d Cir.), dismissed as moot 320 U.S. 707 (1943); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *National Association for the Advancement of Colored People* v. *State of Alabama*, 357 U.S. 449 (1958); *Joint Anti-Facist Refugee Committee* v. *McGrath*, 341 U.S. 123 (1951); *Barrows* v. *Jackson*, 346 U.S 249 (1953); *Office of Communication of the United Church of Christ* v. *F.C.C.*, 359 F.2d 994 (D.C. Cir. 1966)].

Petitioner John F. Banzhaf III is an adult male citizen of the United States and a resident of Washington, D.C., who is vitally interested both individually and professionally with the problems of smoking. As a private citizen he filed a petition with the F.C.C. which led to a ruling requiring all radio and television stations broadcasting cigarette advertisements to devote a significant amount of time free to messages about the health hazards of smoking. He successfully defended this decision in the United States Courts [*Banzhaf* v. *F.C.C.*, 405 F.2d 1082 (D.C. Cir.

1968), cert. denied 90 S. Ct. 50 (1969)] and, through ASH, participated in the enforcement of the decision. Petitioner Banzhaf is Executive Director of ASH. He is also Executive Trustee of Legislative Action on Smoking and Health (LASH), the only anti-smoking lobbying organization, and a registered lobbyist on behalf of anti-smoking interests. In this capacity he has testified in a number of congressional proceedings. Petitioner Banzhaf flies on commercial domestic air carriers often and has frequently been subjected to being forced to breathe the smoke of other passengers which is annoying and harmful to his safety and health. He petitions the Secretary of Transportation and the Administrator of the Federal Aviation Administration on behalf of himself and all other persons similarly situated.

II. STATUTORY AUTHORITY TO PETITION

Petitioners bring this petition for the promulgation of a rule pursuant to 5 U.S.C. 553(e), 14 C.F.R. 11.25(a), and 49 C.F.R. 5.11.

5 U.S.C. 553(e) provides: "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of rule."

14 C.F.R. 11.25(a) provides: "any interested person may petition the Administrator to issue, amend, or repeal a rule within the meaning of section 11.21, or for a temporary or permanent exemption from any rule issued by the Federal Aviation Administration under statutory authority."

With respect to any functions of powers not exercised by the Administrator and exercised by the Secretary of Transportation 49 C.F.R. 5.11 provides: "any person may petition the Secretary to issue, amend, or repeal a rule, or for a permanent or temporary exemption from any rule."

Petitioners, as demonstrated in Part I above, are clearly "interested persons" within the meaning of the acts and regulations.

III. STATUTORY AUTHORITY TO PROMULGATE PROPOSED RULES

The Federal Aviation Act of 1958 established the Federal Aviation Agency to be headed by an Administrator with broad powers including the power to issue rules for the regulation of commercial domestic air carriers. Although his primary responsibility was to "promote safety of flight of civil aircraft in air commerce" [49 U.S.C. 1421(a)], the statutory grant of power—as will be shown—was far broader and required him to give consideration to the public interest including the highest possible degree of safety for the passengers, and to the encouragement and development of civil aeronautics in the United States and abroad. The Administrator and the Agency have consistently interpreted their grant of authority very broadly, and their interpretations have been upheld. The Department of Transportation Act transferred to and vested in the Secretary of Transportation "all functions, powers, and duties of the Federal Aviation Agency", and provided that a portion of these functions, powers, and duties were to be exercised by the Federal Aviation Administrator [49 U.S.C. 1655(c)]. This Act, which consolidated in the Secretary many transportation functions heretofore fragmented, again stressed that they were to be exercised to promote the public interest and the general welfare. Petitioners therefore jointly petition the Administrator and the Secretary to promulgate the proposed rule under their authority and duty to:

(1) see that the air carriers operate with the highest possible degree of safety;

(2) protect the public interest and promote the general welfare;

(3) encourage and foster the development of air commerce.

Petitioners will demonstrate that the Administrator has repeatedly relied on one or more of these principles as a basis for statutory authority to enact regulations for the promotion and protection of passenger safety, health, and comfort. Such regulations have been directed to the conduct of passengers and the air carriers, not only with regard to the safety of the aircraft, but also with regard to the safety, health, and comfort of passengers within the aircraft itself. Petitioners' rule requiring smoking and non-smoking sections would fall within this category, thus conforming to well established Administration policy.

1. Safety

The Administrator's mandate with regard to safety is set out most specifically in 49 U.S.C. 1421(b), which states that "in prescribing standards, rules, and regulations . . . the Administrator shall give full consideration to the duty resting upon air carriers to perform their services with the *highest possible degree of safety in the public interest.*" [Italic added]. On several occasions the courts have not only recognized this duty but held the Government liable for failure to promulgate or enforce rules consistent with this standard. *Furumizo* v. *United States*, 245 F. Supp. 981 (D. Hawaii 1965); *Rapp* v. *Eastern Air Lines, Inc.*, 264 F. Supp. 673, 680 (E.D. Pa. 1967) ("the Board had to give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest."); see also *Airline Pilots Association* v. *Quesada*, 182 F. Supp. 595, 598 (S.D.N.Y. 1960) ("The Federal Aviation Act of 1958 . . . imposes upon the defendant the duty and responsibility of promulgating rules and regulations to provide adequately for the highest possible degree of safety in air commerce.") In cases involving these duties of the air carriers the courts have repeatedly reaffirmed that the "highest possible degree of safety" standard applies not only to the safety of the aircraft but also to passenger safety within the aircraft compartment. Thus in *Wilson* v. *Capital Airways*, 240 F. 2d 492 (4th Cir. 1957) a passenger was injured due to the lack of a handrail in a lavatory. The U.S. Court of Appeals for the Fourth Circuit held that an "airline company, which was a common carrier, was bound to exercise the highest degree of care and foresight for the safety of the passengers." Courts have also established that air carriers are liable for injury to a passenger caused by another passenger. In *Garrett* v. *American Airlines*, 332 F. 2d 939 (5 Cir. 1964), the court found the air carrier liable for an injury to a passenger resulting from the injured party falling over a piece of hand luggage placed in the aisle by another passenger. The court warned air carriers that "they must reasonably take cognizance of the habits, customs, and practices followed generally by its passengers insofar as such actions present hazards to its business invitees." Thus the Administrator has the power and the duty to promulgate regulations providing for "the highest possible degree of safety in the public interest" which applies to the safety of passengers within the aircraft as well as to the safety of the flight.

The "highest possible degree of safety" standard, when applied to the broad grant of authority given to the Administrator in 49 U.S.C. 1421(a)(6)[1], and viewed in light of a number of FAA regulations (Regulations section, *infra*) governing conduct within the passenger compartment, leads one to the inescapable conclusion that the power and duty to regulate the passenger's safety within the passenger compartment lies within the Act. Medical evidence (Medical section, *infra*), has shown conclusively that inhaling tobacco smoke endangers the safety and health of approximately 30,000,000 people who have pre-existing illnesses, and is an annoyance to all non-smokers. It would be incongruous, then, if the Administrator had the power to regulate the safe stowage of carry-on baggage (14 C.F.R. 121.589) in order to prevent one passenger's baggage from falling and injuring a neighboring passenger, and could not regulate the involuntary health and safety hazard one passenger can impose upon another by forcing him to inhale the smoke from his cigarette, cigar, or pipe.

Petitioner contends that the Administrator has not only the authority, but the duty as well, under 49 U.S.C. 1421(b), to promote safety in civil air commerce by requiring the effective separation of smokers from non-smokers on domestic air carriers.

2. Public interest

49 U.S.C. 1303 clearly seems to require the Administrator to follow and be guided by the public interest standard because it sets forth in detail at least five elements that he "shall consider . . . as being in the public interest." 14 C.F.R. 11.25(5) also implies that a proposed rule will be promulgated if the petition can show that "the granting of the request would be in the public interest." 49 U.S.C. 1651(b)(1) provides that "the Congress therefore finds that the establishment of a Department of Transportation is necessary *in the public interest* and to assure the coordinated, effective administration of the transportation programs of the Federal Government." [emphasis added] This concept, despite the various delineations applied to it, remains broad and somewhat flexible. By leaving the definition open-ended, Congress has given the Administrator great latitude to enable him to act with respect to a wide variety of circumstances, both foreseeable and unforeseeable, that might arise.

The term "public interest" encompasses the balancing of the needs and desires of one sector of the population with those of the remainder, so as to effectively satisfy the greatest number, while causing the least hardship (or, ideally, no hardship at all) to the smallest number. Petitioner's rule would beneficially affect a large sector of the population (Medical analysis, *infra*), while causing no harm and virtually no inconvenience to the sector wishing to smoke. The non-smokers whose health is so seriously affected that they have had to forego use of the airways would be able to fly. Non-smoking passengers who are to a lesser degree deleteriously affected by tobacco smoke will be able to patronize the air carriers without being subjected to aggravation of their physical condition. In addition, healthy passengers will not be subjected to health hazards. The passengers who wish to smoke will not be deprived of their smoking privilege. There can be no question that the benefits from the proposed rule far outweigh any possible drawbacks, thus serving the public interest.

3. Fostering and development of air commerce

49 U.S.C. 1346 defines the Administrator's authority with respect to civil aeronautics and air commerce as follows: "The Administrator is empowered and directed to encourage and foster the development of civil aeronautics and air commerce in the United States and abroad." Interstate and overseas air commerce, as defined by 49 U.S.C. 1301(20), includes "the carriage by aircraft of

[1] This section empowers the Administrator to promote the safety of air commerce "by prescribing and revising from time to time: (6) Such reasonable rules and regulations, or minimum standards, governing other practices, methods, and procedures, as the Administrator may find necessary to provide adequately for national security and safety in air commerce". This section is a departure from the rest of 1421(a) in that it does not deal solely with equipment, maintenance, or design.

persons or property for compensation or hire . . . or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce." The significance is that air commerce unquestionably includes business aspects, which necessarily refers to the passenger market. A separation of smokers and non-smokers would significantly enlarge the potential passenger market. The development of air commerce would be beneficially affected because the segment of the population that previously had to avoid commercial air carriers because of serious reactions to smoke would be able to utilize the air carriers, and that segment of the population that flew reluctantly, or only when they had no other choice, would fly more often. Both results would enlarge the air passenger market and further the development of air commerce thereby implementing the intent of the above sections.

4. Applicable regulations

The Administrator has demonstrated the authority and the determination to promulgate rules which regulate the conduct and affect the safety of passengers while inside the airplane. A substantial number of these regulations have been specifically designed to promote the safety, health, and comfort of the passengers during the course of the flight indicating the Administrator's interest in limiting hazards within the craft. The following regulations are similar in nature and scope to the rule requested in this petition:

1. 14 C.F.R. 25.831(b): requiring that passenger compartment air must be free from "harmful or hazardous concentrations of gases or vapors."

2. 14 C.F.R. 91.11: providing that a pilot may not allow a "person who is obviously under the influence of intoxicating liquors or drugs (except a medical patient under proper care) to be carried in that aircraft."

3. 14 C.F.R. 121.219: providing that passenger and crew compartments must be "suitably ventilated", and that "carbon monoxide concentration may not be more than one part in 20,000 parts of air."

4. 14 C.F.R. 121.265: providing that if any toxic extinguishing agent is used in the airplane's fire extinguishers, "precautions must be made to prevent harmful concentrations of fluid or fluid vapors from entering any personnel compartment"; and, "if carbon dioxide is used, it must not be possible to discharge enough gas into the personnel compartments to create a danger of suffocating the occupants".

5. 14 C.F.R. 121.285: providing that cargo may be carried in passenger compartments if it is installed in a position so as not to restrict access to emergency exits or aisles, and as long as suitable safeguards are provided to prevent the cargo from shifting; and as long as the cargo does not obscure any passenger's view of the "seat belt" or "no smoking" signs.

6. 14 C.F.R. 121.311: providing that there must be an "approved safety belt for separate use by each person over two years of age; and, that during each takeoff and landing, each passenger shall "secure himself with the approved safety belt provided him"; and, that no plane may take off or land unless "each passenger seat back is in the upright position".

7. 14 C.F.R. 121.317: providing that "no person may operate an airplane unless it is equipped with signs that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts should be fastened"; and that these signs must be "turned on for each landing and takeoff and when otherwise considered to be necessary by the pilot in command", and, that "no passenger or cabin attendant may smoke while the no smoking sign is lighted and each passenger shall fasten his seat belt and keep it fastened while the seat belt sign is lighted."

8. 14 C.F.R. 121.571: providing that before each takeoff passengers must be "orally briefed by the appropriate crew member" on smoking, use of seat belts, and location of emergency exits.

9. 14 C.F.R. 121.575: providing that no passenger "may drink any alcoholic beverage aboard an aircraft unless the certificate holder operating the aircraft has served that beverage to him"; "no certificate holder may serve any alcoholic beverage to any person aboard any of its aircraft who appears to be intoxicated"; no person may be allowed to board any aircraft "if that person appears to be intoxicated".

10. 14 C.F.R. 121.589: providing that no passenger may carry any article of baggage aboard an airplane unless that article can be stowed under a passenger seat in such a way that it will not slide forward under crash impacts severe enough to induce certain specified inertia loads.

These regulations indicate that the public interest requires that a high degree of care be exercised by commercial air carriers. Implicit in this duty of care is a recognition of the fact that individual passengers should be reasonably free from all conditions that may be harmful or annoying, including those caused by the conduct of other passengers. The Administrator has recognized the importance of regulating the conduct of each individual passenger, where such conduct, if unregulated, could adversely affect the health, safety, and comfort of other passengers. This concern and authority is clearly demonstrated by the substantive provisions of the above regulations. Therefore, since tobacco smoke, particularly in confined areas, constitutes a safety hazard and annoyance to others, its regulation would be wholly consistent with past Administration policy and well within the authority, purview and intent of the Act.

IV. MEDICAL EVIDENCE

The average smoker seems to be aware only of the harm he is causing himself. Most people, smokers and non-smokers alike, do not know that cigarette smoke in a confined area is also harmful to those who do not smoke. It has been established beyond any reasonable doubt that cigarette smoking is a severe health hazard causing an estimated 300,000 deaths a year [estimates by former Surgeon Generals Luther Terry and William H. Stewart, and Dr. D. T. Ravenholt, reported in Diehl, *Tobacco and Your Health: The Smoking Controversy* 34–35, 1969] and that inhalation of cigarette smoke can cause different forms of cancer and chronic non-neoplastic bronchopulmonary diseases, and aggravate or contribute to a variety of cardiovascular diseases and other medical conditions. [See, e.g., U.S. Public Health Service, *The Health Consequences of Smoking*, 1968.]

As a basis for its proposed rulemaking, petitioners contend that cigarette smoking is also harmful to the non-smoker because the formed inhalation of another's cigarette smoke in an enclosed environment creates:

(1) a clear and present danger to an estimated 30 million people with certain pre-existing medical susceptibilities, AND

(2) a significant health hazard and discomfort to most others.

1. Persons suffering from pre-existing medical susceptibilities

The presence of tobacco smoke, especially in a confined area, presents a serious medical threat to the millions of Americans who have certain medical susceptibilities and conditions. This smoke can directly aggravate the condition of anyone afflicted with: chronic sinusitis, asthma, hay fever, an allergy to smoke, chronic bronchitis, emphysema, and many other chronic lung diseases. The total number of people susceptible to this problem is staggering. The National Health Survey which ended in June, 1967, gave the following breakdown for lung disease in the United States:

Estimated number of persons suffering from a preexisting susceptibility to cigarette smoke

Chronic bronchitis	400,000
Emphysema	726,000
Chronic sinusitis	16,818,000
Asthma or hay fever	16,099,000
Other sensitivities to smoke*	
Total	More than 34,000,000

*Estimated to be in the millions.

Thus cigarette smoke in a confined area creates a clear and present danger to the safety, health, and very lives of as many as 30 million Americans.

According to Dr. John M. Keshishian, a thoracic and cardio-vascular surgeon at the George Washington University Hospital, the presence of tobacco smoke in the air can trigger an attack in a person plagued with chronic lung disease. This attack can result in either mild discomfort, such as a coughing spell, running eyes and nose, and impaired breathing, or a more serious attack involving extreme discomfort and great difficulty in breathing. [See attached Affidavit from Dr. Keshishian, *infra*.]

Recognized authorities have studied the effects of smoke on persons afflicted with chronic lung disease and allergies. Their research indicates the dangers which airlines currently permit their passengers to be exposed to.

Dr. Irwin Caplin, a respected allergist, sympathizes with the non-smoker exposed to cigarette smoke.

"The truly unfortunate patient is the one who develops severe asthma when he enters a smoke-filled room. It seems that cigars or pipe smoke will usually aggravate the asthmatic more than the cigarette smoke. We see many asthmatics who develop severe asthma from even one cigarette in a room or just by smelling the ashes in an ash tray. There are the patients who can be likened to the man living in Dante's inferno where there is no escape from burnt fingers. Unfortunately, the non-allergic population has no understanding of what they do to their asthmatic members of the family when they smoke in their presence. They are usually annoyed and place the asthmatic in a most embarrassing position. He must either ask them not to smoke in his presence or stay home and isolate himself from society. This is indeed a problem, and I do not know the answer. Perhaps if we could have a magic wand and make all smokers asthmatic for one hour a week and then have them sit in a room full of cigar smoke we would certainly have a population with a great deal more understanding." [Caplin *The Allergic Asthmatic*, 1968.]

Dr. J. J. Ballinger discussed cigarette smoke as an air pollutant in the August, 1968, issue of *Laryngoscope*. In an article entitled "The Effect of Air Pollutants on Pulmonary Clearance", he stated that "a recent report indicated that a single one hour exposure of mice to cigarette smoke . . . lowered their resistance to infection, as measured by mortality and survival time; also, exposure to smoke of mice infected with influenza A virus twenty-four hours previously, resulted in significantly higher mortalities, thus suggesting that *cigarette smoke can aggravate an existing respiratory viral infection.*" [Italics added.]

Precise testing of persons with allergies, as conducted by Dr. Bernard Zussman, has shown that "The problem of clinical hypersensitivity to tobacco smoke is assuming greater importance in atopic [allergic] patients, who do not smoke themselves, but who are exposed to smoke either at school, office, or home." The results of the testing showed definite allergic symptoms in these patients when exposed to tobacco smoke. With treatment, and avoidance of smoke, the symptoms disappeared. [Zussman, *Atopie*

Symptoms Caused by Tobacco Hypersensitivity, 61 Southern Medical Journal 1175 (1968).]

Additional evidence of the health hazard caused by cigarette smoke is found in a study of the effects of smoke on persons with allergies conducted by Dr. Frederic Speer. [Speer, *Tobacco and the Nonsmokers;* 16 Archives of Environmental Health, 443 (1968).] He states, "A study of both allergic and nonallergic patients revealed that intolerance to tobacco smoke is common to both groups." Strong reactions were recorded, leading to the conclusion that "The many individuals who develop symptoms from tobacco smoke need the understanding and support of the physician in helping them avoid its noxious effects." The "noxious effects" recorded included eye irritation, nasal symptoms, headache, cough, wheezing, sore throat, nausea, hoarseness, and dizziness, as shown in the table below:

REACTIONS TO TOBACCO SMOKE AS REPORTED BY 191 ALLERGIC NONSMOKERS

	Boys[1]	Men	Girls[1]	Women	Total	Percent
Patients	38	44	29	80	191	100.0
Eye irritation	30	32	22	56	140	73.3
Nasal symptoms	25	31	22	59	137	67.1
Headache	6	22	9	50	87	46.0
Cough	20	13	19	35	87	46.0
Wheezing	9	13	8	13	43	22.5
Sore throat	4	13	6	21	44	23.0
Nausea	3	5	3	18	29	15.2
Hoarseness	1	9	1	20	31	16.0
Dizziness	0	2	1	8	11	5.3

[1] Under 16 years of age.

The wide variety of ill effects caused by the inhalation of another's tobacco smoke is well summarized by F. K. Hansel in (*Clinical Allergy,* 1953):

"As a primary irritant, tobacco smoke may cause nasal obstruction, increased nasal discharge, and reduction in the sense of smell. In the lower respiratory tract it is a common cause of coughing. The tobacco tars are now recognized as important carcinogenic agents in the mouth, larynx, and bronchi.

"Tobacco is a very significant factor as a secondary irritant in patients with nasal allergy, hay fever, and bronchial asthma. Even among those allergic patients who do not smoke, tobacco may act as an irritant or primary sensitizer.

"Satisfactory results in the management of allergic patients may depend upon the complete elimination of tobacco as an etiologic (causal) agent or as a secondary factor . . .

"The structure and function of the nose exposes its membrane particularly to the irritating effects of chemical fumes, tobacco smoke, and such air pollutants as photochemical smog, . . .: They are active as secondary irritants aggravating the symptoms of patients who have allergic rhinitis and the attacks that they precipitate are essentially indistinguishable from those due to the primary causative antigen.

"There is little doubt that tobacco smoke is an important secondary factor in precipitating allergic symptoms through its action as a nonspecific irritant."

Bettina C. Hilman ["*The Allergic Child*", Annals of Allergy, Nov. 1967] reports that the National Health Survey of 1959–61 found that over 4.6 million American children have asthma. Also, that an estimated ten to twenty percent of the children in this country have one or more allergies. [As of 1968, there were almost 60 million children under 14 years of age in this country; 20% would be 12 million.] Dr. Hilman goes on to state, "The immunological load varies with the amount of exposure to offending allergens (inhalants and ingestants). The total allergic load is also influenced by the degree of exposure to offending odors, e.g., paint, hair spray, fish oil, cigarette smoke." Therefore, exposure to air contaminants, such as tobacco smoke, inhibits the control of allergies in children and may lead to dangerous allergic reactions. Even before smoking was widely recognized as a serious health hazard tobacco smoke was known to be irritating to the young hay fever and asthma patient. (Vaugh and Black, *Practice of Allergy,* 1954) Smoke was also seen to "obviously act as a non-specific irritant in many children with respiratory allergy", (Sherman and Keesler, *Allergy in Pediatric Practice,* 1957). Thus several different medical studies have shown that as many as 15 million children would be endangered by the unrestricted smoking conditions on air carriers, and, as flying becomes more popular and more widely available, more children will be exposed to these dangerous conditions. Furthermore, these studies supplement and lend further support to the earlier cited reports showing that smoking in a confined area can be dangerous to all nonsmokers.

Although it is a difficult factor to measure, the presence of smoke may psychologically affect a passenger with chronic lung disease, allergy, or other susceptibility to tobacco smoke. Extensive worry about exposure to smoke may itself bring about the symptoms of an existing malady or make the victim more susceptible to a lower concentration of tobacco smoke. "When we consider that the fumes that annoy people are certain to cause mental distress, it is not easy to assess to what extent the resultant symptoms are psychogenic." [Speer, *Tobacco and the Nonsmoker,* 16 Archives of Environmental Health 443 (1968)] Fear of a fire in flight, air crashes, or even air sickness may likewise psychologically reduce the threshold level at which a person with a pre-established susceptibility will be endangered by the cigarette smoke of others.

Thus there is general agreement within the medical profession, based upon a number of research studies, that persons with chronic sinusitus, asthma, hay fever, an allergy to smoke, chronic bronchitis, emphysema, and many other chronic lung diseases, when exposed to tobacco smoke, are seriously threatened with aggravation of their conditions. Figures provided by the National Health Survey show that more than 30 million Americans, and as many as 15 million children, are susceptible to this danger.

2. Health hazard and discomfort to all nonsmokers

The findings of a research team under the direction of Dr. Giuseppina Scassellatti-Sforzolini show that smoke from an idling cigarette contains almost twice the tar and nicotine of an inhaled cigarette. On the average, smoke from an inhaled cigarette contains 11.8 mg. of tar and 0.8 mg. of nicotine, as compared to 22.1 mg. of tar and 1.4 mg. of nicotine from idling smoke. Thus smoke from an idling cigarette may be twice as toxic as smoke inhaled by the smoker. Although the concentration of harmful substances breathed by the non-smoker is less than the concentration inhaled by the smoker himself, the exposure will be for a greater period of time; an idling cigarette contaminates the air for approximately 12 minutes while the average smoker is actually inhaling on the average for 24 seconds during his "enjoyment" of each cigarette. Thus effects due to decreases in concentration may be more than overcome by increases in exposure time. In some cases, Dr. Scassellatti-Sforzolini reports, smoking "will obviously constitute something of a menace to a . . . nonsmoking passenger." [*Nonsmokers Share Carcinogenic Risk While Breathing Air Among Smokers,* Medical Tribune, Dec. 4, 1967.] Therefore it seems obvious that in the confines of an airplane, where a nonsmoker may be required to sit next to or between two smokers, and where the air circulation is typically poor [and may be next to nonexistent, e.g., while waiting in line for takeoff], the non-smoker will be subjected to a significant health hazard to appease a smoker.

Others who have recognized the danger of smoke to the non-smoker have made similar findings. An editorial in the December 1967 issue of *Science Magazine* concerned the pollution of air by cigarette smoke. *Science Magazine* reported that "in a poorly ventilated smoke-filled room concentrations of carbon monoxide can easily reach several hundred parts per million, thus exposing smokers and non-smokers present to a *toxic hazard.*" [Emphasis added] Carbon monoxide affects the body's hemoglobin, robs the body of needed oxygen, and "commonly leads to dizziness, headaches, and lassitude." One may thus suspect that those who have a tendency to become ill on an airplane will become ill more readily if exposed to cigarette smoke. As to those who do not normally become air sick, carbon monoxide can cause dizziness and headaches, and may also act as a catalyzing agent for air sickness.

Two other harmful components of cigarette smoke are nitrogen dioxide and hydrogen cyanide. The former is an acutely irritating gas, reported *Science Magazine,* and cigarette smoke contains concentrations fifty times the level considered "dangerous." Hydrogen cyanide, a deadly agent particularly active against respiratory enzymes, is present in cigarette smoke in concentrations 160 times that considered dangerous for extended exposure. Furthermore, cigarette smoke contains acrolein, aldehydes, phenols, and carcinogens like benzo(a)pyrene, some of which have been found to have synergistic effects among the toxic agents. In its summation *Science Magazine* concludes: "when the individual smokes in a poorly ventilated space in the presence of others, he infringes the rights of others and becomes a serious contributor to air pollution."

The results of a recent German study on the amounts of tar and nicotine present in confined areas and the effects on the nonsmoker have been startling. In *Deutsche Medizinische Wochenschrift,* Volume 92, November 1967, these findings were reported in answer to a question on the effects of tobacco smoke on a non-smoker: "The test results of Harmsen and Effenberger [Harmsen and Effenberger, Archives of Hygiene and Bacteriology 141 (1957)] show the smoking of several cigarettes in a closed room makes the concentration of nicotine and dust particles in a short time so high that the non-smoker inhales as much harmful tobacco by-products as a smoker inhales from four or five cigarettes." This report was further supported by other studies including: (1) *Smoking and Health. Summary of a Report of the Royal College of Physicians of London on Smoking in Relation to Cancer of the Lung and Other Diseases,* (London, 1962); (2) H. Oettel: *Cancer Research and Fight against Cancer,* IIId Book, 6th Conference of the German Cancer Society in Berlin, from March 12th to 14th, 1959; (3) H. Oettel: *Smoking and Health,* Nachrichten aus Chemie und Technik 11 (1963), 28; (4) Journal of Medicin Rhein-

land-Pfalz 18 (1965) 217; (5) H. Oettel: *Toxic Materials in the Air, Water, and Food* (Short essay in monthly course of instruction for doctors (1967) written after a speech of the International Congress Symposium of the doctors in Davos and Badgastein on March 6th and 8th, 1967).

More evidence of the detrimental effects of tobacco smoke on the average non-smoker has been documented by Dr. Fredric Speer in Archives of Environmental Health, Volume 16, March 1968. The chart below shows that a very significant number of people not allergic or otherwise particularly susceptible to cigarette smoke can suffer severe reactions to the smoke produced by others:

250 NONALLERGIC NONSMOKERS

	Boys [1]	Men	Girls [1]	Women	Total	Percent
Patients	19	71	21	139	250	100.0
Eye irritation	9	54	14	96	173	69.2
Nasal symptoms	5	28	2	38	73	29.2
Headache	5	26	5	43	79	31.0
Cough	7	15	10	31	63	25.2
Wheezing	1	4	0	6	10	4.0
Sore throat	0	7	0	7	14	5.6
Nausea	3	6	0	14	23	9.2
Hoarseness	0	6	0	5	11	4.4
Dizziness	2	2	2	10	16	6.4

[1] Under 16 years of age.

Dr. Cyril D. Fullmer, in a report to the Annual Scientific Meeting of the Utah State Medical Association in September, 1968, also commented on the hazardous effects of tobacco smoke on non-smokers. His report originally concerned a study of the hazards of cigarette smoking to smokers but, during his study he discovered evidence of it being harmful to non-smokers as well.

A health survey in Detroit homes of children of smoking and non-smoking parents found that even healthy children are particularly susceptible to cigarette smoke. The survey concluded that smoker's children were sick more frequently than non-smoker's children, and that the presence of tobacco smoke in the environment is associated with "lessened physical health." [Cameron, Kostin, et al., *The Health of Smokers' and Non-Smokers' Children:* Preliminary Report I included in Appendix] On an airplane, it is likely that young children, often excited, restless, and frightened, will be easily affected by cigarette smoke. The report is also further evidence of the suspectibility of healthy nonsmokers to the cigarette smoke of others.

Another inconvenience created by the smoker is pure discomfort. Most non-smokers just do not like cigarette smoke being exhaled in their faces. This often results in eye irritation, coughing, and nausea. Petitioner believes that the discomfort resulting from cigarette smoke is quite apparent and needs little further explanation. For the sake of documentation. Petitioner refers the Administrator to a letter in the AMA News, April 7, 1969, written by Dr. Ralph Berg of Spokane, Washington, and resultant replies to the letter by other physicians. These letters will be found in the Appendix along with a small sample of others.

V. IMPLEMENTATION OF PROPOSED RULE

There appear to be various means by which to accomplish the objective of the proposed rule: the separation of smokers and non-smokers on commercial air carriers. Merely for the purpose of demonstrating several means by which this could be accomplished at no cost to the airlines and no inconvenience to either the smoking or nonsmoking passengers, a number of possible alternatives for implementing the proposed rule are set out below:

(1) Non-smokers would be seated from the rear of the aircraft while smokers would be seated from the front, and the order would be interchanged equitably. Thus, on all but capacity flights, there would be an effective barrier of several rows of seats between the two groups.

(2) Non-smokers would be seated on the left side of the aircraft while smokers would be seated on the right, possible alternating if necessary to achieve fairness. If one side became full the overflow could be seated at the rear of the other section. Thus, on most flights and for most passengers, the center aisle would be an effective barrier between the two groups.

(3) Blocks of seats, perhaps in group of five rows, would be labeled for the use of smokers and non-smokers alternatively by the use of easily movable markers. As these small sections filled up appropriate adjustments for the particular ratio of smokers and non-smokers could be made by the stewardesses.

Obviously, there are many alternatives not suggested in this petition that would accomplish the desired objectives. Most public transportation systems have, at one time or another, effected some means of separating smokers and non-smokers, and such separation by the air carriers would be in accordance with the statutory intent of developing a "coordinated transportation service [49 U.S.C. 1651(b)(1)]. Smoking cars on trains, and various bus regulations, have dealt with this problem. Certainly the imaginative personnel working for the Administrator, and for the major airline companies, can develop a simple, inexpensive, yet effective means of dealing with this hazardous and annoying situation without inconveniencing any of the passengers.

Enactment of Petitioners' proposed rule would have no detrimental effects on air carrier service and, indeed, would merely involve a designation of certain seats in which smoking would be permitted and would not involve any structural changes in the aircraft. There would also be no inconvenience caused in the preflight preparations. Both smoking and non-smoking passengers would purchase the same tickets, and make the same reservations, as is now done. There would be no problem of an imbalance of smokers or non-smokers, because the solutions suggested above contemplate a flexible policy.

The most significant argument in favor of smoking sections is a basic one: the use of such sections would not infringe the rights of any smoker, but would give non-smokers the rights which they have been deprived of in the past—the right to breathe unpolluted air. While no passengers would be harmed, or inconvenienced, a large number would be greatly benefitted. This clearly includes the courteous smoker who might otherwise be deterred from enjoying a cigarette by his concern for the health and comfort of passengers next to him.

VI. CONCLUSION

The Federal Aviation Administration and the Department of Health, Education and Welfare are scheduled to begin a joint 12-month study "to measure the amounts of tobacco smoke contaminants in air transport aircraft." (Department of Transportation Release No. 69–108, 19 September, 1969). This study will attempt to "measure the amounts of carbon monoxide and other impurities in both cockpit and passenger cabin areas."

The results of this study will not be reported until late in 1970 or early in 1971. There is no rational justification for the Administrator to wait for the results of this study before requiring smoking sections on airplanes. Little benefit would be gained from such a delay, particularly since the study is expected to re-confirm conditions already known to exist. Non-smokers have for too long been subjected to the unreasonable hazards caused by tobacco smoke.

This petition has presented sufficient evidence upon which the Administrator can and should conclude that tobacco smoke in the passenger compartment of an airplane constitutes a severe and substantial threat to the health, safety, and comfort of nonsmokers; so severe, and so substantial, that nothing short of the immediate enactment of the proposed rule would be an acceptable remedy.

It is elementary that where there is doubt as to the danger of an act or substance that doubt should be resolved in favor of protecting the public health and safety, particularly where this can be done with substantially no inconvenience and at no cost to any party. The health of the majority of Americans including:

(1) the 49% of all American males over 17 who do not smoke;

(2) the 66% of all American females over 17 who do not smoke;

(3) the over 30 million Americans who have pre-existing conditions making them particularly susceptible to cigarette smoke;

(4) and all non-smoking children, particularly the estimated 12 million who have pre-existing medical conditions, making them particularly susceptible to cigarette smoke; should not be wagered on the chance that an investigation would show that it might not be seriously endangered. Many of the components of cigarette smoke—e.g., nicotine—are recognized as drugs, and the law requires that with respect to drugs doubt is to be resolved in favor of the consumer. [See generally 21 U.S.C. 301 et seq.] Tobacco smoke has clearly been identified as both an irritant and as a strong sensitizer [2] and, under the Hazardous Substances Act, doubt as to these are to be resolved in favor of the public safety and health. [15 U.S.C. 1261(f)(1)(A) and 1262(a)(1).] A most striking recent example of this policy was the recent decision of the Secretary of Health, Education, and Welfare to restrict the sale of products containing cyclamate because a dosage 50 times greater than normal human consumption caused cancer in mice. Indeed, this policy is required by the statute for food additives which have been shown to be capable of causing cancer. [21 U.S.C. 348(c)(3); *see Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).] Whether directly applicable or not, these statutes are a clear indication of long standing congressional intent which should be followed.

Petitioners respectfully submit that they have shown that:

(1) they are interested persons with standing to petition for the proposed rule;

(2) that the statute gives the Administrator the power, and indeed even the duty, to promulgate rules for the protection of passengers from safety hazards within the aircraft;

(3) that the Administrator has consistently utilized this power, and recognized this duty, to promulgate rules to provide for the safety of passengers from hazards within the aircraft, and that the proposed rule

[2] See, e.g., Hansel, *Clinical Allergy* (1953) ("Tobacco smoke may act as a (1) primary irritant, (2) secondary irritant in an allergic individual, (3) a primary sensitizer."

would be consistent with others previously issued;

(4) that the overwhelming weight of the medical evidence indicates that unrestricted smoking aboard aircraft creates a clear and present danger to the safety and health of an estimated 30 million people who because of pre-existing medical conditions are particularly susceptible to tobacco smoke;

(5) that a number of studies have indicated that unrestricted smoking in enclosed environments like aircraft creates an involuntary and inflicted health hazard to every passenger;

(6) that the proposed rule could be effectuated without cost to the airlines or inconvenience to passengers;

(7) and that any doubt as to safety and health of passengers must be resolved in their favor.

Therefore Petitioners respectfully request that the Secretary and the Administrator promulgate the proposed rule, and that the Petitioners be made parties to any related proceedings with the right to further support their proposed rule.

Respectfully submitted,

JOHN F. BANZHAF III,
Attorney for Petitioners.

S. 3258—INTRODUCTION OF A BILL RELATING TO JURISDICTION FOR ALASKA RAILROAD SUIT

Mr. STEVENS. Mr. President, I introduce for appropriate reference a bill that will authorize the U.S. District Court for the district of Alaska to hear, determine, and render judgment on the claim of the State of Alaska that the Goldstream forest fire near Fairbanks, Alaska, which occurred in August 1966, was approximately caused by the negligent operation of the Alaska Railroad. The State seeks to collect for damages done to the land which was burned and for the cost in controlling and extinguishing the fire.

Upon discovery of the fire in August 1966, men and materials were rushed to the fire. The cost to the State of Alaska as billed by the United States was $266,225.23. However, because the State claims that the fire was proximately caused by the negligent operation of the railroad, an instrumentality of the United States, the U.S. District Court for Alaska seeks the authority to hear and determine the claim of the State.

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

The bill (S. 3258) to confer jurisdiction on the U.S. District Court for the District of Alaska to hear and determine the claim of the State of Alaska for a refund of a sum paid to the United States for firefighting services, introduced by Mr. STEVENS, was received, read twice by its title, and referred to the Committee on the Judiciary.

S. 3259—INTRODUCTION OF A BILL ESTABLISHING THE BUNKER HILL NATIONAL HISTORIC SITE

Mr. KENNEDY. Mr. President, I introduce for myself and for Mr. BROOKE, Mr. COTTON, Mr. MCINTYRE, Mr. DODD, and Mr. RIBICOFF, a bill to establish the Bunker Hill National Historic Site. I ask unanimous consent that the bill be printed in the RECORD at the conclusion of my remarks.

On June 17, 1775, a highly disorganized band of patriots—made up of militiamen from Massachusetts, New Hampshire, and Connecticut—decided to take Bunker Hill and drive the British from Boston. Only 2 months after the opening of hostilities of the Revolutionary War it became apparent to the patriots that the British strategy was to occupy all of the hills surrounding Boston Harbor. In this way, both the city and the harbor would be secure and open to the free movement of the British military.

And so 1,200 patriots, under cover of night, were sent to seize Bunker Hill which overlooked the Mystic River from Charlestown, Mass. By mistake, the patriots arrived at Breeds Hill—a smaller hill nearer to the city of Boston—and worked through the night in preparation for battle. Working silently, they were undiscovered until daybreak—when the British warships anchored below opened an ineffective fire.

Reinforcements were sent to aid the band and they were deployed on both Breeds and Bunker hills. The British army began its attack—marching in solid lines up the hill to meet the patriots who were protected by the trenches and fences they had built in the night. By holding their fire until the British were well within range, the patriots repulsed the British twice in a bloody exchange of gunfire. Faced with a third assault by the well-armed British, the Americans who were now short of gunpowder were forced to withdraw and finally suffered defeat.

But in the light of day, defeat was turned into a moral victory as the patriots learned they had the ability to repell the enemy and inflict substantial losses while suffering few among their own men. The difference in fighting styles between the Americans and the British militia—first revealed at the Battle of Bunker Hill—was to be of great significance throughout the war and was certainly, in the early days of battle, contributory to the Americans' belief that they would emerge as the victor in their fight for independence.

The Revolutionary War gave birth to this Nation of freedom and of free men. The memory of the courage of our early patriots is treasured in the hearts of all Americans. The sites involved in the battles of the American War of Independence are a significant part of the visual history of our Nation. They should belong to the Nation—to be restored and preserved as part of our American heritage.

The bill I introduce today, with the encouragement of the Commonwealth of Massachusetts, would allow the Federal Government to accept the existing Bunker Hill Memorial on behalf of the Nation and declare it a National Historic Site.

As we approach our bicentennial year, it is appropriate to prepare the sites of the American Revolution for the education and inspiration of those millions of American and foreign visitors who will come to Massachusetts—and to the other original colonies—to share in the history of this Nation's birth.

I ask my colleagues to support this bill and other similar bills designed to make this and other historically significant sites of the Revolutionary War part of our National Park System. The Nation born on the battlefields of the Revolutionary War is, today, the greatest Nation in the world. It has achieved its greatness, in part, through a steadfast adherence to the same principals of freedom which drove our American patriots to engage in a war of independence.

The sites and the memory of that war are part of the history of every American. Surely, the remaining evidence of that history should belong to all of us. Therefore, I am pleased to introduce this bill and I hope it will have your support.

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

The bill (S. 3259) to authorize the Secretary of the Interior to establish the Bunker Hill National Historic Site in the city of Boston, Mass., and for other purposes, introduced by Mr. KENNEDY, for himself and other Senators, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs, as follows:

S. 3259

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized to accept the donation by the Commonwealth of Massachusetts of approximately four acres of land and improvements thereon in the district of Charlestown, city of Boston, known as Bunker Hill Monument, and to establish such property as the Bunker Hill National Historic Site.

SEC. 2. The Bunker Hill National Historic Site shall be administered, protected, and developed by the Secretary of the Interior in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented (16 U.S.C. 1 et seq.), and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461–467).

SEC. 3. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

ADDITIONAL COSPONSORS OF BILLS

S. 1933

Mr. HARTKE. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Tennessee (Mr. BAKER), the Senator from Nevada (Mr. CANNON), the Senator from New Hampshire (Mr. COTTON), the Senator from Rhode Island (Mr. PASTORE), the Senator from Vermont (Mr. PROUTY), the Senator from Louisiana (Mr. LONG), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Virginia (Mr. SPONG), the Senator from Rhode Island (Mr. PELL), the Senator from Kansas (Mr. PEARSON), the Senator from New York (Mr. GOODELL), the Senator from Oregon (Mr. HATFIELD), the Senator from Connecticut (Mr. RIBICOFF), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Maryland (Mr. MATHIAS), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Alaska

(Mr. GRAVEL), the Senator from Georgia (Mr. TALMADGE), the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. MURPHY), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Pennsylvania (Mr. SCOTT), be added as cosponsors of S. 1933, providing for Federal railroad safety.

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

S. 3163

Mr. GRIFFIN. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Nevada (Mr. BIBLE) be added as a cosponsor of S. 3163, to provide for a White House Conference on Indian Affairs.

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

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969—AMENDMENTS

AMENDMENT NO. 436

Mr. ERVIN (for himself, Mr. BAYH, Mr. BURDICK, Mr. COOK, Mr. EASTLAND, Mr. FONG, Mr. HART, and Mr. MATHIAS) submitted an amendment, intended to be proposed by them, jointly, to the bill (S. 3246) to protect the public health and safety by amending the narcotic, depressant, stimulant, and hallucinogenic drug laws, and for other purposes, which was ordered to lie on the table and to be printed.

SEVERE PENALTIES FOR PROFESSIONAL DRUG MERCHANTS UNDER THE CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

AMENDMENT NO. 437

Mr. TYDINGS. Mr. President S. 3246, the Controlled Dangerous Substances Act of 1969 carries an explicit warning to professional dangerous drug merchants that the Federal Government is prepared to impose upon them penalties which in severity will match the depravity of their crime. These penalties will be at a level which should serve to deter large scale drug trafficking.

The severe professional criminal penalties are in large part a product of my efforts in the Judiciary Committee, where I offered the penalties in the form of an amendment. I am gratified that the amendment was accepted by the committee. The penalties are also a reflection of the penal provisions for professional drug merchants as set forth in S. 3071, the District of Columbia Comprehensive Drug Abuse and Narcotics Crime Act of 1969, which I introduced on October 27, 1969. The Senate Committee on the District of Columbia, of which I am chairman, is currently holding hearings on this bill.

Mr. President, there is no more despicable criminal than one who engages in large-scale importation and wholesale and retail distribution of addictive drugs. Not only does he debase the lives and exhaust the financial resources of thousands of addicts who fall victim to his drugs, but also, through them, he is responsible for ravaging society with countless muggings, robberies, and other serious crimes perpetrated to support the addicts' habits. In this regard, a recent study of men admitted to District of Columbia jail revealed that 45 percent evidenced drug use immediately prior to arrests. The major drug traffickers also rob the public purse of millions of dollars through the costs incurred in narcotics law enforcement and treatment and rehabilitation of addicts.

Unfortunately, the profits produced by this nefarious activity are great. Three hundred and fifty dollars worth of pure opium purchased abroad can be parlayed into $225,000 when sold as heroin to the addicts on our streets. For this reason, the importation and distribution of narcotics is organized crime's major illegal activity next to gambling.

Because the damage wrought upon society is so pervasive and the profits reaped in return by the criminal, so lucrative, stiff criminal sanctions are not only justified but essential to deter the activity. The past Commissioner of the Bureau of Narcotics, Henry L. Giordano, has stated that underworld drug traffickers are fearful of severe penalties and such penalties have a deterrent effect. Similarly, a report on organized crime and illicit traffic in narcotics by the Senate Committee on Government Operations concluded that "long prison terms for traffickers are essential to effective drug law enforcement."

Likewise, in 1963, the President's Advisory Commission on Narcotics and Drug Abuse recommended:

> The illegal traffic in drugs should be attacked with the full power of the federal government. The price of participation in this traffic should be prohibitive. It should be made too dangerous to be attractive.

The provisions of the act pertaining to professional criminal penalties is in the spirit of this philosophy. Section 509(b) of the act will subject professional criminals to imprisonment for no less than 5 years and up to life and a mandatory fine without limitation in an amount sufficient to exhaust the assets utilized in and the profits obtained by the illegal activity. The fine is designed to completely knock the professional offenders out of the drug business.

Mr. President, I believe that this provision will serve as notice that the Federal Government will give no quarter to professional drug merchants.

Mr. President, I submit an amendment, intended to be proposed by me, to the bill (S. 3246) to protect the public health and safety by amending the narcotic, depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

AGRICULTURAL STABILIZATION ACT OF 1969—AMENDMENT

AMENDMENT NO. 438

Mr. NELSON. Mr. President, today I am submitting an amendment, intended to be proposed by me, to the bill (S. 3068) to improve farm income and insure adequate supplies of agricultural commodities by extending and improving certain commodity programs. The amendment would prevent individuals who use farm operations as a tax shelter from receiving payments through Government farm programs. This proposal would prohibit farm payments under the wool, cotton, feed grains, wheat, rice, soybean, flax, tobacco, and other commodity programs to persons who use losses from farming as a means to avoid paying income tax on nonfarm income.

However, I want to make it abundantly clear that this bill would not penalize the family farmer who may legitimately incur losses from drought, fire, weather, or recognized losses from sales. In addition, this measure will not affect any persons who now receive payments under the cropland adjustment program (CAP) since these persons must have a history of crop production before they qualify for such payments. This program is also vitally necessary in the total effort to conserve our soil, water, and wildlife.

Our farm programs were established by Congress to assist the family farmer and sensible restrictions should be placed on farm program payments in order to insure that family farmers are the main beneficiaries of these programs.

The Internal Revenue Service has indicated that 264,000 farmers who reported losses on their agricultural operations also received $272 million in farm program payments.

I ask unanimous consent that the full text of my amendment be printed at this point in the RECORD.

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

The amendment (No. 438) was referred to the Committee on Agriculture and Forestry, as follows:

AMENDMENT NO. 438

At the end of the bill add a new title as follows:

"TITLE XII—LIMITATION ON BENEFITS

"SEC. 1201. (a) Any person who is determined by the Secretary, as provided in subsection (b) to be engaged in farming operations in any year without a reasonable expectation of making a profit from such operations shall be ineligible in the immediately succeeding year for any benefits under any of the programs amended or extended by title II, III, IV, V, VI, or X of this Act, or under any other Federal program providing price support payment on any agricultural commodity.

"(b) If the net operating loss incurred by any person from farming operations exceeds $10,000 in each of any three years in any five-year period, such person shall be deemed for the purposes of subsection (a), to be carrying on farming operations in the last year of such five-year period without a reasonable expectation of making a profit, unless such person can show, in accordance with such rules and regulations as the Secretary may prescribe, that he was carrying on such operations with a reasonable expectation of making a profit.

"(c) The provisions of this section shall not apply to the payment of benefits under the cropland adjustment program provided for under title VI of the Food and Agriculture Act of 1965 or under any other conservation program if participation in such program is not dependent on reducing the acreage on the farm devoted to the production of a specific commodity."

ORGANIZED CRIME CONTROL ACT OF 1969—AMENDMENT

AMENDMENT NO. 439

Mr. CASE submitted amendments, intended to be proposed by him, to the bill (S. 30) relating to the control of organized crime in the United States, which was ordered to lie on the table and to be printed.

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, December 18, 1969, he presented to the President of the United States the following enrolled bills and joint resolution:

S. 1108. An act to waive the acreage limitations of section 1 (b) of the Act of June 14, 1926, as amended, with respect to conveyance of lands to the State of Nevada for inclusion in the Valley of Fire State Park;

S. 2734. An act granting the consent of Congress to the Connecticut-New York Railroad Passenger Transportation Compact;

S. 3169. An act to amend the Atomic Energy Act of 1954, as amended, and for other purposes; and

S.J. Res. 90. Joint resolution to enable the United States to organize and hold a diplomatic conference in the United States in fiscal year 1970 to negotiate a Patent Cooperation Treaty and authorize an appropriation thereof.

RETIREMENT OF MOST REVEREND THOMAS J. TOOLEN, ARCHBISHOP—BISHOP OF MOBILE-BIRMINGHAM, ALA.

Mr. ALLEN. Mr. President, after 42 years of outstanding leadership, the Most Reverend Thomas J. Toolen, archbishop—bishop of the Mobile-Birmingham Diocese, recently retired at the age of 83. Archbishop Tolen has been a powerful and influential voice in ecclesiastical affairs, a respected statesman of Roman Catholicism, and a beloved spiritual leader and administrator of the Alabama and Northwest Florida Diocese. His outstanding religious and civic accomplishments during a long and eventful tenure have endeared him to his parishioners and evoked the admiration and respect of the people of Alabama.

Under the circumstances, Mr. President, I would like to touch briefly on some of the highlights in the brilliant career of service of Archbishop Toolen so that the public might more fully appreciate his accomplishments.

In 1927, a young bishop from Baltimore, Md., came to serve the Catholic Church in Alabama and Northwest Florida. He has served for 42 long and fruitful years, tirelessly and with loving care.

The growth of the church under his guiding hands has been monumental. The prestige of the Catholic Church has developed remarkably during nearly a half century administration of this beloved archbishop of the Southland. Under his expert care Catholic institutions multiplied throughout the diocese. His constant concern for youth, the poor, and the orphaned marked his long career. A network of Catholic schools dot the Alabama countryside as a testimony of his regard for religious education at every level. He was instrumental in building hospitals, nursing homes, churches, and colleges. He cooperated in civic endeavors sponsored by the community.

Archbishop Toolen often traveled the length and breadth of his beloved Alabama and northwest Florida, where he learned to know and love the innumerable souls entrusted to him. His deep love for the people inspired them to labor diligently for the church, for the State of Alabama, and for the country he loves so well.

Countless accomplishments, religious and civic, mark his career as one of the greatest bishops of U.S. history. Those who know him, love him, and work with him recognize him as a holy man, an energetic prelate, and a patriot of the noblest degree.

Mr. President, Archbishop Toolen's recent retirement to honorary status was an event of great interest to the people of our State. A recent issue of the Birmingham News, Birmingham, Ala., devoted a feature article to the event. In recognition of the accomplishments of Archbishop Toolen and as a token of respect for a life of tireless effort and outstanding achievement, I ask unanimous consent that the feature article on his retirement be printed in the RECORD.

I extend my hearty congratulations and sincerest best wishes to Archbishop Toolen.

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

[From the Birmingham News, Oct. 26, 1969]

"HAPPY YEARS" FOR THE ARCHBISHOP

(By George M. Cox)

MOBILE.—It was twilight, and another busy day was nearing an end for the new titular Archbishop of Glastonbury.

In the solitude of his comfortable apartment in the episcopal residence in Mobile, he relaxed in a favorite easy chair, stroked intermittently at a crop of snow-white hair accentuating blue eyes and a ruddy complexion, and reminisced about what others see as a remarkably active and productive life.

"Regrets?"

It was in a tone of inquisitive surprise that The Most Rev. Thomas J. Toolen responded to questions about his personal post-retirement thoughts a week after Pope Paul VI accepted his resignation as the archbishop of the Mobile-Birmingham Catholic Diocese because of physical reasons.

"I have no regrets," he said firmly, "because my 42 years as head of the diocese were very happy years. They were made that way by the people I love so much."

Recognized as the nation's elder statesman of Roman Catholicism because of his long tenure as spiritual leader and chief diocesan administrator of Alabama and Northwest Florida, the 83-year-old Archbishop Toolen now has another title bestowed on him by Pope Paul—honorary Archbishop of Glastonbury, a diocese that once flourished in England but now inactive.

He will continue to live at the Cathedral Residence at 400 Government St. in Mobile.

Time, to be sure, has taken a toll on the venerable prelate.

He probably will be unable to continue his regular trips to his beloved Ireland, where his parents were born and where he has recruited many priests and sisters to serve in his diocese.

But he still intends to make as many trips as he can to Birmingham to visit his grandniece, Mrs. Al Lucas Jr., and her seven children. They are the apples of the archbishop's eye.

"She is all I have left," he says of Mrs. Lucas. "And if you want to figure our relationship closer, just get out your pencil and a computer—my sister was the grandmother of the mother of those seven wonderful children."

If the four-score and three years have cut into Archbishop Toolen's physical activities, they haven't blunted his Irish wit and enthusiasm at all.

On the day the Vatican was announcing acceptance of his resignation, Toolen was addressing a dinner of the Diocesan Council of Catholic Women in Birmingham. The news was out, and tears glistened on many a feminine face in that audience.

"This was no time to be emotional," he says. "So I just got up to the mike and started telling jokes!"

The crying stopped.

His hobby is still traveling ("depending, of course, on the doctor"). He still likes to work long days, although recent illnesses have curtailed them. "I used to get up at 4:45 in the morning," he says, "and say my Mass at 5:30. Now they make me stay in bed until 6 and say my Mass at 7:30."

Both Archbishop Toolen and his physician describe his current physical condition as exceptional. Immediately upon his recent return from Birmingham, he checked into a hospital for a head-to-toe check and came out in top shape for a person of his age.

"Of course," he explained, "I have been a diabetic for 20 years. But diabetes never kills anyone if they have sense enough to take care of themselves."

The archbishop keeps abreast of national and world affairs by reading as many newspapers and magazines as he can.

"But there's so much happening in the world today it seems that sometimes you just have to keep on reading," he laughed.

In his long service as bishop and archbishop, what does he consider his greatest accomplishment?

"Covering the diocese with churches and schools," he responded. "We have erected at least 600 buildings and see that they are kept in good shape. We have established a wonderful institution of schools and spiritual societies through which we tried to unite the people."

Any disappointments?

"None big enough to keep me awake at night. I have not had an unhappy day in Mobile or elsewhere in the diocese. We have finished everything we started and my 42 years have been happy, happy years. This is because the people I love—and I really love people—made them that way."

Archbishop Toolen rarely displays outward signs of unhappiness, but if you press him hard enough about hippies, yippies, campus riots, LSD, marijuana, attacks on policemen and sexual permissiveness, he will give you his opinion of the cause and cure.

"Some people have left God out of all things," he says. "Their principle is that there is no God. If you have no respect for God, you can have no real respect for your country or your fellow man. Sometimes I fear that all this lawlessness over the nation will eventually destroy us."

And the cure?

"Get back to church. Get back to God. If minorities refuse to respect the law of man, then the only possible hope for relief is to try to get them to respect the law of God."

Archbishop Toolen said the same minorities screaming today for freedom "want freedom only for themselves. If you argue or disagree with them, then they claim you are interfering with their freedom. These groups should recognize the fact that when they use the wonderful opportunities America has

given them, then they should at the same time accept the obligations that go with them."

Last Wednesday's moratorium against the war—how did he view that?

"It seems that a small minority has no sense of patriotism. Our boys are over there fighting and sacrificing their lives, and over here they are not receiving complete support. Some organizations simply have to be fomenting and encouraging all this unrest and agitation."

Born in Baltimore, the eminent churchman observed his 59th year as a priest last month. Prior to his resignation and the three-way division of the diocese, Archbishop Toolen directed the work of 118 parishes, 48 missions, 178 priests, 60 schools and nearly 20,000 students. He was the spiritual leader of 143,000 Catholics in Alabama and Northwest Florida.

He is a close friend of the Most Rev. John L. May, the 47-year-old auxiliary bishop of Chicago, who has been named by Pope Paul as the new bishop of the Mobile diocese. The Most Rev. Joseph G. Vath, former auxiliary to Archbishop Toolen, will become bishop of the Birmingham diocese after the Alabama separation.

There is no date yet set for the installation of either Bishop May or Bishop Vath, but ceremonies to be held in both Mobile and Birmingham probably will be attended by the Vatican's apostolic delegate, who is headquartered in Washington.

Bishop May, as president of the Catholic Extension Society, has been "very kind to the Mobile-Birmingham diocese in helping to establish missions and churches," the archbishop said.

The Most Rev. Fulton J. Sheen, D.D., who resigned Wednesday as bishop of Rochester, N.Y., is a 25-year friend of Archbishop Toolen and the two are expected to get together in Mobile, perhaps Monday. Bishop Sheen will speak at Biloxi, Miss., on behalf of Hurricane Camille victims and then will make a special trip to Mobile to see Archbishop Toolen.

Bishop Sheen was instrumental, through the raising of funds, in the erection of the Blessed Martin de Porres Hospital in Mobile and also in the rebuilding of a church for Our Lady of Fatima parish in Birmingham, which had been destroyed by fire.

In the sunset of his illustrious career, Archbishop Toolen will continue to serve the diocese in an advisory capacity whenever he is called upon.

He joins the ranks of the old soldiers, once described by a famous general as men who never die but simply fade away.

HEALTH CARE—THE EUROPEAN WAY

Mr. KENNEDY. Mr. President, this week the Philadelphia Inquirer published a series of five major articles on health care in the United States and in three representative European nations. The series, entitled "Health Care—the European Way," by Donald C. Drake, is an extensive comparative analysis of the virtues and defects of the American health care system and the systems of health care in Britain, Sweden, and Germany.

Many of us in Congress and across the Nation are deeply concerned about the current crisis in the organization, delivery, and financing of health care in the United States. Two days ago, in an address in Boston as a part of the Lowell lecture series, I had the opportunity to discuss a number of the critical issues of health policy now facing the United States, including what I believe is the growing recognition of the need for a comprehensive national health insurance system, capable of bringing high quality health care to all our citizens. In our efforts to improve our own system, we can learn a great deal from the European experience. I, therefore, ask unanimous consent that the series of articles from the Philadelphia Inquirer, including an introductory article announcing the series, be printed in the RECORD.

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

[From the Philadelphia (Pa.) Inquirer, Dec. 7, 1969]

MEDICAL CARE ABROAD STUDIED IN FIVE-PART SERIES

Beginning next Sunday, The Inquirer will publish a series of articles examining the health care systems of European countries against the context of usage in America. The five-part series, "Health Care: The European Way," by Inquirer medicine-science writer Donald C. Drake, is part of a continuing investigation of the costs, effectiveness and administration of health care which The Inquirer began in September.

The series will compare the methods of England, Sweden and Germany with those in the United States, with the purpose of showing strengths which Americans might emulate and weaknesses they should avoid.

FIVE-WEEK TOUR

The information was accumulated during a five-week tour of the three countries and their facilities, in addition to five weeks of interviews with officials in the United States to gather comparative material.

All told, the European part of the report involved interviews with more than 60 officials, doctors and government representatives in the three countries, tours of several hospitals and health facilities, and on-the-street interviews with the people getting the care.

The five parts are:

Sunday, Dec. 14—An overview of the three systems showing how the U.S. information on these systems has been completely distorted by special interest groups that go over there only to get information to support their bias.

Monday—A study of the British system which does have many faults—the general practitioner is something of a second-class citizen in the medical community—but neither doctor nor patient would think of abandoning the system, despite what the AMA says.

Tuesday—The Swedish system. This program is probably one of the best in the world yet Sweden—both the public and private sector—spends less on health care per capita than the United States.

Wednesday—the German system. This is the least known here but is perhaps the most likely to work in this country—at least at this time, because it does most to preserve the private enterprise medical system.

Thursday—This article will pose problems that will confront the United States on the basis of what European countries already know and make some suggestions on what the U.S. course should be. One of the least tasteful thoughts is that the United States is not now and might never be in the position of guaranteeing all of its citizens the same high quality care. Perhaps a two-class system will be required. The public class will be guaranteed a high level of minimum care but the more affluent will be able to purchase additional care.

[From the Philadelphia Inquirer, Dec. 14, 1969]

HEALTH CARE—THE EUROPEAN WAY: AMERICAN MEDICINE STANDS TO GAIN MUCH FROM NATIONALIZATION

(The health care system in the United States is in serious trouble. Some authorities believe America should adopt a program similar to some of those in Europe. Others violently disagree. Amid the heated disputes, facts are scarce. This is the first of five articles on medical care written after a five-week tour of European countries as part of a continuing Inquirer investigation of the U.S. health care crisis.)

(By Donald C. Drake)

Government leaders and a lot of other important people are thinking of ways to improve the deteriorating health system in the United States.

Undoubtedly the decision-makers will consider the experience of European nations that have turned to various forms of state-supported and controlled medicine.

American medicine will be in serious trouble, however, if our legislators base their actions on the popular conceptions of European medicine held by medical leaders in this country.

America has a completely distorted view of the European systems.

The distortion has been accepted, if not fostered, by American organized medicine, which, understandably, doesn't want to lose a good thing.

The self-styled experts on the European systems base their "knowledgeable" views on cursory examinations, deliberately misleading reports in American medical publications with axes to grind and information gathered from less than authoritative gripe sessions with foreign colleagues who justifiably envy some aspects of the American system.

It's become something of a sport for medical association officials to take vacations in Europe, talk to a few physicians there and come back with the horror tales that they sought to prove their preconceptions.

Some of the myths start with misinterpretations of factual information.

Others are just out and out lies.

Many of the faults attributed to nationalized medicine are more properly blamed on European medical traditions or economic problems gripping an entire nation.

American medical journals are filled with stories written by disgruntled British physicians, giving the impression that every British doctor would like to blow up the Ministry of Health along with the National Health Service.

Interviews with more than two dozen physicians and health officials in London, however, failed to reveal one that did not think the NHS was essential, though many felt that some changes in its administration would be desirable.

American physicians are forever telling us how the Swedish citizen pays the highest taxes in the world, blaming this on their health care system.

What they neglect to mention is that the private and public sectors of Sweden spend the same or less on health care than the U.S. does and that other aspects of their highly socialized system are more responsible for the high taxes than the health care system.

Other American authorities insist that socialized medicine is wasteful and costly.

To support this contention they tell how the NHS costs the British government 130 percent more now than it did 10 years ago.

This bit of information taken by itself is disconcerting until a check of U.S. records

reveal that U.S. expenditures on health during the past decade have also increased—by exactly 130 percent.

The startling fact is that the state, local and Federal governments in the United States already spend more per capita for health care than the entire NHS when cost of living differences are ignored.

It has been frequently stated that so-called free service will result in enormously high and unnecessary usage of the system. This may be partly true, but in Germany, where patients aren't required to pay anything for hospitalization or an office visit, the utilization rate is below the average in America, where patients frequently have to pay for everything.

European medical systems have many problems but it is quite clear that the European doctor, who is frequently a victim of these problems, is more outraged by the injustices of the medical system in America than he is about the system in his own country.

European doctors, almost without exception, are shocked to read that Americans can be bankrupted by illnesses or that large segments of the American population go without care because they cannot afford to pay for it or because inadequate programs fail to reach the poor.

FEELING JUSTIFIED

The Europeans are also the victims of partial truths and misinformation about U.S. medicine but basically their antagonism to the American system is justifiable.

One British physician said he understood that Negroes died in the street because they could not afford the price of a tank of oxygen.

This, of course, is nonsense.

But it is true that a lot of Negro babies die because their mothers don't seek prenatal hospital care, refusing to endure the indignities or the long waits for a clinic visit.

The American Medical Association says that no American goes without care if he needs it.

This is not true.

It is more accurate to say that no one in America is refused medical care if he seeks it: if he leaves his ghetto and travels across town to the hospital where he might have to wait hours for a visit with a doctor, if he is willing to lose the hours at work and if he is sophisticated enough to know that the help exists if only he is persistent enough to get it.

In most European countries the philosophy has been established that top-notch medical care is a right that will be provided by the government without discrimination, and that the chances are good that the patient in the hospital bed next to yours is equally likely to be rich as poor.

BAD ASPECTS

There are, however, many aspects of European medicine that the American would find distasteful.

For instance, there is a sharp division between hospital and nonhospital physicians.

A heart victim could see a cardiologist twice a month for a year, establishing a strong rapport, only to discover that once he is hospitalized following a heart attack he will be forced to accept a strange hospital physician.

The cardiologist he knows so well has no right to practice in the hospital.

Right away this would seem to be a justifiable argument against nationalized medicine, but further investigation reveals that this is a traditional schism, one that started years before anyone ever thought of anything as humane as guaranteed medical care for all.

Proponents of socialized medicine, or the European way, are quick to say that Europe has found the answer to the health delivery problem and America should completely do away with its current system.

EXTREME POSITION

This is clearly too extreme a position to take.

There are many things about the American system that are superior to European medicine.

The most obvious example is American medical research, which is second to none in the world.

But there are other things.

American doctors are much more active in the new and promising field of preventive medicine.

Five times as many Americans as Germans seek preventive medical care. In England, a medical checkup isn't even covered by the NHS because British physicians question its value.

American hospitals are much more efficient in moving patients out of the hospital, mainly because there is a shortage of beds here.

The average length of stay in American hospitals is many days shorter than in Sweden, Germany or England, countries that have centered their health systems on the most expensive unit in the medical scheme.

Our doctors, on the average, spend more time with patients than European doctors do, even though they are much less likely to make a house call.

GROUP PRACTICE

We are far more advanced with the concept of group practice, which takes over many of the functions that outpatient clinics in European hospitals are required to perform.

Many European physicians and health officials believe that group practice, which unites specialists, complicated equipment and technicans in an effective combination, is a potent aid in holding down costs.

The European doctor who mistakenly believes that American Negroes die on the streets for want of oxygen is ignorant of the fact that the majority of Americans are covered by insurance such as Blue Cross or Blue Shield, plans which are obviously not fulfilling their obligations to society but are making American medicine a much less brutal business than many on the other side of the Atlantic believe.

Europeans generally agree that the top care provided here is the best in the world but it is provided at a great expense to a large segment of society that goes without even the most rudimentary care.

The very real danger that exists at this time is that the reformers are ready to blindly throw away many of the advantages in the U.S. system for the sake of emulating the European plans that provide care for all.

What, of course, is needed is a blending of the systems rather than a choice of one system over the other.

INCENTIVE LACKING

None of the European systems studied offered substantial incentives to doctors to do a superior job.

Many of them, in fact, reward inefficiency.

In England, it is traditional for a British GP to swiftly send a patient off to the hospital if his care requires anything more than superficial treatment.

In Sweden and Germany, patients are kept in expensive hospital beds for excessively long periods—more than twice the U.S. average—simply because there is no need to move them out and tradition says this is how it should be done.

British hospital doctors are reluctant to discharge patients because they are afraid that the overworked GP is not up to the task of handling post-hospital care.

The three systems considered in this series—English, Swedish and German—use different ways to meet the needs of the people.

But they all have things in common:

Everyone is guaranteed medical treatment in the doctor's office or hospital at no extra charge or with heavy government subsidization.

Doctors who treat public patients outside of the hospital can't follow their patients into the hospital.

They are all partly responsible for infant death rates that are below those in the U.S., which also has a comparatively short life expectancy figure.

The cost of maintaining the medical system is distributed over a large base that involves all working members of the society, not just those who are unfortunate enough to become ill.

Each of the systems, however, meets the goal of guaranteed health care differently.

In England the population is taxed and public patients receive no care from specialists outside of the hospital. The GP is the backbone of the system.

The system completely disregards the fee-for-service concept, spoken so highly of by the American Medical Association.

In Sweden, excessive usage is discouraged by the requirement that patients pay full cost for care with the guarantee that the government will reimburse them for 75 percent.

Patients usually seek specialized care—the GP does not play as significant a role as he does in England—but they cannot choose their doctors in the hospital.

In Germany, the government plays a significant but limited role by setting fee schedules for doctors and the premiums quasi-public insurance companies can charge. Little tax money is used in the health care system.

"DOCTORS LIMITED"

The system is essentially run by government-required professional organizations and the insurance companies, which represent employers and employes who pay the premiums.

A major complaint of American doctors is that a nationalized medical system would take away the prerogatives of doctors to practice medicine as they see fit and sharply curtail the amount of money they can earn.

None of the systems, theoretically, at least, dictate the way doctors should practice medicine, but in England the system is set up in such a way to hamper, if not discourage, initiative.

This is not true in the other two countries.

In Germany and Sweden, physicians are paid on the basis of fee-for-service and the harder they work, the more they get paid.

The GP makes a significantly lower salary in England, where his salary averages about $24,000 when per capita income is calculated.

In Germany and Sweden the figure is closer to $30,000 which falls below the $35,000 average in America but not significantly.

The division between hospital and nonhospital doctors in Europe seems undesirable.

LEARNING RESTRICTED

Hospitals and medical centers are the principal centers of learning and it is difficult if not impossible, for a doctor to keep up with medical advances if he is cut off from the intellectual mainstream.

It also seems foolish to separate a patient from a doctor who is intimately involved with his case when the patient needs him most—at the time his condition becomes so critical that hospitalization is required.

Contrary to reports in this country, few patients in any of the three countries feel their doctors treat them like case numbers or obligations imposed on them by the state system.

Even in Britain, where this complaint would seem to be most justified, the patients by and large are quite happy with the treatment they receive.

But then this could be accounted for by a different attitude Europeans have toward doctors. Americans might tend to see their physician more as a father figure.

If America went to a socialized or na-

tionalized form of medicine, the number of cases per patient or doctor would undoubtedly increase sharply just as they did under Medicare, when money restrictions were lifted.

But most authorities attribute such increases to the fulfillment of a need that is not being taken care of under the old system and not to malingering.

BACKLOG MISSING

Sweden has a utilization rate of doctors half that of the U.S., even though 75 percent of care is covered by the state. But then Sweden doesn't have a backlog of untreated cases nor does it have a large poverty population, which requires more than average medical treatment.

It would be foolish for the U.S. to transplant a medical system in toto from Europe because the cultures and needs are so different, but certain aspects of the various systems could be incorporated into ours—certainly the concept of guaranteed health care for all.

Most important, our leaders must be careful not to discard many of the good things that have been developed by our doctors and hospitals.

But on the other hand, they shouldn't be afraid to make changes simply because one pressure group or the other will make hysterical predictions—as some did during the formative stages of Medicare—or because the privileged position of one small segment of the society will have to be forced to give a little for the sake of all the rest of that society.

[From the Philadelphia (Pa.) Inquirer, Dec. 15, 1969]

HEALTH CARE—THE EUROPEAN WAY: BRITISH PROGRAM HELPS ALL, BUT LIMITS DOCTORS' RANGE

(By Donald C. Drake)

LONDON.—The much-publicized National Health Service in England is outrageously unfair to doctors and the level of care patients get is questionable, yet few Britishers would think of giving up socialized medicine.

Good, bad or indifferent, the fact remains that every Englishman is entitled to government-financed health care, and that one benefit is so important that it over-rides most other considerations.

Even the British general practitioner, who has every right to damn the government and bureaucrats who have turned him into a form-filling clerk, is more outraged by the American system than he is by his own.

PUBLIC ACCEPTANCE

Said one London GP in an interview:

"I certainly can understand why your doctors don't want socialized medicine, but it's beyond me how they have convinced their patients and their government that it wouldn't be in the public's interest."

Said a British medical writer who had been covering the NHS for five years:

"We in this country are horrified to read of the inhuman way your doctors criticize socialized medicine. If they knew what they were talking about, they wouldn't dare say the things they do. In the American system the primary concern is for the doctor and not the patient. In Britain the concern is for the patient."

An American visitor getting a first-hand look at the famous British system is disturbed by what he sees and hears.

Working on a five-minute appointment schedule, GPs frequently don't bother with physical exams because it takes too long for the patient to undress and dress.

"Complicated" cases that require more than 10 minutes or "sophisticated" equipment like an electrocardiograph, standard equipment in the offices of many American practitioners, are frequently packed off to the hospital.

Twenty to 30 percent of the patients in a doctor's waiting room are there only to have a variety of forms filled out, mostly to entitle them to government sickness insurance.

NHS patients must go to the hospital if they want to see a specialist, or else pay the fees of a private physician. Only private specialists practice outside of hospitals in England.

The plight of the English physician is a vivid example of what happens when the profession refuses to offer alternatives and lets the politicians take the initiative as the English doctors did during the formative stages of the NHS and the American doctors are doing now while our government considers changing the U.S. system.

American authorities discredits the British system for the wrong reasons.

They say, for instance, that the NHS should be abandoned because it has become too expensive, pointing to a 130 percent increase in its budget during the past decade. They neglect to add that expenditures for medical care in the U.S. also have jumped by exactly 130 percent since 1958.

The problem is not that the system is so expensive but that England, a nation with serious money problems, is not spending enough for the service its politicians promised the voters.

The NHS spends an average of only $67 per person each year, compared to the $145 Sweden spends annually per capita on its program and the U.S. average of $294, which includes both public and private expenditures.

SIMPLE SOLUTION

Many, though certainly not all, of the problems with the NHS could be solved by simply spending as much on health care as other nations do.

A British GP gets a ludicrously low $2.58 a year from the NHS for each patient signed up with him no matter how many times he sees the patient during that period.

The average GP has 2470 patients on his list—the most he can legally have is 3500—and he sees about 200 of them each week, almost half of them on house visits.

This compares to the American GP, who has an average of 130 office visits and makes a paltry three house calls a week.

As a result of tight finances, the most a GP is likely to make, even with additional money coming in for the performance of special screening tests and the treatment of persons under 65, is $12,000 and many GPs say this estimate is generous.

THIRTY PERCENT LEAVE

Considering that the per capital income in England is half the U.S. figure, the $12,000 would be the equivalent of $24,000, but this is $11,000 below the U.S. average and about $6000 below the average in Germany and Sweden.

Largely as a result of low income and other inconveniences, Berlin loses to other countries, by one estimate, the equivalent of 30 percent of the doctors its schools graduate each year. (Others cut this figure in half but it is still a substantial loss.)

Doctors insist they should be making about twice as much as they do but this isn't their only complaint with the system.

Another problem is that medicine has become intellectually deadening for the GP.

Hard-pressed for time, the GP is forced to send medically interesting cases to the hospital, which explains why the NHS spends 20 percent more of its budget on hospital care than the public and private sectors of American medicine do.

Since England's hospital admission rate of 71 patients per 1000 population is 37 percent below the U.S. average, the larger expenditures are accounted for by unusually large outpatient clinics and an average length of stay more than six days longer than the 8.5-day U.S. average.

One source in England said that hospital physicians are reluctant to discharge patients quickly for fear that the harried GP just wouldn't be up to the demands that the patient's post-hospital care would require, hence a costly waste of a hospital bed.

Hospital specialists do better than the GP and, especially in teaching hospitals, have more time to spend with the patient, but the schedule is still tight.

SURGEONS PROFIT

The top salary a surgeon at prestigious Guy's Hospital may make is $25,000, equivalent to an American surgeon when the per capita difference between the two nations is taken into consideration. The average salary for surgeons and other specialists, however, is considerably lower. Prestigious specialists with a large percentage of private patients can make many times $25,000 but then their practices are more like private medical care in the U.S.

In an effort to concentrate more patient care outside the hospital, the British are experimenting with a variety of group practice plans, which, at best, are only weak copies of what is already being done in the U.S.

In the growing new community of Thamesmede, which only a few years ago was a military arsenal, a prototype group practice is being set up that, unlike in the U.S., will be staffed only by GPs.

Plans call for construction of a modernistic building that will house 24 doctors, a small laboratory, operating room for minor procedures, X-ray machines and a couple of electrocardiographs.

This might sound like a modest proposal to the American accustomed to finding all this in group practices or partnerships but in England it's a break with tradition.

The doctors are to be assigned to five or six teams, which will each include two registered nurses, a social worker and visiting nurses. Since it's doubtful that any specialists will be lured from their prestigious hospitals, the GPs will specialize in obstetrics-gynecology, geriatrics, child care and general medicine.

ONE THOUSAND SERVED

Only 1000 persons live in Thamesmede now, but the population will grow to 60,000 persons, who will be served by the new setup that plans a variety of innovations such as physical checkups during the first visit to the program (this is routinely done in the U.S. but rarely in England) and computerized health records.

The optimistic hopes that the founders have for the Thamesmede project is evidence of the basic confidence that doctors have in the general philosophy of socialized medicine, if only it could be organized in a more reasonable manner.

Not one of the two-dozen doctors and health officials interviewed in England questions the concept of socialized medicine but rather indorses it.

Many feel, however, that the system is too much in the control of bureaucrats and politicians, who are more sensitive to political expediencies than to a basically sound concept and program that needs professional direction.

DEFECTORS CITED

A. H. Burffot, a clerk to the governors and chief administrator at Guy's Hospital, feels that the government should continue to decide how much money should be spent but that a board staffed by health professionals, perhaps appointed by the Ministry of Health, should direct operation of the NHS.

Other health authorities feel patients should be charged a nominal fee to discourage casual and wasteful use while some suggest establishing a system where fees would be linked to the amount of service performed by the physician.

Still others, however, disagree with this suggestion, pointing out that dentistry under the NHS is already operated on a fee-for-service principle even though many believe that British dentistry is of far lower quality than medicine.

Many American visitors to England attempt to discredit NHS by saying that an increasing number of Britishers are abandoning the government system for private insurance.

This is partly true, but mainly wrong.

Private medicine is by far smaller than the public sector, so much so that few physicians could hope to make a living without accepting a large percentage of NHS patients. Ninety-seven percent of the population is registered with the NHS.

The visitors misunderstand the growing popularity of insurance plans that augment rather than replace the NHS—plans that enable patients to see doctors on an appointment basis, get better rooms in hospitals and choose the hospital physician, which a straight NHS patient cannot.

These plans also enable patients to avoid waiting several months or years for hospital treatment of nonserious medical complaints such as hemorrhoids, varicose veins and small orthopedic problems.

The NHS is, of course, plagued by bureaucracy but so is any large organization, as physicians in any of Philadelphia's top medical centers will testify.

One GP said he did simple blood tests in his own office even though the government prohibits reimbursement for this—it's supposed to be done in the hospital—because he can get the results back immediately and can thus avoid wasting time on a second office visit.

Another physician complained that when he sent his patients to the hospital for simple tests, the lab or radiology department sent the results back by slow second-class post to save a penny or two.

"A proper solution to this problem, I should think," the physician said with British stoicism, "would be to send back only the positive results by first-class post."

GOBBLE PILLS

It's generally agreed that British doctors tend to overmedicate but the reason is simple:

It's been shown that British patients expect to get medicine from their doctors and when they don't, they tend to summon the doctor more often for house calls.

As one physician said philosophically, it takes less time to write out a prescription than to make a house call or a physical examination.

British patients tends to be more ruthless about house calls than Americans—who are lucky if their doctor doesn't have an unlisted phone number—because he knows that his GP could be called up on charges and disciplined should he refuse to respond when the patient insists.

The AMA frequently emphasizes that the British system is impersonal.

It certainly seemed so to an American visitor, but the British seem to like their doctor-patient relationships.

Interviews with numerous British patients indicated almost total satisfaction with their doctors though the young seemed more critical.

Most patients, however, thought that their doctors were very concerned about them as people as well as patients, though it's hard to appreciate how this is accomplished with such swift appointment schedules.

SYMPATHY FELT

More startling for an American to hear was patients sympathizing with the doctor and feeling sorry that he worked such long hours and got so little money.

Even the British Medical Association conceded that care has improved considerably since the NHS went into service 21 years ago. "Improvements in hospitals have been enormous," said a spokesman for the BMA, after conceding that most of the facilities date back to the Victorian era.

Dr. Scott Gale of the University of Colorado School of Medicine, studying at St. Bartholomew's, one of London's top hospitals, said care there is comparable to that found in the U.S. though he did think America's hospitals were better equipped and that the very seriously ill patients did better in the States.

A British urologist familiar with American hospitals agreed that America had more equipment but he thought that American medicine tended to be mechanized.

Dr. John Seale, an exclusive Wimpole Street doctor with a large percentage of private patients and hospital-admitting privileges, feels that the English system is too centralized and lacks money incentives, such as fee-for-service, to encourage superior performance.

He thinks no nation could afford to have a single-class medical system, but he says the NHS with all its problems is essential for England.

"The British system," he said, "is too skewed to the Utopian concept that everyone should have the best possible medical care when this is impossible."

He does not, however, prefer the American system of essentially private enterprise.

"If there are people in America who are being financially ruined by medical costs," he said, "then something should be done about it."

U.S. hospital admission rate is highest; length of stay lowest

[Hospital admissions are per 1,000 population]

England and Wales:	
Hospital admission	82
Days	14.8
Germany:	
Hospital admission	120
Days	19
Sweden:	
Hospital admission	127
Days	12.5
United States:	
Hospital admission	134
Days	8.5

[From the Philadelphia Inquirer, Dec 16, 1969]

HEALTH CARE—THE EUROPEAN WAY: SWEDEN'S SERVICES TO ALL

(By Donald C. Drake)

STOCKHOLM.—Sweden has justifiably gained an international reputation for having one of the best health care systems in the world.

Unlike Americans, few Swedes go without needed care because most, if not all, of the cost is paid for by the government.

The doctors by and large are well trained and the hospitals are mostly new and well stocked with modern equipment.

Partly because of the high quality of care, the Swedes have the lowest infant mortality rate and the longest life expectancy in the world.

Despite all this, the startling fact is that the combined public and private sectors of Sweden spend less per person for health care than the United States, with all of its problems, gaps in care and in infant mortality rate almost twice that of Sweden's.

It cost an average of only about $215 in 1967 for the health care of each Swedish citizen as compared to $250 for the American.

Cost of living differences, an extremely difficult thing to use in international comparisons, could partly account for the difference but it does not explain how Sweden can achieve its impressive results while devoting the same or a smaller percentage of its gross national product to health care than the U.S.

Looking at this more meaningful economic measure, the U.S. is spending 6.7 percent of its GNP—that is 6.7 percent of its resources—on health care as compared to between five and six percent for Sweden.

It is difficult to determine the comparative quality of care in the two countries. Most experts surveyed in Europe said that the top care provided in the U.S. is second to none in the world.

But the same experts generally agree that the overall care in Sweden is better than that provided in the U.S.

The big difference is not quality but accessibility to care.

While a large percentage of America's 30 million to 40 million poor receive inadequate care no one in Sweden goes without care because he is without funds.

A Swede can visit a doctor in his office and have 75 percent of the cost reimbursed by the government. (Sweden is currently revamping this system so that a patient will be required to pay only $1.35 for each visit.)

If the patient is affluent, the doctor may charge above government fee schedules but the government payment, geared to fee schedules determined by a lay government committee, will fall to 50 percent or less.

With only a token payment of $1.40 a day, which is covered by other forms of social insurance, hospital care is free.

Virtually all hospital beds in Sweden are for government-subsidized care and no social stigma is attached to receiving it.

Prescription drugs are also heavily subsidized by the government and some chronic drugs such as insulin for diabetes are completely free.

LITTLE POVERTY

If a Swede is completely destitute—few of them are because the country has virtually no poverty—the state will pick up the token payments and partial charges designed to discourage excess use.

Criticism of a nationalized or so-called "free" system in this country insist that such "generosity" on the government's part will encourage patients to seek unnecessary care. This doesn't seem to be borne out by the Swedish experience.

In fact, the average Swede sees his doctor an average of only 2.5 times a year, almost half the U.S. rate.

This is partly because Swedish doctors and patients question the value of the annual routine checkups, considered in Europe an American mania, and Swedish doctors are far slower to treat minor or imagined ailments.

While the average American is forever trudging off to his doctor for a checkup and a consultation for this minor ache or that, the Swede perseveres and more often than not survives without the annual assurance of good health from his doctor and the minor ache disappears without medical intervention.

This low level of utilization partly explains how Sweden can provide so much for so many with a budget comparatively smaller than America's.

It also suggests, as some U.S. officials have already said, that the U.S. cannot guarantee a similar level of minimum care to all of its citizens without expanding medical facilities, staffs and budgets far beyond present levels or denying the affluent American some of the possibly excessive care he is currently getting.

HOSPITAL USE

Asked why the utilization rate was so low, Dr. Sven Alsen, chief of the hospital division of the National Board of Health and Welfare, said that Swedish doctors were too quick to dispatch difficult cases to the hospital.

If Dr. Alsen is correct, then the U.S. has a bigger problem on this score than Sweden has because this country's admission rate is even higher than Sweden's.

Excluding obstetrics cases, which would vary with a nation's birth rate and hence confuse matters, the admission rate to short-term hospitals in Sweden is 110 per 1000 population as compared to 114.5 in the U.S.

Though it's true that once a patient goes into a Swedish hospital he'll stay there on the average 50 percent longer than the American (12.5 days as compared to 8.5), Sweden uses almost half as many staff personnel per bed as America does.

Since manpower accounts for 70 percent of a hospital's budget, this results in substantial savings.

It costs $80 a day to care for a patient in a major Stockholm hospital.

At first this would not appear to be substantially less than the cost at a comparable facility in the U.S., but the $80 not only includes the cost for outpatient care of other patients, but also the cost of services by physicians, who are all salaried by the hospital.

HIGH TAXES

Critics of the Swedish medical system are quick to point out that Swedes pay enormous taxes. This is quite true. Sweden has the highest taxes in the world.

Taxation in 1967 equaled 40.9 percent of Sweden's gross national product as compared to 28.3 percent in the U.S.

The Swedish equivalent of an $8000-a-year man pays a whopping 48 percent of his income in taxes as compared to only 29 percent for the Philadelphian but the health system is not totally to blame for this.

Sweden provides more social services than any other country in the world. College education is free as well as all other levels of schooling. The country's unemployment insurance and family and child welfare programs are among the most generous and the national pension plan provides the elderly with an income equal to two-thirds of the income earned during his 15 highest paid years.

In fact, the health program accounts for only 20 percent of taxation, falling considerably below the amount spent on pensions.

Though proponents of nationalized medicine would like to think that Sweden has a perfect plan, the system has its problems.

With 30 percent fewer doctors on a per capita basis than the U.S., the Swedish doctor doesn't spend much time with each patient.

A five-minute visit with the doctor is about par for the course though one hospital doctor said he has only three minutes for patients (he sees 100 a day) though he spends a leisurely five minutes with those he is seeing for the first time.

AVERAGE TIMES

A survey by the medical journal Medical Economics indicates that the average American GP spends 15 minutes on the first visit and 10 minutes for revisits as compared to specialists such as internists who take 25 minutes on a first visit and 15 minutes for revisits.

The nationalized system is not completely to blame for the doctor shortage but, in fact, can take credit for reacting to the problem so swiftly.

About five years ago, a government commission decided that twice as many doctors were needed and the current active physician population of 8500 will be doubled during the next decade.

Since it controls medical education, the government had little trouble in getting the added manpower, unlike the U.S., which has been trying for years to persuade the medical schools to graduate more doctors. But the number of physicians has increased by only 30 percent during the last decade.

A principal complaint by Swedish authorities is that their system is too strongly oriented toward hospital medicine, so much so that some experts believe that hospital physicians are superior to those on the outside.

Unlike the American practice, outside physicians are not allowed to cover their own patients in the hospital but must transfer their care to a salaried hospital physician.

LONG WAITS

This schism between hospital and non-hospital doctors, a tradition of European medicine not caused by the Socialistic concept, so concerns Swedish authorities that they are formulating plans to periodically rotate physicians through hospitals to familiarize them with new techniques and hopefully equalize the quality of care.

A common complaint made against socialized medicine is that patients spend hours waiting for care, as though the clinic patients in America don't have to, and that those with non-emergency complaints go for months or years without care.

This is partly true in Sweden but authorities attribute the problem to the shortage of physicians and they believe the shortcoming will be relieved when the extra doctors get out of school.

A wait of two or three hours for care in a Swedish hospital is not unusual and hospitalized patients may be detained for several days as they are slowly routed through this test or that.

The waiting time for nonemergency operations is about three months (it's three to five weeks in Philadelphia) and it is true that some patients have been waiting for years.

But these are mainly patients who want cosmetic surgery or the correction of minor orthopedic problems.

All told, Sweden has a waiting list of 80,000 patients that would take two months to dispose of but low priority cases may be repeatedly shoved to the bottom as new more serious cases arise, accounting for a wait of a year or more in a handful of situations.

One of the main reasons medical associations in this country oppose government-controlled or supervised medicine is that they are afraid the bureaucrats will not only lower medical standards but also lower physicians' incomes.

FEE SCHEDULES

Again, the Swedish experience doesn't bear this out.

Even though a lay government committee sets fee schedules, the income of a Swedish doctor is comparable to that of an American physician.

A Swedish doctor makes an average of $25,000, which is 30 percent less than the American doctor does, but then Sweden's per capita income is 25 percent less than that of the U.S. so the physician's relative economic position is roughly equivalent to the American doctor's.

The Swedish system's principle weakness is that it lacks incentives to encourage doctors and patients to make the most efficient use of manpower and facilities.

Sweden, for instance, has more than enough hospital beds and the doctor doesn't have to worry about whether the state-subsidized patient can afford care so he is under no pressure to move the patient out quickly.

Hence, Sweden has an average length of stay that is 50 percent longer than America's and the Swedish officials aren't at all happy about the extravagance.

Still, the overall utilization rate for all facilities and personnel in Sweden on a per capita basis is below that found in the U.S.

Dr. Joseph T. English, administrator of the U.S. Health Services and Mental Health Administration, puts much of the blame for the higher U.S. utilization on poor organization of medical services and the large poverty population.

It's been roughly estimated that 20 percent of Americans, mostly the poor ones, get inadequate medical service even though they need it more.

One study showed that the physician utilization rate in one ghetto doubled to six visits per year when a neighborhood health center was opened up, indicating to officials that the poor needed more care than the average American, who saw his doctor only 4.5 times a year.

CRISIS MEDICINE

If the U.S. eventually achieved a system equivalent to Sweden's, Dr. English predicted, utilization and cost would shoot up but then level off as the backlog of cases was taken care of.

Crisis medicine is costly and a well organized and accessible system such as Sweden's makes crises less likely and hence medical care becomes more economical.

Dr. English's comments pointed up something said during an interview in Stockholm with Dr. Malcolm Tottie, senior officer of the health bureau of Sweden's National Board of Health and Welfare.

It's impossible, said Dr. Tottie, to pull out health care from a system of social services saying that this constitutes health care and this does not.

Elimination of poverty with a welfare and food program, for instance, would not be considered a health measure but it would probably do more to reduce illness than any single public health measure.

Because the U.S. is behind Sweden in other social programs as well as health care, and because the U.S. has such a large poverty population, any health program that the government instituted would necessarily be more costly than Sweden's.

In the long run, however, a wise program of social services would probably result in not only economic but human savings as well.

U.S. spends more on health care than any nation, 1968

[Government sponsored program only]

PER CAPITA COST

England and Wales	$67
Germany	75
Sweden	145
United States [1]	90

PERCENTAGE OF NATIONAL RESOURCES

England and Wales	4.5
Germany	5
Sweden	5.6
United States	6.5

[1] Private and public sectors combined, $250.

[From the Philadelphia Inquirer, Dec. 17, 1969]

HEALTH CARE—THE EUROPEAN WAY: GERMANY USES DUAL SYSTEM

(By Donald Drake)

BONN.—Officials of the American Medical Association like to give speeches telling Americans how lucky they are because they don't have horrible socialized medicine like the British do.

The implication of what they say is that either a country has American-style private businessmen—doctors, or it has socialized medicine.

For some inexplicable reason, no one ever says anything about the way they practice medicine in Germany.

German medicine is an intriguing system with two highly organized forces—one representing the doctor and the other representing the patient—and the government acts only as an overseer laying down a few important ground rules.

Most Germans believe theirs is the best health system in the world.

Non-Germans might dispute this, but they can't deny that it's the oldest form of quasi-socialized medicine, having been started under Bismarck in 1884, nor can they deny that it has preserved the German physician's independence on a continent that has become

dominated by fully socialistic medical systems.

EIGHTY-FIVE PERCENT COVERED

At first sight Germany appears to be a medical utopia where both patient and doctor are doing very well.

More than 85 percent of the population is covered by state-supervised insurance companies that not only finance hospitalization but also all care given by doctors in their offices or during house calls, which American insurance firms rarely do.

The patient can choose any doctor he wants—the hallowed doctor-patient relationship the AMA is always talking about is thus preserved—though the patient must accept whatever doctor he gets once hospitalized.

The most a patient has to pay for a prescription is 68 cents; the insurance company picks up the rest.

And there is no limit to the number of visits a patient may make to his doctor nor the time he may spend in the hospital.

In short, when insured patients get sick their doctor-patient relationship is never stained by the exchange of bills or money.

It's all handled by the system and the doctor can concentrate on medicine and the patient has only to worry about getting well.

CHECKS, BALANCES

All money matters for the doctor are taken care of by government-required groups called the KVs—panels of doctors—which negotiate finances with the insurance companies.

The doctor merely checks off the services he performed and KV gets the money and sends it to him. Thus another hallowed principle of the AMA—fee for service—is preserved and presumably the doctor has a financial incentive to do a complete job.

Interwoven into this system is a variety of checks and balances to discourage doctors from taking advantage of the system, guarantee patients a minimum level of care that is quite high and help keep costs down, though not very effectively.

Big Brother in this case is the government, which plays a limited but significant role in the system.

The government sets:

—The minimum coverage that the insurance companies must provide to all subscribers.

—The maximum amount of premiums that the companies may collect from citizens.

—The fees doctors may charge.

This centralized control has helped enable Germany to hold down the cost of its health services to the equivalent of 5 percent of the gross national product as compared to 6.7 in the U.S.

By indirectly setting doctors' fees and by directly limiting insurance premiums, the government, in effect, is telling the medical community how much the German society is willing to devote to health care.

RATES SET

The control isn't completely effective—just as in every other country, medical costs in Germany are increasing along with the development of costly medical advances—but there is some control.

There is none in the U.S.

The most an insurance company can charge a subscriber under current regulations is 11 percent of his salary. Charges vary between 8 and 11 percent.

In an effort to reduce the number of medically indigent whose care would have to be paid for by other subscribers or the state, the government requires all persons who make under 900 marks a month ($268) to buy insurance and their employers to pay half of the premiums.

Persons who make over this figure may join voluntarily but must pay the total cost. The health plan must be desirable since more than 85 percent of the population buys the insurance though more than half of them don't have to.

The premium pays not only for the subscriber's own care but also partially subsidizes the care of retired persons and those who are not working, in addition to the care for all members of his family.

SICK ARE PAID

A significant portion of the money also insures a worker for up to six weeks for wages lost during illness.

This is such a costly feature of the program that the government will be able to drop the maximum premium charge to 8 percent starting Jan. 1 when all employers will be required to provide wages for the sick.

Considering that the average American devotes about 7 percent of his family budget to health care plus another 1 percent for Federal and local taxes that finance public health programs, the high-paid German citizen isn't spending much more than the American and the lower-paid German is spending much less, since half the cost of insurance is paid for by his employer.

If there were no controls of fees and insurance premiums under such a system, medical inflation would be excessive.

Fee schedules are determined by a commission representing the doctors, insurance companies, government and other interested parties.

In typically exhaustive Prussian fashion, the schedules cover 1500 different procedures, everything from the amount a doctor can charge for mileage on a house call to the cost of an injection.

For instance, a doctor gets $1.63 for an office visit, another $1.08 if he gives an injection during the visit plus an additional $1.90 if he gives advice on what the patient should do.

LESS HOURS

Doctors can legally vary charges by as much as 600 percent, depending on the patient's affluence and the doctor's experience and prestige, but with insured patients the variations run between 10 percent below fees (for the poorer patients) to about 30 percent above for the more affluent.

With such modest fees, it would seem that a German doctor couldn't make much, but he does about as well as the average American physician and he doesn't work as long either—about 50 hours a week as compared to the American 60-hour average.

Seeing 30 patients a day in his office and 10 on house calls, the average general practitioner takes home about 63,000 marks, which equals less than $16,000 but the buying power is worth more than $30,000 in Germany.

With the exception of Herr Professor in the hospital—and there is only one per department—the hospital doctor doesn't do anywhere near as well.

He makes the equivalent of $6000 a year, which explains why there is a fast turnover of junior people who leave when they realize it's unlikely that they will ever get the coveted post of chief of department who can make additional money by charging fees for private patients.

SELF-POLICING

Outside the hospital, doctors could reap a huge profit by exaggerating claims, taking a bigger percentage surcharge than they are entitled to or by requiring unnecessary office visits:

"Take this pill and come back in three days to see how you are doing."

But the doctors' organizations act as a fairly efficient policing agency in this regard because they have a vested interest. They are dealing with the government-limited money that an insurance company has and if one doctor takes more than his share, the other doctors in the group will suffer.

Automatic reviews are made of all produres that appear excessive or multiple office visits for mild complaints and the doctors' organizations are not above calling in a member to find out the reasons for irregularities.

The situation is not so good with the German hospitals, which are suffering from a price-control hangover from the war.

The hospitals don't get paid enough on a per-diem basis for the care they provide. They solve this problem wastefully by keeping the patient in the hospital longer than is needed.

LONGER STAYS

To one outside the medical fraternity this might not make sense, but it does because a hospital loses money during the initial days of a patient's stay when costly tests and procedures are being done and makes money later on when the patient is virtually nothing more than a hotel guest.

As a result of this and stuffy German medical tradition, the average length of stay is ridiculously high—more than twice that of an American hospital.

The average length of stay in a short-term, general hospital is more than 19 days as compared to 8.5 in the U.S. A German maternity case stays in an average of nine days.

Some in the system claim that German doctors feel the extra time is necessary for good medicine, but most of the newer physicians believe that the lengthy stays have no medical justification.

Another shortcoming is the peculiar prohibition that tradition and non-hospital doctors have forced onto the system preventing hospitals from having out-patient clinics.

(The only exceptions are the teaching hospitals that may have clinics for educational purposes.)

WASTE CHARGED

As a result of this ban, patients who require more care than a non-hospital physician can provide must be hospitalized in costly facilities even though they could be treated on a more economical out-patient basis.

Critics of the system claim that because of this and the fact that patients aren't required to pay anything when they visit a doctor that the system is being wastefully used.

This may be true for hospitals but it isn't borne out elsewhere.

Germans see their doctors an average of only three times a year, which is just a little above the 2.5 average in Sweden, where patients must pay 25 percent, and 4.5 in the U.S., where they pay everything. The hospitalization rate is also slightly below the U.S. average.

Even though Germans see their doctors less than Americans and even though the German doctor/patient ratio of 1.6 per 1000 is equivalent to the U.S. ratio, German physicians tend to rush patients through.

And a one-hour to two-hour wait for the swift service isn't uncommon either, prompting 10 to 15 percent of the population to buy extra private insurance.

German doctors insist that such insurance doesn't guarantee better medical treatment but only more of the amenities such as better hospital rooms, a choice of hospital doctors and appointments in the doctor's office to avoid long waits.

TOO FEW BEDS

Germany has a shortage of hospital beds, unlike Sweden, which has too many, but most of them are well-equipped.

Germany has only five heart centers capable of performing an average of 3000 open heart operations a year when there is a need for 12,000.

As a result, 9000 patients either die or, if they have enough money, go to America and pay for the care out of their own pocket.

Germans blame the shortage of heart centers on the lag of development because of World War II and not on their quasi-socialized system of medicine.

Germany also has a shortage of general practitioners, being victims of a trend to-

wards specialization that has taken over health care in Germany as well as the U.S. and many other countries.

Sticking to old-fashioned teaching methods where the student is a slave who must not contradict the great Herr Professor, German medical education leaves a lot to be desired.

Aware of the problem, about 25 percent of the schools have adopted U.S. methods and students are doing less work in the classroom and more work at the bedside.

To sum it up then, Germany seems to have a strong and effective system that officials in this country should find worthy of study, especially if they want to avoid a completely socialistic system such as exists in Great Britain.

MUCH TO STUDY

Doctors have retained much of their independence as a result of the establishment of government-required professional organizations that strongly represent members in dealings with the insurance system.

The principle of fee-for-service and the doctor-patient relationship have been preserved, allowing patients to choose their doctors.

No patient need worry about the threat of personal bankruptcy as a result of illness and all persons are guaranteed a high level of minimum care.

Furthermore, the base for the support of the system is much wider than in this country with virtually all persons contributing to its maintenance through comprehensive insurance schemes.

In considering adoption of various aspects of the German system, U.S. officials and medical leaders would be wise to avoid the German mistakes such as:

The separation of nonhospital doctors from the hospital and centers of learning.

The excessive use of hospitals with unnecessarily long stays.

And an educational system that stifles initiative and experimentation by new doctors.

It is also important that any new scheme the U.S. considers not destroy many of the strong points in America's existing system.

No other country has developed group practice to the same extent as the U.S. and many Europeans feel, as do U.S. leaders, that group practice is an effective way to provide top-notch care at the least expense.

[From the Philadelphia Inquirer, Dec. 18, 1969]

HEALTH CARE—THE EUROPEAN WAY: U.S. SYSTEM NEEDS REFORMS TO CUT COSTS AND BRING SERVICE TO ALL

(By Donald C. Drake)

Something is terribly wrong with American medicine.

The United States is spending more for health than countries with national or socialized programs, yet 20 percent of the American population goes without adequate care.

Some changes must be made, but they must be made with care.

National health insurance, which is being considered in Washington at this moment, is not by itself the answer.

It's not merely a matter of finding new ways to fund the health industry. More important is to find better ways to operate it.

The important question the legislators and decision makers must answer is:

How can Europe do so much more with so much less?

The answers are not simple but a study of the systems in Germany, Sweden and England reveal two striking things:

Europeans seek health care less often than Americans.

And the American system seems quicker to undertake measures that have not been conclusively proved on an economic or medical basis.

Organized medicine tells us that national systems encourage wasteful usage.

The evidence, if anything, suggests that doctors with a profit motive will promote more usage than doctors whose patients get so-called "free" care.

Patients in Germany, Sweden, and England see their doctors less often and are hospitalized less frequently than Americans.

CALIFORNIA PLAN

This fact could be attributed to differences in nations rather than differences in medical systems until the statistics of the highly respected Kaiser-Permanente Health Plan in Northern California are considered.

Compared to Americans throughout the nation using the traditional system, Kaiser patients visit their doctors 20 percent less often, stay in the hospital 32 percent less and are almost half as likely to be hospitalized in the first place.

The big difference between the Kaiser plan and Blue Shield and Blue Cross is that the doctor has no financial interests in extra visits or hospital stays.

In fact, since the Kaiser doctors are salaried and receive a share of the profits at the end of the year, the incentive is to practice economical medicine.

Many persons angered by the high income of doctors in the U.S. hold the simplistic view that health care costs could be held down by simply reducing physicians' incomes.

This would have only a minor effect.

If the income of the nation's 280,000 physicians was cut by more than half to a ridiculously low $17,000 annually—a foolish move that could destroy American medicine—the national expenditure for health care would be cut by a paltry eight-tenths of 1 percent.

USED MORE OFTEN

More efficient utilization of personnel, equipment and facilities would also probably have only a small effect.

There is little evidence that medicine practiced in Europe is any more efficient. In fact, there are indications that United States medicine is even more efficient, especially with prepaid group practices such as Kaiser-Permanente.

The answer seems to lie in utilization.

American doctors require more office visits, make more attempts at preventive medicine and undertake more therapy than European doctors do for their patients.

Cynics may say that doctors here do this for profit.

Undoubtedly some do. But most of them probably just don't bother to think in terms of whether a given procedure is cost effective—that is, whether the cost to society for doing the work produces sufficiently effective results to justify it economically.

A doctor may make an extra $10 or $15 if he requires a second visit, but if he orders unnecessary costly drugs, examinations or hospitalization, the costs to the patient and society are multiplied many times.

Cost effectiveness, however, is more properly a matter to be considered by administrators and government officials than by doctors, especially if a national form of medical care supported by tax dollars is set up.

IS IT WORTH IT?

Priorities must be set so that a limited amount of money can be spent most effectively.

Officials cannot delude themselves into thinking that medical automation will spare them from the distasteful task of setting these priorities by making care so cheap that society can do everything medically possible for everyone.

Everything that is medically possible is not necessarily economically justifiable.

Take the controversial question of routine physical examinations or medical screens, which are commonly done in America but infrequently in European countries.

Take just one procedure—sigmoidoscopic examinations to detect rectal cancer before symptoms appear.

The American Cancer Society and proctologists believe that routine examinations should be performed to improve the survival rate for cancer victims.

Taken by itself, this seems to be a perfectly reasonable thing to do and, should our government adopt a national health system, many specialists would undoubtedly insist that sigmoidoscopic examinations be given to all people over 45.

Some specialists charge as high as $25 for the exam, though the cost could be brought down to $6 if it were done widely. But even at this price is it cost effective?

VALUES NEEDED

If the exams were given annually as recommended, and for as little as $6, it would cost the American society $435 million a year or about $475,000 for each of the 920 lives the screen would save.

If society had only $475,000, wouldn't more lives be saved, more illness avoided or cured if the money were spent elsewhere, say for prenatal care or Pap smears to detect cervical cancer?

If routine $4 Pap smears were given to the 65 million women who should get them, it would cost society $260 million a year, but as many as 12,000 lives could be saved that would be lost otherwise. This would come to an average of $21,600 for each life.

Put in other terms, society could save 22 times as many lives by spending its limited funds on Pap screens as it could by spending the same amount on the more costly sigmoidoscopic tests with a proper yield of treatable positive cases.

It would be nice to save all the lives but medical funds are limited, no matter how rich the nation, and distasteful priorities must be set.

Interestingly, European countries encourage Pap smears, but not sigmoidoscopic examinations.

This is not to discount the value of sigmoidoscopic examinations. They certainly should be done the minute symptoms appear, and health-conscious persons who would rather spend their own money for care or prevention rather than on other things like boats or European vacations certainly should be free to have them.

TESTS ADDED

Perhaps a U.S. health program could afford routine screening and sigmoidoscopy, which is given here only to illustrate the point that cost accounting of medical work can have value, but somewhere choices will have to be made.

Sigmoidoscopy is only one example.

Medical costs are probably being pushed up a lot more than authorities realize by procedures, tests, operations and other treatments that not only have not been proved cost effective but are even questioned on medical grounds.

The medical literature is filled with procedures that have been promoted by sincere physicians blinded by their own enthusiasm only to have the work belatedly disapproved many years and many millions of dollars later.

The once-popular and now-discredited tonsillectomy, which today is done in only extreme cases, is a notorious example.

Scientific glory lies in finding new tests and therapies, not in disproving old ones. There is too little glory attached to dispatching unworthy medical procedures to the therapeutic graveyard. And so society is burdened with costly medical fads that persist with the enthusiasm of the misguided practitioner.

Today, a doctor with enough institutional pull can, for instance, in a few hours, boost society's medical bill by $25,000 to $50,000 by simply performing a heart transplant operation.

TWO-CLASS SYSTEM

This, of course, is an extreme and dramatic example. More important are the less costly procedures of a similar questionable nature that cumulatively add billions to the financial burden of the system.

Years ago medical science was so rudimentary that nothing the physician did would greatly affect a nation's economy, but now the situation has reached, or will soon reach, the point where some control must be applied, if not by the profession then by the government.

If the control is achieved by limiting the coverage of a national system to only those procedures that have been proven medically and economically justifiable, then the nation will have a two-class medical system—public and private.

A system that promises everything to everyone would strain an already burdened system to the breaking point.

The nation's leaders must determine the need and the resources available to meet that need and then tailor the program within those bounds.

If existing resources are unable to provide an adequate program, then a limited program should be started while facilities, schools, equipment and personnel are increased to provide a more ambitious program in the future.

GUIDES NEEDED

It should not be for only the providers of health care to decide, as they do now, what level will be offered. Rather, a consensus among the professional, the recipients who will pay for the care, and the government is needed.

The question of whether the program should be essentially public or private could be argued effectively either way, but it does seem essential for the government to play a central role, setting guidelines and basic requirements as it does in Germany.

What, then, should an ideal national health system involve? Here are suggestions for a system:

1. Everyone should be required to support it, either by paying premiums to government-regulated private insurance companies, as the Germans do, or by paying taxes as the English and Swedes do.

It is foolish to require Americans to support a health system at the time when they are least able to by forcing them to pay for it only when they are sick and out of work. Frequently they can't, and the burden falls to the government or hospitals and their private patients.

2. Coverage must not favor one aspect of care—as Blue Cross and Blue Shield do by paying primarily for hospital care—but rather incentives should be built in to encourage the most economical way of doing necessary jobs. This would mean that with economic delivery methods such as prepaid group practice, regional planning and extensive use of paramedical personnel and automation.

3. The AMA is probably right in saying that the fee-for-service concept should be preserved, but not necessarily in the unlimited way it would like.

Physicians in Great Britain, where there is no fee for service, generally agree that the system encourages shoddy medicine because British general practitioners receive a single fee for a patient each year regardless of how much they do for him.

The general fee-for-service concept could be indirectly preserved with plans similar to Kaiser-Permanente, where the doctors are salaried but receive a percentage of the profits at the end of the year.

4. The patient should be required to pay something when he visits the doctor to discourage unnecessary usage. This is not required in Germany or England, where doctors complain of over utilization (it's still below that of the U.S.). In Sweden, patients pay 25 percent of office visit charges and Sweden had the lowest rate of four countries.

5. It should be basically a two-tier national system. The first tier would include all doctors and hospitals who would be paid for providing a high level of minimum care to all Americans. The second tier would be the clinical research section.

Located at major medical centers throughout the nation, the clinical research section would do any procedures considered promising regardless of cost. The aim would be to make new discoveries or find cheaper ways to do existing proven procedures.

These units would be required to feed in the data from their work to a centralized agency for evaluation and comparison.

6. A well-funded agency, headed by a blue-ribbon panel of medical and economic experts above medical or governmental politics, should be established.

GUIDES NEEDED

This agency would review the data from the clinical research centers, with the hopes of moving new discoveries into the general care part of the system as soon as they had been proved medically and economically.

The agency also would review procedures being done in the general system, with the idea of exposing, and perhaps, eliminating, the useless. Since this would be a highly sensitive area, the board in charge of this agency should have great stature, equivalent to that of the National Academy of Science.

7. The system should subsidize or take over the cost of educating doctors, nurses and other personnel so that sufficient personnel would be available to provide the services promised.

8. Doctors should not be cut off from the hospitals and centers of learning as they are in Europe, where nonhospital doctors lose their patients as soon as they are hospitalized.

This practice has hurt medicine in Sweden and England.

Physicians should be encouraged to keep up with advances and participate in group practices and hospital care.

9. Finally, the system should be set up in such a way that not only will everyone have ready access to care, but those locked in ghettos would have the care brought to them.

Authorities believe that costly crisis medicine is practiced among the poor, who frequently don't get help until a condition has developed to the stage where it is very costly to handle.

Regardless of what is done, however, any national system that provides a reasonable level of care to all Americans would sharply increase the total amount spent on health care in the U.S.

State, local and Federal governments in the U.S. already are spending more per capita on health care than the entire British National Health Service, which is criticized in this country for being so costly.

MORE CARE

Difference in living standards would probably push the real value of the $67 per person the NHS spent in 1968 above $90 per person spent by the U.S. Government. But even so, it is clear that the government in America is already spending a lot on health care, which is still a predominantly private system. The total bill comes to $250 per person.

How much the $22.6 billion spent by government in 1969 would have to be increased if an adequate health program was provided is open to conjecture.

Experts say predictions are difficult.

But in any case such an ambitious program would cost a lot.

Can any civilized society, however, justify a system, such as America's, which provides the best care in the world to a small segment of the population while 20 percent of the population receives inadequate care or no care at all.

An American visiting Europe holds his head high when the subject being discussed is medical research.

American medical research is by far the best in the world.

When the topic turns to the matter of delivering health care to all the people, the pride is replaced by shame.

Government role in U.S. medical care increasing

[Billions of dollars]

Fiscal years:	
1950	12.1
1960	26.4
1966	42.3
1968	53.9

[Percentage]

1950	
Government	26
Philanthropy and others	8
Private health insurance	7
Out of pocket	59
1960	
Government	24
Philanthropy and others	8
Private health insurance	18
Out of pocket	50
1966	
Government	25
Philanthropy and others	9
Private health insurance	21
Out of pocket	45
1968	
Government	36
Philanthropy and others	8
Private health insurance	18
Out of pocket	38

SILVER MEMORIAL BRIDGE OPENED IN RECORD TIME—SENATOR RANDOLPH PRESENTS BRIDGE REPLACEMENT PROGRAM TO AVERT FURTHER DISASTERS

Mr. RANDOLPH. Mr. President, Monday of this week was the second anniversary of one of the worst highway disasters in the history of the United States. On December 15, 1967, the Silver Bridge, spanning the Ohio River between Point Pleasant, W. Va., and Kanauga, Ohio, collapsed with a loss of 46 lives.

While this tragedy stunned the Nation, it also shocked us into the realization that a new and critical look must be taken at the thousands of bridges that carry highways across water in this country. We realized that many of them were old, carrying loads for which they were never designed. We learned, through hearings by the Public Works Committee's Subcommittee on Roads which I chair, that we not only have aging bridges but that in many cases the inspection and maintenance of these vital spans was inadequate and haphazard.

It was readily apparent that the time was long past for a systematic, nationwide program to replace these older bridges that are now anacronisms in our highway transportation system and represent potential future catastrophies.

Mr. President, on December 12, I introduced legislation S. 3242, that would commit the support and the encouragement of the Congress to a comprehen-

sive program of replacing major highway bridges that are inadequate and unsafe. To underscore the urgency of the need to replace these old bridges, I have asked that $150 million in the highway trust fund be earmarked each year to assist the States in building replacement bridges.

I urge the Congress to join in a solution to the urgent national bridge problem by enacting this legislation. Only by an immediate and energetic program of replacing old bridges can we substantially reduce the possibility of having to live through the horror of another tragedy like that evening 2 years ago when the Silver Bridge fell into the icy Ohio River.

I gave considerable thought to the need for such a program on Monday as I helped dedicate a magnificent new replacement bridge across the Ohio River just south of Point Pleasant.

The new span, built at a cost of $15 million, plus a further $2.5 million for approaches, was constructed in a record time—less than half of that normally required. It was dedicated as a memorial to those who died 2 years ago on the Silver Bridge, but it can also stand as a monument to the organizational, engineering, and construction abilities of which we are capable.

It was a memorable occasion for the approximately 3,000 people who attended the ceremonies. Gov. Arch A. Moore, Jr., of West Virginia, and Gov. James A. Rhodes, of Ohio, capped the cooperation of the two States with their joint participation as the Gallia, Ohio, Academy High School and Point Pleasant, W. Va., High School bands played "Beautiful Ohio" and "The West Virginia Hills," respectively. Federal Highway Administrator Francis C. Turner spoke on behalf of the Department of Transportation which performed the leading role in the planning and financing of the new bridge.

In my remarks at the dedication-luncheon, I discussed the results of the Silver Bridge collapse, the building of the new bridge, and my bill for a stepped-up replacement program.

To assist my colleagues in understanding the scope of our national bridge problems, I ask unanimous consent that my remarks be printed in the RECORD.

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

REMARKS BY SENATOR JENNINGS RANDOLPH

It is with mixed feelings of sadness and accomplishment that we dedicate this new bridge over one of our nation's most important rivers. There is sadness because of the tragedy that made this structure necessary. But we also share the sense of achievement in what was done to build this imposing structure in record time.

It is a remarkable accomplishment that a project of this magnitude has been completed and is being opened to public use just two years after the collapse of the Silver Bridge. This ceremony today could not have taken place without the priorities assigned to the construction of the new structure, plus the cooperation and marshalling of resources that were necessary in Washington, Charleston and Columbus. I am especially grateful for the cooperation of Representative William Harsha of the Ohio 5th Congressional District. He sponsored with me in the House-Senate Conference on the Federal Aid Highway Act the amendment which made this project eligible for emergency Federal assistance on a retroactive basis. The completion of this $15 million bridge and $2.5 million in approaches in less than two years' time is indicative of our national capacity for action which can be developed when the motivation is strong.

And, indeed, there was powerful incentive, not only to replace the Silver Bridge as a vital link between West Virginia and Ohio, but to carefully investigate the critical question of bridge safety.

The shock of the catastrophe which occurred near here in 1967 alerted many officials and citizens to the real possibility that what had happened at Point Pleasant could happen elsewhere. The impact of the bridge collapse was accentuated by the rarity of the occurrence, however.

Hearings by the Senate Public Works Subcommittee on Roads, which I chair, awakened an awareness that our nation faces a serious problem with aging river crossings. We were startled to learn that approximately 150 bridges of all types fail every year. Fortunately, however, these failures are seldom accompanied by loss of life—and rarely, of course, in proportions approaching the deaths caused by the collapse of the original Silver Bridge.

We were informed in our hearings that, although new bridges now are designed to last for 50 years or longer, more than 1,000 existing major spans across navigable waters—bridges that were not built to today's better standards—are more than 40 years old. Thousands of other bridges on our Federal-aid highway system and in county and municipal street systems are more than a generation old. Most of those old spans were built to serve lighter, slower traffic—not the heavier and high-speed traffic of this period.

One expert witness told the subcommittee that there very likely would be more bridge failures were it not for what he called the "forgiveness of steel"—an undefinable quality that keeps bridge structural metal strong despite age and neglect.

But how much longer these bridges can continue to serve us is a matter of conjecture.

Our Senate Public Works Committee gave cognizance to information gained by the Special Task Force on Bridge Safety created by President Lyndon Johnson in late 1967, immediately after the collapse of the Silver Bridge. We came to understand that greater emphasis on bridge safety must be given priority. We realized that work had to begin on developing a special bridge replacement program which will enable people to provide themselves with the necessary transportation links to accommodate their free movement from place to place and support their economic, social and cultural goals.

To encourage and facilitate an attack on this serious problem, I introduced legislation on Friday of last week to establish a special fund to expedite replacement of many aging and inadequate bridges now in the highway network.

This bill would earmark $150 million a year from the highway trust fund to be used exclusively to assist states in the replacement of bridges. It would require the Secretary of Transportation to take an inventory of all bridges on Federal-aid highway systems over navigable waters in the United States. These major bridges would be classified according to serviceability and safety, and each would be assigned a priority for replacement.

My measure would allow the states to receive up to 75 percent of the cost of replacing any of these old bridges determined to be unsafe and inadequate to meet the demands placed on them. And the proposed new bridge program would give priority consideration to replacement of bridges most in danger of failure.

Only by this type of special commitment can we hope to sharply reduce the likelihood of another Silver Bridge disaster. It is imperative that we give formal recognition to the magnitude of the bridge problem and set about correcting it by replacing old, worn and inadequate spans as quickly as possible.

The impact of the Silver Bridge disaster was immediate and widespread. Bridge inspections were increased, maintenance was improved, and load limits were reduced. In some cases, like the Silver Bridge's companion upriver at St. Marys, questionable bridges have been closed rather than take chances on their failure on hazardous continued usage.

New bridge inspection provisions were written into the Federal Highway Act of 1968, as was authorization for Federal emergency relief funds to replace disaster-destroyed bridges. It was under this provision that the Federal Government was able to participate substantially in the financing of this new bridge, the first built under the amendment I sponsored with Representative William Harsha of Ohio.

The Congress is now aware of the scope of the nation's bridge situation. I believe the Federal Government will measure up to its responsibilities, as much to meet the needs of the nation as to provide a memorial to those who perished at Point Pleasant on December 15, 1967.

We acted with dispatch to change the law to enable work on this bridge to begin without undue delay, changes without which it would now be only in the conceptual stage. The accelerated construction of this bridge is as much a tribute to the members of the Congress as it is to the engineers and architects who planned and designed and the workmen who erected it and constructed its approaches.

It is my fervent hope that we will enact a law next year that will enable us to live the rest of our lives as a nation without a repetition of the events of that horrifying evening two years ago near here. Will Allen Dromoogle, in his poem, "The Bridge Builder," said:

"This chasm that has been as naught to me
To that fair-haired youth may a pitfall be;
He, too, must cross in the twilight dim,
Good friend, I am building this bridge for him."

LUTHERAN MEDICAL CENTER—COMMUNITY REDEVELOPMENT

Mr. JAVITS. Mr. President, in Brooklyn, N.Y., in a community called Sunset Park, a dramatic and unprecedented approach to human and urban conservation is about to take place which I understand may well become a model for the improvement of other urban areas through America. I should like to present to the Senate information about this attempt to improve a seriously blighted area.

The Lutheran Medical Center, an 86-year-old New York City neighborhood hospital is playing a vital role in this community-based renewal effort. This voluntary institution has set out to assume a positive role in assisting in the shaping of overall social policy in a community and demonstrate it can help move beyond individual medical care. The hospital's leadership considers its relocation in a low income, ethnically diverse community as an opportunity to help improve the quality of life in the inner city, and to serve as a vehicle with which community, Government, and private financial interests can cooperate in the renewal of one urban neighborhood.

Plans for comprehensive renewal of Sunset Park community began last June, when Lutheran Medical Center President George Adams put forward a daring proposal to relocate the entire hospital service center in an abandoned factory building located just 10 blocks from the present hospital plant. The plant, which was given to the city of New York last April, is close to the Brooklyn waterfront in the "sickest" part of the Sunset Park community. Industry, which once thrived in the area, has gradually moved out, leaving blighted conditions and decay in its wake. The immediate neighborhood has become a breeding place for poverty and disease, contributing to a downward economic plunge which affects all of Sunset Park and, inevitably, the adjacent middle-income community of Bay Ridge.

The Lutheran Medical Center's offer to move to the site was prompted in part by the urgent need to replace its present obsolete and indaquate physical plant, most of which was built before 1910. More important, however, was the firm belief of the hospital leadership that the conversion of the vacant factory into a modern, full-service medical center could restore confidence in the community, reverse its downward trends, and stimulate a new surge of prosperity in Sunset Park. They envisioned the hospital's multi-million dollar investment as the first step in a much larger project of revitalization, which would include the development of new housing and commercial, educational, recreational, industrial, and other facilities necessary to the rebirth of a healthy community.

After 6 months of intensive efforts on the part of the medical center, community groups, the city of New York, and interested individuals, the foresight of the hospital leadership has already been rewarded. What seemed like an "impossible dream" only a short time back is now on the road to becoming reality.

The first breakthrough came with the completion of a report on the feasibility and estimated costs of converting the poured concrete shell of the building into a modern medical center. The report, prepared by a well-known hospital architectural firm, concluded that this unprecedented venture in transforming an obsolete industrial structure into an important community resource was both feasible and economically sound. The architects present a detailed description of how the factory's usable floor space can house a 484-bed general hospital with extensive ambulatory care facilities, almost doubling the hospital's present bed capacity and number of employees. Large areas of unused land around the factory provide ample space for planned future development of health-related services as a day care center, geriatrics centers, extended care facilities, drug and alcohol addiction services, enlarged educational programs, doctors' offices, industrial health services and hospital staff housing.

Estimating the total cost of constructing a comparable new hospital from the ground up at about $37 million, the architects concluded that use of the existing shell will cut approximately $6 million off that amount, as well as providing a considerable financial savings on terms of planning and construction time.

The office of the mayor of the city of New York received the Lutheran Medical Center's proposal with great enthusiasm and undertook to coordinate efforts throughout the city government to make the property available to the hospital. To encourage an environment conducive to community deveolpment around the proposed hospital, the city planning commission has initiated zoning changes in the area surrounding the site, previously zoned for heavy industry.

The city provided a part of the funds to develop a comprehensive plan for rehabilitation of the Sunset Park community. The recommendations of the planners, focusing on the proposed new hospital as the hub of the redevelopment programs, will be completed by January 1, 1970.

A most important facet of this project for Sunset Park has been the active involvement of a historically fragmented community in a cooperative planning process. Early last summer, the medical center initiated meetings with leaders from throughout the community to explore their reactions to the concept of the move. Universal support was given from all organized community groups reaching across traditional ethnic, cultural and economic lines of division. A 16-member redevelopment committee, elected by representatives of more than 25 community organizations, has worked closely with the urban planners to insure a significant community input in the final recommendations for redevelopment.

In less than a year, what began as a new concept of the responsibility of a local hospital to its neighborhood has expanded into a communitywide movement that may well mark the turning point in the history of an entire urban area. The willingness of one institution to come forward as an aggressive advocate for its neighborhood, as the rallying point for a unified community effort and as a bridge between the people, their government, and private economic interests, can serve as an experimental model for future programs of renewal in urban areas throughout America.

I ask unanimous consent that the text of a letter from 40 representatives of these groups to Mayor John V. Lindsay and other city agencies, indicating their unqualified support for the project, be included in my remarks.

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

SUNSET PARK REDEVELOPMENT COMMITTEE,
Brooklyn, N.Y., November 1969.

To: Mayor John V. Lindsay, the New York City Council, the Board of Estimate, the City Planning Commission, the Department of Health, State of New York, the Health and Hospital Planning Council of Southern New York, the Brooklyn Borough President's Office, the Economic Development Agency.

The Sunset Park Redevelopment Committee and the following organizations and individuals wish to make known to all concerned their support of the Lutheran Medical Center and its plan to rebuild our community hospital. We understand that this is the first essential step in a comprehensive program of redevelopment in the Sunset Park community—including housing and other community facilities—to which the City committed itself at a public hearing before the Site Selection Board on August 18, 1969.

We know that Lutheran Medical Center has received expert opinion indicating that the American Machine and Foundry building, at 55th Street and Second Avenue in Brooklyn, can be converted into a 484-bed acute general hospital with extensive ambulatory care facilities. We know the community will save approximately $8 million by using this abandoned building, as against constructing a new hospital from the ground up. We also know that relocation at the AMF site is the only way the hospital can remain in Sunset Park.

Therefore, we urgently request that the City of New York make this building and the attached properties (assets received by the City as a gift) available to Lutheran Medical Center at no cost. We also urge the City to make available to the Medical Center on the same basis the vacant property on 56th Street between First and Second Avenues, which is also owned by the City, and such other adjoining properties as will be necessary for further expansion of the Center's comprehensive services to the community.

The Lutheran Medical Center has shared its plans for the future with the community since their inception. We endorse these plans and we support the Center's efforts to provide leadership in our neighborhood's drive to create forces which can stop the process of deterioration that has afflicted this part of Brooklyn during the last two decades.

We assume that the plans for Sunset Park which are being prepared by the City's commissioned urban planners, working together with the Sunset Park Redevelopment Committee, will be the basis for an immediate program of urban renewal in the area between 39th Street and Owls Head Park, the waterfront and Fourth Avenue. We understand that the City's subsidy of the Medical Center through the AMF building and adjacent land can be the basis of Federal and State programs in housing, community facilities and open space which in turn will generate private sector investment in our community. We see the new Lutheran Medical Center at AMF as the core of this comprehensive program of renewal and rehabilitation.

We commit ourselves to aggressively pursue this community-based effort to improve the quality of life in Sunset Park and we ask that our government officials reaffirm their commitment by immediately implementing this cooperative redevelopment program.

George Adams, Chairman, Sunset Park Redevelopment Committee; Andrew A. DeOrio, Director, St. Rocco's Youth Center, Cochairman, Planning Board No. 7; Elizabeth Perkins, President, 42d Street Block Association; Frances Murray, Executive Director, United Negro/American Association and Area Representative on the Council Against Poverty.

Sdalimaya Staiano, Chairman, Sunset Park Planning Committee; Robert Schultz, Chairman, Sunset Park Housing Coordinating Committee; Pedro Hernandez, Community Organizer; Sunset Park Family Health Center; Gonzalo P————, President, United Puerto Rican and Spanish Orgs. of Sunset Park-Bay Ridge, Inc.

Joseph Nandone, President, Sunset Park Civic Association; Kathleen Tully, Community Planning Board No. 7; Angelo Arculeo, Minority Leader, New York City Council; Guy Hanson, President, 68th Precinct, Youth Community Council; Joseph Lena, Director, L.M.R. Olympics Program.

Thomas A. Ward, 58th Street Board of Trade; Josi Elias, President, Sunset Park Health Council; Joseph J. Dowd, New York State Assemblyman (52nd A.D.); John T. Norton, Chairman, Planning Board No. 10; J. Gerald Shea, President, Bay Ridge Civic Improvement Association.

Edward F. Slattery, Assistant Pastor, Basilica of Our Lady of Perpetual Help; Herbert Gray, Executive Director, United Puerto Rican and Spanish Organizations of Sunset Park-Bay Ridge, Inc.; Wilfred Yugs, United Puerto Rican Student Organizations.

Mateo H. Lorenzo, Community Worker, Puerto Rican Community Development Project; Ellen M. Parcell, Director, Sunset Ridge Organized Community of Kings; Hertha Smagala, Community Organizer, Sunset Park Civic Association.

Paul Gold, Chairman, Brooklyn Army Terminal Development Committee representing: Bay Ridge Community Council, Anchor Savings Bank, Bay Ridge Savings & Loan Association, Brevoort Savings Bank, 86th St. Board of Trade, 5th Ave. Board of Trade, 4th Ave. Merchants Association, First National City Bank, Government Employees Union Local No. 1896, Hamilton Federal Savings & Loan Association, Kings County Lafayette Trust Co., Manufacturers Hanover Trust Co., Merchants & Manufacturers Association of Bush Terminal, Scandinavian-American Business Association.

Enrique Velez, President, Hatillo Civic and Social Club; John J. O'Connor, Pastor, St. Michael's Roman Catholic Church; Frank J. Grande, President, 43d Street Block Association; Jack Crown, President, 45th Street Block Association; Daniel M. Conroy, President, 61st Street Block Association.

Gary W. Lawson, Community Organizer, Maimonides Neighborhood Service Center; Harold Schaefer, Chairman, St. Michael's Parish Council; Rev. Allen K. ———, Pastor, Lutheran Church of St. Jacobi; Ronald Mahany, 56th Street Block Association; Charles Carita, President, 55th Street Block Association.

Farina T. Lenny, President, 56th Street Block Association; Edward R. Riley, President, 55th Street Block Association; Mana T. Medina, Manpower Coordinator for Sunset Park; Jan Matero, First Vice President, Sunset Park Civic Association; Oremand W. Ehzo, Cochairman, 68th Precinct, Youth Ccmmunity Council.

NEW OIL SLICK IN SOUTHERN CALIFORNIA

Mr. CRANSTON. Mr. President, a new oil slick today threatens the beaches of southern California. A main pipe on Union Oil Co.'s platform A is reported to have cracked sufficiently for a slow leak to spill oil into the Santa Barbara Channel. The U.S. Geological Survey district engineer in Santa Barbara told a member of my staff yesterday that the leak had gone undetected for 2 or 3 days. Apparently, the safety devices on the platform are not geared to work when there is a low pressure break in a line.

This is the same platform A from which oil has been leaking since last January when the tragic Santa Barbara blowout occurred. Oil slicks being so common in the vicinity of platform A, the new slick was not detected until a commercial fisherman's spotter plane discovered it yesterday.

Approximately 300 barrels of oil are reported to have escaped. The oil slick's size is variously estimated to cover from 13 to 50 square miles. Fortunately, the slick is moving in a southerly direction away from the beaches of Santa Barbara.

Mr. President, the failure to detect this oil leak serves to illustrate the dangers of underwater drilling. Had such a low-pressure leak occurred on land, it would have been clearly visible for immediate correction, and there would have been no damage done—just a puddle of oil on the ground.

But under water, the entirely different sequence of events and consequences to the environment give more weight to the findings of President Nixon's Panel on Oil Spills. The Du Bridge panel said very clearly:

> The nation still does not have an adequate oil spill technology and has not yet provided the means for bringing an adequate technology into being.

Even more specifically, the Du Bridge report warned that our oil spill surveillance system is inadequate and made the following proposal:

> While considerable experience has accumulated with these techniques and while much of it pertains to definition of oil slicks, there is no operational system available which can be deployed to obtain the precise data that are required for effective monitoring of oil slicks. We therefore recommend a mission-oriented R&D program aimed at developing a combination of perfected techniques that can be used by an operating team to monitor the spread of spilled oil, estimate the quantities involved, and confirm predictions developed from weather and current data.

Mr. President, I find it incredible that we are blindly plunging into the Santa Barbara Channel oil reserves before we have perfected the techniques for safe drilling or for adequate oil spill surveillance and cleanup. I see no reason why our Nation needs Santa Barbara's oil right now, instead of at some future date when its extraction will not threaten the environment.

This new spill strengthens the case made by the Du Bridge report. I urge that President Nixon move to implement the recommendations of his distinguished scientific panel. Specifically, I urge the President to consider classifying the Santa Barbara channel petroleum resources as what the Du Bridge panel calls an "escrow resource" to be held with no drilling starts for a period of time until adequate techniques and skills are perfected. The case for special treatment of the Santa Barbara channel is clearly made by the U.S. Geological Survey paper "Geology, Petroleum Development, and Seismicity of the Santa Barbara Channel Region, California," which Secretary Hickel released at the end of October 1969. In the section "Geologic Characteristics of the Dos Quadros Offshore Oil Field," the field on which platform A stands is described as "unique" because of the extremely shallow layer of porous and permeable interbedded siltstone, claystone, and sandstone. This 300-foot stratum is in unique contact with other fields where the shallowest covering is from 1,000 to many thousands of feet of relatively impermeable strata.

Combine this uniquely thin capping layer of the Dos Quadros field with the unique environmental values and beauties of the Santa Barbara coastline, and our present policy of approving evermore new drilling starts becomes incomprehensible, if not irrational.

With the preponderance of findings published this year by this administration clearly pointing toward the environmental danger of continuing on Santa Barbara oil development without our having developed adequate safeguards, I believe President Nixon has a unique opportunity to correct the errors of the past and at the same time make a dramatic turn toward a new and environmentally sane national policy of oil production. The declaration that the Santa Barbara oil resource is to be held in escrow as a reserve to meet future needs is but one step the President can take in line with the recommendations of his advisers. Another step would be to announce his support of my proposal, S. 3093, to create Federal marine sanctuaries seaward of the areas where the State of California has banned oil drilling.

I ask unanimous consent that two New York Times articles on the subject be printed in the RECORD.

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

[From the New York Times, Dec. 17, 1969]

SCIENTISTS TERM THE CHEMICAL TREATMENT OF OIL SPILLAGE MORE HARMFUL THAN THE "DISEASE"

(By David Bird)

Scientists and engineers have expressed concern here that attempts to control oil spills with chemical dispersants are causing more harm than the oil itself and may be creating long-term ecologic damage, such as is now being attributed to DDT and other pesticides.

The concern is expressed in reports and discussion at a three-day Joint Conference on Prevention and Control of Oil Spills, ending today at the Americana Hotel. The meeting is sponsored by the Federal Water Pollution Control Administration and the American Petroleum Institute, an industry group.

TORREY CANYON DISASTER

When the conference was planned last summer, the sponsors expected about 300 persons to attend. More than 1,000 have registered.

Their interest reflects increased public concern after two disastrous oil spills.

The first occurred in March, 1967, when the supertanker Torrey Canyon struck a reef off the southern coast of England and sent 30 million gallons of crude oil oozing toward the Cornish coast and across the English Channel to the shores of Brittany.

The second oil spill occurred early this year, when 18 million gallons leaked to the surface of the Santa Barbara Channel in California during offshore drilling operations.

At least one million tons of oil are spilled every year from tankers, manufacturing plants and refineries. Much of the effort to control the spills has centered on chemical dispersants that dissolve the oil, spreading it out so thin that it is not noticeable.

Some scientists say that the dispersants are merely an attempt to hide the visible effect of the spills and that the chemicals pose an additional danger.

A. Oda, a researcher with the Ontario Water Resources Commission, told the con-

ference yesterday that studies of dispersants since the Torrey Canyon disaster have led to the conclusion that some of them "were far more deadly and far more damaging to marine life and ecology than the oil itself."

BEACH DAMAGE, TOO

Howard J. Lamp'l of the Federal Water Pollution Control Administration said, "We firmly believe that the use of dispersants, emulsifiers and other chemicals is entirely unjustified in the cleanup of oil-polluted beaches."

He said Federal studies had shown that the oil, when "mixed with chemicals, caused penetration of the mixture into the sand at least three times the depth of the untreated oil. In oil-polluted water, Federal officials have recommended that the chemicals be used only as a last resort when it is impossible to soak up the oil with straw or similar material or to suck it up by mechanical means.

Perhaps the strongest attack on the present methods of controlling oil spills came from a biologist, Dr. Ira N. Gabrielson, who is president of the Wildlife Management Institute. He said: "The usual approach is to try to contain or isolate the floating oil—an attack that works rarely, if at all—or to remove it from the public eye by sweeping it under the ocean's surface by means of dispersants or detergents. More animal life was killed by chemicals in the Torrey Canyon accident than by the oil itself."

"Even if the detergents or dispersants are not toxic in themselves," Dr. Gabrielson continued, their action in breaking up the oil "apparently accelerates the exposure of marine life to the toxic hydrocarbons" in oil.

He noted that "some of the hydrocarbon fractions are suspected of having carcinogenic activity," that is, they are linked to cancer.

"These hydrocarbons are stable," Dr. Gabrielson said, "and they can be retained and concentrated in the marine food cycle as the lesser animals are consumed by those higher up the animal ladder. Some ultimately may end up in man."

Scientists have recently found that it is just such a concentration of DDT that stays in the food chain and has harmful effects on the life cycles of higher animals.

[From the New York Times, Dec. 18, 1969]

IN THE NATION: SEEDING THE CLOUDS

(By Tom Wicker)

It has been suggested at a meeting of the American Geophysical Union in San Francisco that a small nuclear device be detonated on the moon, so that the various quiverings and wobbles that would be set off would tell the instruments that have been planted on the lunar surface what is inside the old ball of cheese. No doubt this is of great importance to know, but can we be sure that the knowledge would be worth the possible cost?

Aside from the obvious questions about the effects of nuclear fallout in the moon's atmosphere and political fallout in the earth's atmosphere, what might be the total environmental consequences of such an explosion—for the moon itself, for those who will be visiting it from earth, for other objects in the solar system? Based on past performance, it is a good bet that there would be some unexpected and probably unwelcome result.

DUBIOUS BENEFITS

In Paris, for instance, a group of hydrologists and other scientists have been finding out a lot this week about what man has wrought in the name of progress. The new Indus and Ganges River irrigation systems, they were told, have raised the water table in the flat plains of India, and in the process have contaminated much topsoil with salt that rose from the earth with the water. The net result is a loss of arable land. The Aswan Dam is spreading disease with its irrigation waters and damaging the fertile Nile delta by interfering with the ancient silting process.

PERILS OF TECHNOLOGY

These are rather spectacular examples of the unforeseen consequences of great technological feats, but they are by no means isolated. Here in the United States, a horrid recent example is the virtual ruin of the Santa Barbara Channel off the California coast because of oil leaks from the ocean floor, set off by the latest scientific drilling techniques.

Just sixty years ago today the Wright brothers got their strange-looking crate into the air above Kill Devil Hill for the few seconds it took to introduce a whole new epoch of technology. Whatever the Wrights thought powered flight might do for man, it is a reasonably safe bet that neither they nor anyone else thought it might choke him to death. Yet, between the automobile, which at about the same time was getting a good start on creating smog, and the airplane, man may yet expire for lack of unpolluted air to breathe. And the end is by no means in sight. Wait until the Boeing 747 and the Concorde and the C–5A and the American SST with their monstrous engines get into the air, along with all the other burnt-kerosene spouters already spewing their poisons on mankind.

One of the most critical problems of this kind—although it should have been foreseen, and probably was by the kind of people who are dismissed as idealists or crackpots—is the runoff of agricultural chemicals into lake, river and stream waters. This poses the usual dilemma agonizingly; the chemicals increase food production for a starving world, but they also pollute fresh waters and kill off fish, so that the dead seas that result foul the air and earth in their turn.

PRODUCTION OR POLLUTION?

What are the relative values in such a conflict? Must men choose between Malthus and the "silent spring"? Surely, more foresight, caution and sensitivity can prevent the necessity for most such either/or choices. It may not prove literally true, as was suggested at the Paris meeting, that diverting the Yukon and Fraser Rivers south to water the American plains could tilt the earth on its axis by the weight of shifting surface water; yet that is the kind of possibility that man's almost limitless technological ingenuity now forces him to consider. Anyone who thinks, for instance, that paving over the Everglades for a jetport is damaging only to the wildlife it would kill and displace ought to remember the social and economic consequences for humans—the so-called dustbowl—that followed the indiscriminate plowing up of the Great Plains.

THE EVEREST SYNDROME

Yet indefatigable man plunges on, gripped in his tiny genius by the Everest syndrome, climbing every technological summit because it is there. It seems not in his nature to let well enough alone, even in his environment, so that in his impulse to build he plants the seeds of destruction.

Ultimately, can man master anything that really matters? Certainly not nature, and least of all, himself; rather, it is altogether likely that if the Biblical flood someday engulfs the earth, it will flow from seeded clouds. That might even be a fitting end.

INAUGURATION OF LONDON-TO-MIAMI FLIGHTS ON JANUARY 1, 1970

Mr. GURNEY. Mr. President, in 1961 Congress created the U.S. Travel Service as a part of the Department of Commerce with a view toward expanding the flow of foreign travelers to the United States. The Travel Service has attempted to bring together the transportation people, entertainment, and hotel and restaurant industries and other governmental agencies to boost the "Discover America program." The ultimate hope behind the legislation was that such a Travel Service would give us a greater part of the world travel market. It has been estimated that three-fourths of all money spent on international tourism, and 90 percent of all international travel as part of tourism, occur in the two major areas of the world that are developed and can accommodate this traffic: that is the United States and Europe. The United States has come off second best in this friendly competition so far. The simple reason is that so many Americans choose to go to Europe to vacation. It is estimated that 1967, the last year for which we have any reliable figures, the U.S. travel deficit was $2.1 billion. A substantial part of this sum can be traced to the fact many Americans, as a matter of course, spend their dollars with the foreign carriers who fly them to Europe.

There has been an encouraging development recently which might very well encourage Americans to use domestic carriers and at the same time encourage Europeans to vacation in the United States. That is the inauguration of the new nonstop air route between Miami, Fla., and London, England. We can expect that this route will bring many European travelers to the United States and to the Miami area and will also be used as a gateway for connection with Latin America. Under a bilateral agreement with the United Kingdom, the Miami-London route will be served by two airlines only, the one a British carrier, the other, a U.S.-flag carrier. National Airlines has been chosen as the American carrier for this route. This is entirely logical since National's home base is in Florida, and it has for 35 years had experience in Florida tourism and in promoting air traffic. I think this experience will result in many, many European travelers coming to the United States in years to come. The rapid growth of industry and commerce and population in my own State of Florida and indeed throughout the southeastern region of the United States, with its enormous potential for tourism and vacationing, makes this Miami-London air route a logical development. January 1, 1970, the beginning of a new decade, will mark the inauguration of this new and very promising air service. Mr. President, I am confident that the inauguration of this new service will open a new gateway for Americans going to Europe and also, significantly, for Europeans coming to visit America.

For many countries, international tourism is the single most important export industry and the source of much of their foreign exchange. This is a field that we have neglected too long. There are many, many desirable byproducts of tourism here in America over and above the dollar earnings which they result in. Bringing people here to see the glories and the wonders of our country and sending them home with the favorable impressions of our country and our people is a desirable, though unfortunately un-

derestimated, aspect of our foreign policy. For these reasons, I think that the establishment of a Miami-London route is a great step forward for the U.S. tourist industry. The president of National Airlines, Mr. L. B. Maytag, has pledged that his company spend at least $1 million in 1970 to persuade Europeans to visit America. Mr. President, I wish to congratulate the carriers, British and American, and wish them Godspeed in this happy new venture.

ADDRESS BY SENATOR McGOVERN BEFORE NATIONAL CONVENTION OF ASSOCIATION OF FARMER-ELECTED COMMITTEEMEN

Mr. EAGLETON. Mr. President, last Friday, December 12, the distinguished Senator from South Dakota (Mr. McGOVERN) visited my hometown of St. Louis, Mo., to address the national convention of the Association of Farmer-Elected Committeemen.

Senator McGOVERN has spoken eloquently on the challenges to American agriculture before and he did so again last Friday.

He understands the problems of the farmer who grows our bountiful agricultural abundance as well as the plight of the 15,000,000 hungry Americans who do not share in it.

His work in the field of hunger is well known. His service on the Agriculture Committee has produced a thoughtful understanding of our agricultural problems as well as constructive legislation to assist in their solution.

Senator McGOVERN is the principle sponsor of S. 3068, a bill to improve farm income and insure adequate supplies of agricultural commodities by extending and improving certain commodity programs. I am proud to be a cosponsor of this legislation. I especially commend to my colleagues Senator McGOVERN's remarks regarding S. 3068.

Mr. President, I ask unanimous consent that excerpts from Senator McGOVERN's perceptive address be printed in the RECORD.

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

AMERICAN AGRICULTURE IN A HUNGRY WORLD

(By Senator GEORGE McGOVERN)

It is a pleasure for me to be with you and to share what I hope will be some useful ideas on the outlook for American agriculture and the challenge of a hungry world.

You are a remarkable group of people. Anyone who can be closely identified with farm programs and still get elected by the farmers is performing something of a political miracle. I know a little bit about miracles myself. The guy who said "No man is an island," has never run for office as a Democrat in South Dakota.

In any event, you and I share a concern about the health of American agriculture—not only because of its importance to our farm families and our national economy, but also because American agriculture is the lifeline of a hungry world. No problem of the 1970's will be any more urgent than the necessity of increasing world food production and reducing world population growth. If those two closely related problems are not resolved, there will be little chance for an orderly and peaceful world.

The global food-population crisis challenges America and especially American agriculture in four ways:

First, we need to undergird the economic health of our own food producers—the American family farmers.

Secondly, we need to make the best possible use of our food abundance in eliminating hunger in America. It is inexcusable that one American child should suffer the blight of hunger and malnutrition.

Thirdly, we should use our agriculture as effectively as possible in reducing hunger abroad.

Fourth, we should share more effectively our technical know-how in food production and family planning with the developing countries.

I see these four responses costing roughly $10 billion a year more than we are now investing. That $10 billion should be invested in approximately equal portions of $2½ billion in each of the four programs. I would propose that this $10 billion be secured by an equal reduction in the arms spending that now consumes $80 billion annually. We have clearly seen this year that wasteful practices in the form of fantastic cost overruns and ill-advised weapons systems are eating up billions of dollars in tax funds. I believe we could contribute more to our national defense and to world peace by strengthening our farm economy, by ending hunger and malnutrition in America, and by reducing hunger abroad. A Budget Bureau analysis tells us that malnutrition costs America three an a half times as much as it would cost to end it. And on a world scale, I believe that a few billion dollars spent on drying up the swamplands in which Communism breeds would accomplish more than the $125 billion and 40,000 American lives we have spent trying to fight Communism in Southeast Asia.

Let us look more closely at each of the factors I have mentioned beginning with the current condition of our own agriculture.

The statistics leave no room for doubt about the outlook facing family farmers in this country. Disposable personal per capita income of farm operators is only two-thirds that of the income of other Americans. You receive, respectively, 1942 prices for wheat, 1944 prices for corn, 1952 prices for livestock, and 1942 prices for cotton. Yet, you pay enormously inflated 1969 prices for all of your production and living expenses, and galloping 1969 interest rates for the credit you need to stay in business. And those interest charges are applied to a farm debt that approaches $50 billion.

The squeeze between low prices and rising costs of production is driving farmers off the land into overcrowded cities. Almost three million farm units have disappeared since the close of World War II, and the trend continues. Between 1960 and 1969, my home State of South Dakota suffered a loss of some 34,300 positions in agricultural employment. We also suffered a net loss in total population, as did several other of the Nation's most agricultural States.

We have not done very well. But even this dismal record does not describe the full extent of our difficulty. Next year, we must face the expiration of the farm program authority which has allowed us to do as well as we have.

Without new legislation, we will revert to the laws in effect prior to 1965, with a drop in farm income of at least $1 billion and probably more. Somehow, between now and the end of next year, we have to come up with the legislative guidelines for the farm policies of the 1970's, and we have to find 51 votes in the Senate and 218 votes in the House to get them passed.

I am here as an advocate of a specific approach, known as the coalition farm bill. I introduced it in the Senate on October twenty-third with a number of cosponsors, and it is also pending in the House. It was developed and is endorsed by some twenty-two national farm organizations and commodity groups, and amounts essentially to a renewal, with some substantial improvements, of the programs which have been in effect for the past four years.

For wheat, it would retain the 100 per cent of parity provisions we have now for domestic food consumption and would add a 65 cents per bushel export certificate on the 40 to 45 per cent that is shipped abroad. This would add about $375 to $400 million to wheat income.

The feed grains section would increase the loan from $1.05 to $1.15 per bushel and the direct payment from 30 to 40 cents for corn, with proportionate increases for other feed grains.

The bill extends the cotton and rice programs and the Wool Act, and continues the Class I base plan for dairy with some clarifying changes to make the program more attractive.

It provides new authority for diversion programs of soybeans and flaxseed, and also for the establishment of marketing orders for any commodity when requested by a majority of the producers.

Finally, it mandates the establishment of consumer protection reserves of wheat, feed grains, soybeans and cotton, which would be set aside in surplus periods to be held until an emergency arises and prices go over parity.

I suggest, however, that if we stick to our traditional methods of presenting farm issues to the country, then whatever is ultimately passed, if anything, will be a disappointment. And I include my own bill in that assessment. This is true because we are already compromising in advance with those who think that both our farm programs and our food cost too much. And if our farm programs are written from that point of view, then there is simply no way for the farmer to get a better deal. Any increase he gets can only come from the taxpayer, through higher price supports and payments, or from the consumer, through increased costs. If both sources are placed out of reach, then no matter how much we adjust the shape or the format of farm programs we're going to watch a continued decline in farm income.

When those of us who still believe in justice for the farmer get together, therefore, I believe we need urgently to go beyond discussions of the *content* of farm programs and the reasons why *we* believe farm income must be improved. We must discuss as well how to convince those 51 Senators and 218 Representatives and *their* increasingly *urban* constituencies—that *they* have an interest in a healthy farm economy.

This country has reaped the benefits of a revolution in farm productivity; there needs now to be a revolution in the way it views the people who brought it about.

We have some blackeyes, some borne of a misunderstanding of the reasons for farm programs and, frankly, some deserved. You all know that there are farm spokesmen who rail against programs to cure the critical illnesses that plague other parts of the country, and who close their eyes to the blight of poverty and hunger that exists even in their own areas. Each such statement tends to weaken the reservoir of interest and concern that we can expect from our city colleagues.

On the other hand, the urban population should understand that they have a vital economic interest in American agriculture. Farmers spend $37 billion each year. 16 million city people are employed in processing and marketing farm products. And there is another mutual concern between town and farm. When we ignore the economic problems of farm people we do not dispose of them; we do no more than move them to other parts of the country where their solution is immensely more difficult and more costly.

In the short period since World War II, United States population has grown by 60 million—by 44 percent. During the same period almost half of the farms disappeared. Almost 3 million farms have been wiped out, and more than 20 million people, with no local economic base to support them, have left farms and small towns for the cities. Today seventy percent of our people are jammed on top of each other on less than one percent of the Nation's land area.

But we're just getting started. Our population is expected to increase by half again in the next thirty years—another 100 million people. Unless present trends are halted and reversed, 80 or 90 million of those will find themselves in huge metropolitan areas.

There they will exist. Each new arrival will add his share to the pollution of the air and water, to the congestion of the streets, to the costs of public services, and to the crushing shortage of space—all problems we recognize as already intolerable. Each new arrival will retard efforts to enhance the quality of urban life, and each will add to the dehumanization and the discomfort of those who live there now.

Certainly farmers and city dwellers have a common interest in halting the rural to urban migration. It is time we made it a common cause.

To do so we can use less of government officials talking timidly to rural audiences about the need to have farm programs which will reduce the USDA budget and the housewives' budget at the same time.

We need less reference to welfare as the solution for those farmers who are displaced each year. We need more of the highest government officials acting as advocates before those who need persuading. And we need more of farmers themselves understanding urban problems and seeking out opportunities for involvement in their solution.

We need, too, for this country, and particularly the leaders of the Executive Branch, to begin understanding the great role our agriculture can play in the construction of a more healthy society at home and a safer society among all the world's people.

Our food surveys in recent years have told us that two-thirds of our planet's population is hungry or malnourished and that even in our own land there are 15 million of our people who are denied food to sustain strong bodies and healthy minds.

In 1966, the year when our food surpluses ran out, the Congress responded with a decision that Food for Peace should be continued and enlarged. We viewed war against hunger as important enough to be included in our production plans, rather than receiving our accidental output in excess of our own needs. We provided authority for purchases in the market, at prevailing prices, for food aid to other countries.

As you know too well, that authority has received little attention. Our world food programs still limp along at only about half of the amounts authorized, and I am told that our missions abroad are under instructions to discourage applications. A hungry world watches as we idle our food productivity, and as we meanwhile pour billions of dollars into weapons designed to control men through fear rather than to win their allegiance through our best efforts to end their suffering. The hungry and malnourished at home watch as we persist in the belief that our success as a nation depends not upon the strength and the comfort of our own people but on our ability to build an ABM, an SST or an Apollo 11.

It is time to reorder our national priorities, in directions which reflect the higher interests shared by all Americans, farmer and consumer alike.

I am convinced that the American people will respond to a clear call for a new order of public business which includes economic justice for family farms and a full share in the nation's prosperity for rural America. This in turn will enable our country to play its part in using food and technology to lay the foundations for a world at peace. That is a goal worthy of the best effort of us all.

NEW WORLD TRADE INITIATIVES—ADDRESS BY ASSISTANT SECRETARY OF COMMERCE DAVIS

Mr. JAVITS. Mr. President, I ask unanimous consent that the remarks entitled "New World Trade Initiatives by the Industrial Nations—Key to Better Life in the World of the 1970's," delivered by Assistant Secretary of Commerce Davis, be printed in the RECORD.

As the New Year approaches and as Europe in particular contemplates significant changes including United Kingdom entry into the Common Market, Secretary Davis' summing up remarks are encouraging. He states:

The United States understands and accepts gladly its responsibility to participate to the fullest extent with other nations to further world economic growth. Let us enter the new decade with determination to work together among the nations to achieve a better life for all the world of the 1970's.

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

NEW WORLD TRADE INITIATIVES BY THE INDUSTRIAL NATIONS—KEY TO BETTER LIFE IN THE WORLD OF THE 1970'S

(By Kenneth N. Davis, Jr., Assistant Secretary of Commerce for Domestic and International Business)

It is a particular pleasure to be here with these two distinguished groups—the American Chamber of Commerce of Paris and the American Club of Paris. The opening of the new United States' Trade Center here is a most auspicious occasion, both for what it will mean in increased business contacts between our countries now, and for what it symbolizes for the future development of international trade and investment. Like the seven similar United States' Trade Centers throughout the world, we would not have planned this one if we had not seen coming growth opportunities far beyond the present levels of international business. I hope you will all visit the Trade Center soon, both to see the fine facility and meet its capable staff, and also to see its first exhibition of laser equipment. You will see new products that are particularly good examples of the kind of advanced technology which the United States has to offer and which Europe will want to utilize in its science and industry.

A TIME TO LOOK TO THE FUTURE

In only a few short weeks, we will be entering the decade of the 1970's. In the United States, a new Administration has been in office for ten months, and in France and Germany there are also new Governments. Economic issues have been high on the priority lists of the policy-makers in most of the world's capitals in recent months. The outcome of their deliberations, both in their domestic councils and in the international forums, will have great impact on the future course of the world's business affairs. And so, it is an especially appropriate time to examine the prospects for business policy and for leaders like yourselves to become more active in making your views and proposals known to government. I can assure you, we have been hearing a great deal in Washington lately from the American business community.

In looking forward with you today, I would like to discuss three main points:

First, I believe that if we objectively examine the past and also where we stand today, we will discern some basic trends in World Trade, which we can expect to continue. We should not attempt to resist the positive forces of change (new technology, in particular) but rather find ways to take maximum advantage of the great new possibilities offered.

Second, in the next decade, it will become a matter of vital necessity for the great bulk of the industrial enterprises of all nations to become international in scope. No longer will overseas markets be the interest of only large companies. And no longer will some specialized industries be able to think of their domestic market as a private preserve, secure from outside interest or competition.

Third, the time has come for a new round of dedicated efforts by governments and industry together to vastly improve the framework in which the world carries on its business affairs. I am not talking of just more tariff reductions, or only the very important non-tariff barrier discussions which are just getting underway in the GATT. I am referring to the need for good faith bargaining on a whole range of subjects, including the problems of the developing nations, international labor practices and conditions, antitrust policies, foreign investment restrictions, product safety and performance standards, and many, many more. We must not let the practical necessity of dealing with difficult short-term national or industry problems divert us from a golden long-term opportunity of utilizing the competitive global business system to carry the world forward into history's greatest period of economic well-being for all peoples.

Certainly, the most difficult immediate problem facing both the United States and France today is inflation. We are beginning to win our fight against inflation and we are confident that it will be brought under control without recession, which would have most serious consequences elsewhere in the world. We are also encouraged by the way France is attacking its problems and the progress that has been made already.

LESSONS FROM THE PAST

One of the Committees of the United States Congress is the Joint Economic Committee, with both the Senate and House of Representatives included in its membership. In December, this Committee will commence hearings on International Economic Matters, hearings similar to those held ten years ago preparatory to the Kennedy Round of tariff reductions. Recently I read through the record of those old hearings and noted the diversity of opinion as to whether tariff reduction was really a good thing for the U.S. Strong arguments were offered by some members supporting the view that the United States should not go along with tariff reductions. As we all know, the tariffs were reduced, and the results have been beneficial to all of the world. A few figures tell the story. In 1960, total exports from Free World Countries were $112.6 billion. By 1968, they had grown to $212.9 billion. The United States share in Free World exports declined from 17½% to 15%, but in dollar volume our exports rose from about $20 billion in 1960 to $34.7 billion in 1968. The EEC's share grew from 26% to 30% in the same 1960–1968 period. The EEC's exports have been growing at a very healthy 10% annual rate during this whole period. Japan's exports have grown by even more—at 15% per year. If World Trade just keeps growing as fast as in the last 8 years, by 1980 total Free World Trade will amount to over half a trillion dollars annually.

Another measure of the growth of international commerce is the increase in overseas investments by companies from many countries. In 1968, sales of foreign subsidies of United States' companies, for example,

topped $200 billion—a very large figure compared to our $34 billion in exports. To the people of the world as a whole, however, the growth in per capita income is the most rewarding yardstick. In every country, incomes rose, and in many the growth were in multiples of 3, 4 or more times. Here is the real proof that expansionist policies in international business are paying off. The only question is, how can we accelerate the process while maintaining economic stability in the world?

I have already mentioned that new technology is one of the basic forces which we must capitalize on, rather than resist. There are many, many new technologies of course. Jet aircraft, nuclear power and the computer are particularly strong examples of technologies which are bound to change the way we live and work. Does anyone doubt, for instance, that the billions of dollars worth of "Jumbo Jets" which are on order will not change our lives? Those of you who saw the first 747 land at the Paris Air Show in June got a first-hand impression of the impact of new technology!

In another field, that of communications and computers, I saw in my own company how a new technology could change our whole approach to running our worldwide business. Overseas plants and laboratories became as close together as domestic facilities from a management standpoint.

Gentlemen, I don't believe I have to tell you that even more far-reaching technological changes will be coming. The successful companies and the great nations will be the ones that adapt these new technologies to their expansion and advancement. In the 1970's, modern technology will make it as easy to do business in another country as we do today in another city in our own lands.

FURTHER INTERNATIONALIZATION OF WORLD BUSINESS

As in most industrial nations today, we work hard at encouraging more American companies to export. Even though our dollar volume of exports leads all others, as a share of national output we lag behind most European nations and Japan. We export only about 4% of our GNP while others typically export 10 to 20%. A few weeks ago, I was talking to the president of a successful Texas company and found that he did no foreign business at all—no exports, no foreign plants or licensees. "Why should I," he said, "I have plenty of business and I haven't even opened up California yet!" This attitude may be alright in a booming economy. But the day will come when he, like many others will need all the markets he can find. Of particular concern are inefficient businesses which have not kept up with modernization trends. It used to be that some businesses could go on for years without fear of falling behind. They perhaps had a unique knowledge of their product or market, or perhaps the demand was too small to attract competition from at home or abroad. With the communication and transportation facilities improvements which I have mentioned, and the growing awareness of businessmen everywhere that doing business abroad is not so difficult, competition may suddenly arrive from anywhere. This may be hard on the inefficient producer, but in the long run, it is good for the consumer and the public as a whole. Government must not choose to protect the inefficient producer, but rather to encourage and help him to become more efficient or leave the business to others.

So far, it has been the larger firms which have become accustomed to the international life. More and more, we are finding smaller companies entering the field. Exporting through foreign distributors is a well understood practice, and now, investment in overseas facilities by smaller companies is growing rapidly. The United States actively promotes its "Invest in the U.S.A." program here in Europe, with surprising interest being shown by smaller companies. We expect and hope the trend to accelerate.

NEED FOR NEW INITIATIVES BY GOVERNMENT AND INDUSTRY

From foreign government officials and business leaders visiting the United States, the most commonly heard question is "Is the United States becoming protectionist in its thinking?" The most often heard request from these same dignitaries is "Will the United States take the lead in a new initiative to keep the world moving toward trade expansion?"

It can be fairly said that in the United States today there are many who are questioning our past expansionist policies. Most of these questions stem, I believe, from the observation that many foreign markets are in part closed to United States companies. Japan in particular is felt to have been far less than fair in permitting U.S. business access to the Japanese market in anyway comparable to what we have already given Japan. In Europe, too, there are old restrictive practices still in effect and signs of new ones being constructed. The United States could far better afford to accept these onerous conditions when it was the only strong industrial nation. Today we find that, through the transfer of United States technology and through independent development by others, there are many products from many countries that can compete effectively with our own. I can assure you that the forces of international business expansion are far stronger in the United States than those who would turn back. But there is a growing sentiment being heard from both free traders and protectionists that ways must be found to advance more equitability with other nations in expanding international business activity. The new initiatives which are being called for should be joint initiatives with all of our trading partners, not from the U.S. alone.

More willingness is needed from other nations to permit and encourage wide competition in all markets, even those that have been preserved for some domestic industries in the past. As I mentioned earlier, the upcoming round of non-tariff barrier discussions in the GATT offers a critical test of every nation's sincerity in wanting expanded, freer trade. For those who have questioned our willingness to match others in moving toward freer trade, I would point to the current discussion of tariff preferences for the developing countries. The United States has just made the most liberal offer of any nation. We stand ready to provide maximum cooperation and urge the other industrial nations to join us.

SUMMING UP

I have tried today to review with you the fundamental factors that will be affecting the development of world trade in the 1970's. These factors are already influencing United States' trade policies in many areas. There is no question in our minds, but that a period of further world business growth lies ahead, and that internationalization and technological innovation will increasingly become the watchwords of businessmen and government leaders everywhere. The United States understands and accepts gladly its responsibility to participate to the fullest extent with other nations to further world economic growth. Let us enter the new decade with determination to work together among the nations to achieve a better life for all in the world of the '70's.

NICHOLAS VON HOFFMAN ON THE BLACK PANTHER PARTY

Mr. KENNEDY. Mr. President, until recent weeks the Black Panther Party has stood only as a mysterious force in the minds of most Americans. Occasionally one hears the ministrations of defiance or claims for property and justice from Panther orators. Yet, none of us has seriously considered much of what was said.

Today, during our annual season of peace, the Panthers cloak of dark conspiracy has been dramatically reformed because of tragedy and death. Blacks and whites who previously ignored or avoided Panthers and their teachings are now publicly concerned and firmly aroused because of police actions in Chicago and Los Angeles.

In a recent article by Nicholas von Hoffman in the Washington Post we read that black Congressmen "are demanding the great Panther hunt be called off". Indeed, these Congressmen are scheduling an inquiry in Chicago to get information about the Panther's confrontations with police.

Mr. President, I am also concerned about these recent actions. Mr. von Hoffman expresses what I believe is a clear view of the need for a reasoned and judicious look at this entire matter. Woefully, we are still a people who become aroused or concerned about matters only after spectacular or bizarre events snap us out of the comfortable lethargy that shadows our usual daily ventures.

I do not propose to stand in judgment of what happened in Chicago or Los Angeles. But I am painfully sensitive to Mr. von Hoffman's assertion that

> The white-controlled mechanisms of protection have been notably ineffective in keeping lower-class black leaders alive and well . . .

I am seriously concerned about the effect on all black people in America that these and other aspects of our judicial and legal processes will have. Surely we must give that a high priority in our concerns for improving life for every American.

I ask unanimous consent that Mr. von Hoffman's column published in the Washington Post of Monday, December 15, be printed in the RECORD. There is a message in that column that will serve us well if we are sincere in our claims to bring harmony to our "brothers".

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

THE GREAT PANTHER HUNT

(A Commentary by Nicholas von Hoffman)

We Americans are mixed up in so many killings, it's not easy to separate out the routine hits from the important ones. Anybody with half a brain, however, can see the offing of Fred Hamilton, chairman of the Illinois Black Panther Party by the forces of lawnorder was the most significant rubout of 1969, a year that is making a late calendar effort to equal the carnage of 1968.

Until the gunsels gave it to Hampton in his bed, there had been two liberation movements in the black American world. There had been the one we liberal white people called "responsible" and "moderate" and the other which we spoke of as "militant," "radical" and "irresponsible." That's over.

Once Ralph David Abernathy wouldn't have been caught within miles of a Black Panther. The other day he went to Fred Hampton's funeral and spoke words of consolation over the man's body. Black Congressmen of the stripe who'd fidget and look

quiet when Rap Brown's name came up are demanding the Great Panther Hunt be called off.

This is going to confuse white people who've been told that the Panther is a predatory carnivore in a land of herbivorous ungulates. To us whites, Panthers are gangsters, Communists, murderers and racists; we believe Panthers are very dangerous people who must be disarmed immediately at all costs.

But the situation created by the latest shooting and killing in Chicago and Los Angeles is so bad we must make an effort to drop our ethnocentrism and try to imagine how a black person might look at what's happening. We look at each of these police attacks as a unique case, just as we look at Mylai as an "isolated incident." It doesn't occur to us that a black man might see a pattern in what's going on.

He will remember the Marcus Garvey liberation movement of the 1920s and the Black Muslim movement of the 1950s, both important and promising efforts at the political organization of the urban black poor by blacks themselves without hidden white financial support and control. Both movements were smashed by the white government.

We whites buy the Los Angeles police department's explanation of the attack the other day on the grounds the Panthers in the apartment had guns and fought back. A black person might remember the infantry attack launched by the L.A.P.D. in 1965 against The Honorable Elijah Muhammad's temple there. The assault, also near dawn, included firing nobody knows how many rounds of machine gun ammunition in the place. When it was over no guns were found.

You don't have to be a fanatic or a Communist or an irresponsible militant to conclude that, if the police are going to attack you with machine guns when you're unarmed, you'd do as well to try to defend yourself. In fact, a nonwhite person might decide, after comparing Chicago with Los Angeles, that it was the guns that saved the people's lives.

Consider that in Chicago there is serious reason to doubt that Hampton was armed or ready to shoot back. (The police contend he was, but police testimony about killing black radicals ought not to be given too much weight.) So Hampton—possibly unarmed—may have been burst in on and slaughtered in his bed, while in Los Angeles, where the Panthers fought, that battle went on till daylight and enough people had gathered to see and be witnesses to any murdering of unarmed men.

Some people will read this and say the writer is encouraging people to pick up guns and shoot policemen. He is not. He is as absolutely against citizens murdering policemen as he is against policemen murdering citizens. It's wrong, unlawful, insane and tragic. What we are discussing here is how it can come to pass that men would do such things.

We well-to-do white people, when we're in a serious jam, we get ourselves a lawyer, we go to court and we sue. Black people don't have money for that and if they did, getting justice or protection from these white courts is a very iffy proposition. The white-controlled mechanisms of protection have been notably ineffective in keeping lower-class black leaders alive and well: Dr. Martin Luther King (murdered), Medgar Evers (murdered), Malcolm X (murdered), Eldridge Cleaver (exiled), Stokely Carmichael (exiled), Robert Williams (exiled, returned and now jailed), Bobby Seale (jailed). The Panthers alone claim that 28 of their top people have been murdered in the last couple of years and there's no strong prima facie reason to disbelieve them, but these are the big famous names or the members of relatively large and well-known organizations. There are countless episodes of repression and violence that either go unreported or only get a couple of lines in the back of the paper. For example in September in Camden, N.J., the cops raided a garment factory run by the Black People's Unity Movement, smashed their sewing machines and put their leader in jail.

The best thing that could happen is that Attorney General Mitchell would get his mojo going and do what he's paid for instead of the opposite. Fat chance. So how are black politicals going to get protection? Perhaps the best thing would be for rich, white kids to bed down in every Panther apartment and headquarters so that the cops will have to shoot through them to get at the black cats. This was what was done in the South during the Civil Rights Movement era and it unquestionably saved a lot of black lives. Even a cracker from the Justice Department is going to think a little before he messes with a young Dupont or Rockefeller.

If this killing and jailing and beating doesn't stop, the blacks are going to shoot back. If their lower-class political organizations are smashed, they'll do it under the guise of conventional crime. This is already happening. The urban crime that the government is unable to prevent is actually an individualized, unorganized form of guerilla warfare conducted by people with little political consciousness but an overwhelming hatred for the circumstances under which they must live.

Hundreds of thousands of young black men are growing up in the cities without the Southern tradition of subservience which bred a self-hatred that caused black men to kill each other. They will fight lawnorder and they will be joined by a certain number of whites. The results will be catastrophic for everyone. Such will surely happen unless we white men learn that how we see ourselves isn't necessarily how we are. We've been told the truth about ourselves often enough but we never listen. Nearly a hundred years ago, Sitting Bull, the great Indian chief, said it right and said it straight at the Powder River Council:

"Behold, my brothers, the spring has come; the earth has received the embraces of the sun and we shall soon see the results of that love.

"Every seed is awakened and so has all animal life. It is through this mysterious power that we too have our being, and therefore we yield to our neighbors, even our animal neighbors, the same right as ourselves, to inhabit this land.

"Yet, hear me, people, we have now to deal with another race—small and feeble when our fathers first met them but now great and overbearing. Strangely enough they have a mind to till the soil and the love of possession is a disease with them. These people have made many rules that the rich may break but the poor may not. They take tithes from the poor and weak to support the rich and those who rule. They claim this mother of ours, the earth, for their own and fence their neighbors away; they deface her with their buildings and their refuse. That nation is like a spring freshet that overruns its banks and destroys all who are in its path.

"We cannot dwell side by side. Only seven years ago we made a treaty by which we were assured that the buffalo country should be left to us forever. Now they threaten to take that away from us. My brothers, shall we submit or shall we say to them: 'First kill me before you take possession of my Fatherland . . .'"

ADDITIONAL FUNDS FOR RUBELLA—GERMAN MEASLES—IMMUNIZATION PROGRAM

Mr. HARTKE. Mr. President, I was gratified by the Senate's acceptance of my amendment to the Labor-HEW appropriation's bill, H.R. 13111, providing an additional $10 million for the fight against rubella, German measles. If the battle against this terrible disease is to be won, funds sufficient to the task must be appropriated for fiscal year 1970. At present, the rubella vaccination program is dangerously underfunded. Although a safe and effective vaccine has been developed which promises to stamp out this virus disease, the U.S. Public Health Service has declined to ask for funds sufficient to immunize an adequate proportion of the children between 1 and puberty during this fiscal year.

The simple truth is that we have the means now at hand to stamp out a disease which is the No. 1 cause of mental retardation among children. We have the means now at hand to stamp out a disease which has caused congenital abnormalities in thousand of infants. All that was missing prior to the adoption of my amendment was the money to get the job done.

I am hopeful that Senators who are members of the Senate-House conference committee who are currently examing the appropriation bill for Labor-HEW, H.R. 13111, will agree with me that the inclusion of an additional $10 million to fight rubella is absolutely necessary if the nationwide war against this killer and crippler of children is to be won.

During 1964 rubella epidemic, an estimated 50,000 spontaneous abortions and still births occurred, and more than 20,000 infants were born blind, deaf, mentally retarded, or with heart disease. A like tragedy will surely occur in 1971 if Congress does not act now to insure that the rubella immunization program is a success. I submit that $10 million is a very small premium to pay in order to obtain this insurance.

UNITED STATES MUST NOT "BUG OUT" IN VIETNAM

Mr. DOLE. Mr. President, John P. Roche is a columnist and a former three-term president of the Americans for Democratic Action.

However, he is one of those who has never confused liberalism with the new left, or with the surrender of American principles.

He is not so sure, however, of his fellow liberals.

Today, in the Washington Post, Mr. Roche speaks of those liberals who opposed Senate Resolution 280. He says:

> Regrettably, opposition to this resolution can only be founded on one premise: ADA has a vested interest in an American catastrophe in Vietnam.

Later, he warns:

> If the American people ever get it through their heads that liberal Democrats are rooting for an American defeat in Southeast Asia, we will be through politically for the rest of the century.

Mr. President, it is not I, but a bona fide, card-carrying liberal who has said these things.

I would suggest that those who advocate that America bug out on its commitments should reassess their own reason-

ing. No American who loves his country can knowingly have a vested interest in an American catastrophe in Vietnam or anywhere else in the world.

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:

CATASTROPHE POLITICS MIGHT PROVE A DISASTER FOR LIBERAL DEMOCRATS

(By John P. Roche)

The poor old Democratic Party is in worse shape today than it has been in some time—since perhaps 1956. When the Republicans have problems—as they did in 1964—there is always a good simple remedy. But the Democrats, alas, are not so easily doctored: too many of their troubles are, as my father would have put it, "in the head." The GOP can go out and get a few stitches—the Democrats need a psychiatrist.

Take the cross pressures at work on, say, Hubert Humphrey, or Ed Muskie, or Fred Harris. A tremendously articulate constituency is at work on them day and night telling them that unless the party makes Vietnam the issue, and comes out for instant withdrawal, the Democrats are through. These are mostly fine sincere people. Though the Communist Party and other sects have undoubtedly played an important organizational role in the antiwar movement, the great majority of the protesters are there on their own. (Unfortunately, the Attorney General does not seem to understand that these two propositions are not inconsistent.)

I admit that I am fundamentaly baffled by the wildly irrational response to Vietnam in intellectual circles, but there it is. So we have a situation where leading academic and cultural figures—who will always get press and media coverage—are socking it to Humphrey, Muskie, Harris, et al. And they can not be dismissed automatically as "Commies," "dupes," or just fanatics. Many of them have worked hard and loyally in past campaigns. And, I repeat (despite the fact that some of the scars on my back ache) they are fundamentally decent people, driven by a deep concern for American national interest as they see it.

I, for example, spent 21 years as a member of Americans for Democratic Action—three years as national chairman. Throughout that period ADA was the nesting place of Cold War liberals, a designation that I am proud to accept though it has recently become a term of abuse. Hubert Humphrey is also a former national chairman of ADA and—even though we left the organization—many personal ties and warm memories of past campaigns remain.

But, even making personal allowances, what can one make of an ADA decision to oppose Senate Resolution No. 280? The key section of the resolution reads that the Senate "affirms its support for the President in his efforts to negotiate a just peace in Vietnam, expresses the earnest hope of the (American) people . . . for such a peace, . . . approves and supports the principles . . . that the people of South Vietnam are entitled to choose their own government by means of free elections . . . and that the U.S. is willing to abide by the results of such elections and requests the President to call upon (Hanoi) to join in a proclamation of a mutual cease-fire and to announce its willingness to honor such elections and abide by the results . . . ."

Regrettably, opposition to this resolution can only be founded on one premise: ADA has a vested interest in an American catastrophe in Vietnam. Having predicted disaster so long and stridently (national chairman John K. Galbraith, for example, announced shortly after the Tet offensive in 1968 that the Saigon government would collapse in two weeks!), ADA has reached the point of no return.

But what sense can this position make to a liberal politician? In immediate terms, he knows that if things go well in Vietnam, President Nixon wins—and if they go badly, the liberals (who got us there) lose. In broader terms, however, the impact of liberal catastrope politics would be a long-run disaster—if the American people ever get it through their heads that liberal Democrats are rooting for an American defeat in Southeast Asia, we will be through politically for the rest of the century.

Humphrey, of course, knows this—it helps to account for his occasionally schizophrenic political behavior. As chief psychiatrist of the Democratic Party—a fearful job—he deserves considerably more sympathy and understanding than he has received.

MISS MARY SWITZER

Mr. KENNEDY. Mr. President, today we learned that one of this Nation's most effective and distinguished public servants, Miss Mary Switzer, has announced her retirement.

Miss Switzer, first Administrator of the Social and Rehabilitation Service of the Department of Health, Education, and Welfare, has earned the respect and admiration of all of us who share her concerns for the quality of life in this country.

Her career began 48 years ago when she joined the Treasury Department as a junior economist. It spans the whole development of this Nation's commitment to the elderly, to the disabled, and to the health of all of our citizens. Since 1939, Miss Switzer had held position of great responsibility in this field of social significance.

It is my pleasure, and my distinct honor, to extend the great appreciation and admiration of the Commonwealth of Massachusetts to our noted native daughter.

As one who has known and worked with Miss Switzer since the beginning of the Kennedy administration, and during my service in the Senate, I offer my deep regards and warm thanks to a friend who shares my affection for the beauty of Cape Cod, and my concern for the well being of all our citizens.

I ask unanimous consent that an article describing Miss Switzer's career and published in today's Washington Post be printed in the RECORD.

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

MARY SWITZER: WELFARE, WORK AND WISDOM

(By Mary Wiegers)

Since Mary Switzer "came to Washington with the Harding gang," eight Presidents have come and gone.

Through all those administrations, Mary Switzer was making a steady climb from a clerk's post in the U.S. Treasury Department to the job she holds today as head of the U.S. Department of Health, Education and Welfare's Social and Rehabilitation Service.

The SRS is an agency organized in 1967 with Miss Switzer as its first head. It combines welfare and social service programs with a total annual budget exceeding $8 billion, and distributes funds to the needy, disabled, children and the aged. It also makes Miss Switzer the executive with the largest administrative responsibility of any woman in government.

Now at the age of 69, the tough-minded bureaucrat with the Boston accent is retiring. HEW Secretary Robert Finch announced yesterday that he is accepting her resignation "with regret," to be effective in mid-February.

As the announcement was being released, the gray-haired, sparkling-eyed Miss Switzer sat at a conference table outside her office and talked about her 48 years of government service.

She reflected on the future of the welfare program, and the landmark decision which merged welfare, rehabilitation and social services and what it could mean.

She recalled highlights from her career, the jobs she didn't get, the ones she did—like becoming the first person to organize a bacteriological and chemical warfare program, and the first to head federal programs for rehabilitation of the disadvantaged.

The beginning, she recalled, was pretty inauspicious. "I came in at the bottom as a junior economist in the division of statistics in the Treasury Department. If there's one thing I have no gift for, it's research." On the day the Graf Zeppelin flew over Washington, she was fired. But the Treasury Department is "paternalistic" and took her back as a mimeograph operator.

That first setback didn't last long. By 1928, Mary Switzer was handling press intelligence for the Secretary of the Treasury. By 1934 she was assistant to the assistant secretary, who supervised the Public Health Service.

In '39, when the Public Health Service was transferred to the Federal Security Agency, forerunner of HEW, Miss Switzer became assistant to the administrator. During the war, she managed the Procurement and Assignment Services for Physicians, Dentists, Sanitary Engineers and Nurses. For her work she received the President's Certificate of Merit, the first of many honors.

She also organized a research program on bacteriological and chemical warfare. "I had to do it because, strangely enough in today's light, the Army and Navy wouldn't do it. They thought it was contrary to the Geneva Convention. I've often thought how terrible it was, that I did that though I don't know. I don't see much difference between one weapon and another, though on the scale they're doing it today, it's unnecessary and unreal. Anyway we developed some good medical information valuable to researchers later on, so I suppose some good came out of it."

In 1950, Miss Switzer became head of the federal-state program for the rehabilitation of the disabled. Thirteen years later, she was made commissioner of the vocational rehabilitation administration, when HEW Secretary Anthony Celebreze thought that rehabilitation ought to be co-equal with welfare. In 1967, Secretary John Gardner sold her on the idea of merging the two areas and she was appointed head.

That merging, she felt, was an important and wise step. What she'd like to see now is a merging of services for the individual on the local level.

"The next five years are years that need the thrust in the field to get much closer interaction of these services in the community." She would like to see the individual get medical needs, welfare assistance, disability training, and so on, all in the same place, and with all the bureaus working together.

"There has to be a willingness to give up sovereignty on everybody's part to give people what they have to have. There must be decentralization of authority to regions. This big government has to have some glue—has to put things together."

The SRS, she believes, is the part of HEW that is concerned about the individual. "It's like a southern mansion with three pillars. There's health on one side, education on the other and us in the middle.

"Health and education deal mainly with institutions. And sometimes the institutionalized structure stops before they ever see a person. SRS reaches down to the individual.

"One of the most exciting exposures to

involvement was with the National Welfare Rights Organization people. During the Poor People's march, we met with them or their representatives every day for a month.

"The greatest eye opener of that was the difficulty they had getting something done on the local level."

Miss Switzer lives in Alexandria and has made it a point to take part in community affairs there. "It's essential if you have a job like mine, where you are telling people what to do in the communities. It's one thing to tell people what to do, but to do it yourself is to find out how difficult it really is.

"In the Rehabilitation Administration, I had every letter of complaint followed up immediately. Now I've adopted that program in welfare, but I've found the welfare people are not as responsive. I suppose after years in the field they became kind of tough."

On the welfare program, Mary Switzer is a firm believer that "people shouldn't get something for nothing. I think we made the biggest mistake when we saw the welfare load growing, when we didn't emphasize work."

She added that work must be made dignified and meaningful again, as it's not been "in this age of permissiveness.

"I think that one good part about Mr. Nixon's welfare program is that it doesn't put a premium on breaking up homes." In the past she explained, a man didn't work if, for instance, he had a wife and three children, because he could get more money for his family by deserting them and letting them get welfare.

"I don't see anything else that will change the present psychology of not minding dependency, except to make it more attractive to be employed."

Miss Switzer, herself, is going to continue to be employed after her retirement. On Dec. 2, she was elected vice president of the World Rehabilitation Fund, and when she leaves government service in February, she'll set up an office at 1 Dupont Circle for the fund.

She'll also work with the Association of Schools for Allied Health Professions in Washington.

"But if I want to take a day off, I'll be able to. When I feel like cooking my spiced gooseberry preserves and yellow tomato preserves, I can."

Her HEW office is filled with more than 40 awards she has received, among them the Albert Lasker award and the National Civil Service award. Sixteen colleges have given her honorary degrees. She is the first woman to serve on the board of directors of Georgetown University, and the first woman to be appointed trustee of Assumption College.

Miss Switzer was born in Newton, Mass. Her parents came from Ireland. About the one disappointment in her life was that she didn't become assistant director of the mint, a job she badly wanted at the time. "Nellie Tayloe Ross was director then, and she said no. She didn't want another woman around her. When I think of what a dead end that job would have been . . ." said Miss Switzer, her voice trailing off.

SPEEDY REPORT ON CONGRESS

Mr. PERCY. Mr. President, far too often, Members of Congress forget the very important work which is carried on at the staff level as a backup to our work in the Chamber. For example, every morning we expect and receive without fail a copy of the CONGRESSIONAL RECORD, the official record of the proceedings of Congress from the previous day.

I ask unanimous consent that an article entitled "Speedy Report on Congress," published in the Christian Science Monitor of December 3, 1969, be printed in the RECORD. The publication properly commends the members of the Government Printing Office for their fine work.

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

RECORD GIVES DETAILS—SPEEDY REPORT ON CONGRESS

(By Congressional Quarterly)

ROUTE TO RECORD

Congressional publications prior to the Congressional Record included:

1789–1790 — Congressional Register. An early attempt to publish record of Congressional debates. Taken down in shorthand by Thomas Lloyd of New York. Four volumes total.

1790–1825—Debate in House reported in haphazard way by some of better newspapers. Senate debates scarcely reported at all.

1834—Publication of first volume of Annals of Congress. Produced by Gales and Seaton. Brought together material from newspapers, magazines, and other sources on congressional proceedings from 1st through 12th Congress (March 3, 1789, to May 27, 1824). Forty-two volumes total.

1824–1837—Register of Debate. Produced by Gales and Seaton; directly reported congressional proceedings.

1833–1837 — Congressional Globe. Published by Blair and Rivers. Covered 23rd through 42nd Congresses (Dec. 2, 1833, to March 3, 1873). Forty-six volumes total.

1873 to present—Congressional Record. Produced by the Government Printing Office. March 4, 1873, to present.

After each daily session of Congress, the Government Printing Office (GPO) publishes the Congressional Record—the official report of congressional proceedings.

About 49,000 copies of the Record, averaging more than 200 pages a copy, are produced and delivered by 8 a.m. the following day.

The Record is produced in less than 13 hours and involves the efforts of about 2,500 of the GPO's 8,200 employees.

The proceedings of Congress were not printed systematically before 1865, when the Congressional Globe—the forerunner of the Congressional Record—took on a form and style that later became standard for the Record.

According to a 1959 Legislative Reference Service research paper on the Congressional Record, "Before 1825, debates in the House of Representatives were not reported except in a haphazard way in some of the better newspapers." The Senate debates, the report said, seldom were reported at all.

Not until 1855 were reporters of congressional proceedings and debates paid at public expense, and only in 1863 were annual appropriations established in both houses of Congress for reporting proceedings.

RECORD STARTED IN 1873

When the Government contract for publication of the Congressional Globe expired in 1873, Congress passed an appropriations act which provided that with the 43rd Congress (March 4, 1873) the Congressional Record would be produced by the GPO.

The Congressional Record chronologically reports daily what is said on the floor of both houses of Congress. Biweekly and hardbound versions also are produced to provide a corrected and permanent record. The proceedings of the House and Senate alternately appear first in each daily printing of the Record.

The Record contains four separate sections:

Proceedings of the House.

Proceedings of the Senate.

Extensions of remarks.

Daily digest—a summary of the proceedings in both houses, including a calendar of committee meetings for the following day.

MONTHLY SUMMARY

At the beginning of each month a resume of congressional activity is printed in the Record, providing statistical data for the preceding month on the following:

Days Congress was in session.

Page numbers of proceedings printed in the Record.

Page numbers of extensions of remarks.

Bills enacted into law.

Measures reported by committees.

Reports, quorum calls, votes and bills vetoed by the president.

The summary also provides information on the status of executive nominations.

Although the Record purports to print an exact account of the proceedings on the floor of both chambers, members of the Senate and the House edit and revise their remarks before they are published.

SEPARATE STAFFS

Proceedings in both the Senate and the House are taken down by separate staffs of reporters, eight in the Senate and seven in the House. The shorthand notes of the debates are read later into a Dictaphone (dictating machine) and typed by a transcriber. The typed copy is then proofread by the reporters, given an appropriate heading and sent to the members for their own editing and correction.

Reporting in the House is done on a half-hour schedule, requiring that each reporter spend five minutes of each half hour on the floor and the remaining time dictating, transcribing, and correcting his notes. The Senate operates under the same procedures, but on an hourly basis. Each Senate reporter spends 10 minutes of each hour on the floor.

Corrected transcripts of debates must be returned to the GPO by 9 p.m. the same day if they are to be included in the following day's Record.

MEMBERS EXTEND REMARKS

Following the record of floor debate in the two houses is a section for senators and representatives to extend their remarks—to add to the Record materials not actually presented on the floor.

Senators may add extraneous material—such as speeches given outside Congress, selected editorials, magazine articles or letters—to the body of the Record. Representatives must place such material in the Extensions of Remarks section.

The 1946 Congressional Reorganization Act directed the Joint Committee on Printing, which controls the publication of the Congressional Record, to incorporate into the Record a list of congressional committee meetings and hearings, their places and subject matter.

This section of the Record, titled the daily digest, summarizes the following material:

Highlights of the day's congressional activities.

Senate action.

Senate committee meetings.

House action.

House committee meetings.

Joint committee meetings.

MEETINGS LISTED

The daily digest also lists the committee meetings scheduled the day the Record is distributed.

Friday issues of the Record contain a section outlining the congressional program for the coming week, including schedules of major floor action and of House and Senate committee meetings.

Published semimonthly, the index is the key to using the Congressional Record. It is a guide to the contents and means of tracing floor action on legislation.

The index consists of two parts: an index to the proceedings, which includes material

both in the body and in the extensions of remarks section, and an index to the history of bills and resolutions.

Remarks made in heated debates may be judged offensive and edited out by a reporter or the member who made them. Grammar is often improved and the transcripts are often polished.

ADDITIONS FREQUENT

In the 1950's, members of Congress frequently inserted into the transcripts of their own remarks such words as "laughter" and "applause." Such additions have become infrequent. If they appear, the reporter has included them.

On Jan. 8, 1930, one member of Congress referred to the Congressional Record as a "catch-all, . . . a burying ground for editorials, articles, speeches, and addresses from all parts of the country relating to every conceivable subject. . . ."

Such additions in the body or the extensions section cost money. According to a staff member of the Joint Committee on Printing, one of the longest Record insertions by a member of the House was made by Rep. Royal C. Johnson (R) of South Dakota, who inserted 504 pages of names of World War I slackers. No figures on the cost of this extension are available.

In 1935, a Senate speech opposing the National Recovery Administration by Sen. Huey Long (D) of Louisiana took up 85 pages of the Record and cost $4,493.

One of the longest insertions was made by Sen. Robert LaFollette (R) of Wisconsin, who on May 5, 1914, inserted a 365-page speech on railroad rates. The cost of printing this extension, according to figures supplied by the Joint Committee on Printing, was $13,760.

CHANGES UNSUCCESSFUL

Attempts to limit what can be added to the Record have not been very successful. New York City Mayor John V. Lindsay, then a member of the House, in 1962 introduced a bill to require that two type faces be used in printing the Record—one for the actual debates and the other for all materials subsequently added to the Record. The bill, H.R. 534 was never reported by a committee.

The cost of producing the Record has increased over the years. According to officials at the GPO, the cost per page is determined by dividing the total printed pages of the daily Record, the index, the biweekly and bound volumes into the total GPO appropriation for the Record in a given fiscal year. The cost per page in 1969 was $116.

The texts of the Senate and House floor debates, matter for the extensions and daily digest sections are assembled by the GPO each night before printing. The size of the Record never can be accurately determined beforehand, since it depends on the length of floor proceedings. The only known fact is that the Record must be printed and delivered by 8 a.m., regardless of its size or how late Congress remained in session.

WORKERS MEET DEADLINE

GPO officials said that to their knowledge the Record never has missed its morning delivery deadline.

Production begins at 6:30 p.m., when "preparers" check incoming copy, note sections to be printed in specific type sizes and ascertain that the material to be printed is in proper sequential order. The copy is set by nearly 400 composing and casting machines, proofed, corrected and readied for stereotyping by 2 a.m.

The double-deck, 64-page rotary magazine presses that print the Record are supposed to be in operation by 2:15 a.m., running at 18,000 impressions an hour. These presses print 49,000 copies of the Record each day, using 36 rolls of paper weighing nearly 21.5 tons.

By 8 a.m., 34,635 copies of the Record are delivered to congressional offices: 100 are hand-delivered to the homes of members requesting such service in the Washington area; 277 are delivered to area libraries, offices and universities; 6,000 to 7,000 are mailed to individual subscribers; and 5,837 go to federal agencies. Each senator is allotted 100 copies to distribute free to his constituents; each representative is allotted 68.

HYDE SCHOOL IN BATH, MAINE

Mr. MUSKIE. Mr. President, amid all the concern over our young people on the campus of today, it is hopeful to observe some work that is already underway to prepare even younger people for the campus of tomorrow. I say this is hopeful because I believe in treating the illness, not the symptom.

For some time now, it has been my privilege to serve on the board of trustees of the Hyde School at Bath, Maine. Hyde is an independent secondary school whose headmaster and dedicated faculty are working with 120 students to achieve a pattern of education, as distinguished from just teaching and learning.

I visited the school last month and talked with both faculty and students in the course of my stay. I came away with the strong conviction that the philosophy being followed at Hyde may well be worth broad study and discussion.

Hyde School was founded 3 years ago by Joseph W. Gauld, a man who had spent nearly 20 years in secondary school teaching and administration. Over 6 years ago, he became convinced that there was in fact an illness in education that seriously needed treatment. He believed that education of the young required emphasis on the individual to develop an awareness of strengths and weaknesses so that the youngster might truly be "led forth"—or educated—instead of simply being taught without reference to his individuality.

While it is true that Hyde's method, no matter how successful, cannot be a panacea for all the ailments of our educational system, it is equally true that its experiences should be followed closely and its concepts be evaluated in the light of the problems facing our young people today.

Mr. Gauld said:

Up to now our challenges have been to conquer the earth. Now we have got to learn to live on it.

He is convinced that so much emphasis has been placed on achievement in our schools, such as high course grades, high test scores, and the like, that attitude, effort, and growth of the individual have ceased to be significant. Mr. Gauld continued:

If this is true then a school that is helping one student may well be hurting another. How many of these others give up on themselves because they cannot find anything in school they can succeed with?

The Hyde School regards the teen years as the most important in the life of a man, since it determines how he will face his problems, adjust to his shortcomings, and develop his strong points. The grading system takes into account personal growth as well as academic achievement.

The students at Hyde are encouraged to develop a capacity for responsible leadership and to have an active concern for others. Curiosity about learning and about life is stimulated, integrity is prized, and the courage to meet challenge is expected of all.

The impression of a visitor is that pioneering is once more to be observed in New England educational processes. The Hyde School is testing and examining, and sometimes changing, many of the standard practices of secondary schools. Its goal is to provide a better foundation for the student of tomorrow's college and university campus, and for a citizen better prepared to meet the problems which will face our Nation and the world in the future.

Perhaps the best measure of the task the school has set for itself is to be found in these words taken from its catalog:

Hyde School was founded . . .

On a conviction that education must promote among young people a realization of their own potentialities and a respect for themselves as individuals. We feel the growing impersonal trend in education defeats an appreciation of one's self and discourages the type of "rugged individual" that built this country. The principles on which this school is founded maintain that the qualities of self-confidence, self-discipline and perspective are more important to youth than they have ever been before.

We suggest that the following questions raised by the present educational system in this country need careful examination:

Curriculum: Has the emphasis in secondary schools on preparation for a specific college or profession narrowed education to a point where the primary concerns of character development and the discovery of meanings in life are neglected?

Teaching methods: How important is the trend toward machine—or machine-like—teaching, as opposed to the personal teacher-student relationship we believe essential to a truly liberal education?

Testing: Has a tool that started as a worthwhile aid in evaluating a student's capacities become detrimental to his incentive and a substitute for human judgment?

Specialization: In trying to cope with the "knowledge explosion" are we sacrificing to specialization such benefits as aesthetic appreciation, broad understanding, and the moral strength for leadership necessary to the education of the whole man?

Perspective: Has the educational process become so impersonal and so cumbersome that students only intellectualize today's problems without being able to tackle them with a sense of personal involvement?

There are no easy answers to these questions, nor easy solutions to the problems they raise. Nevertheless, we at the Hyde School believe that educational practices should not belittle him nor diminish his self-esteem. Even more important, education should create in the student an enthusiasm for life. This school is dedicated to such a concept of education and to the maintenance of both high academic and high human standards.

I hope, Mr. President, that Mr. Gauld and his faculty and students will continue to seek improvement in our educational system and that as the years go by we will see their success reflected in our processes of higher education. Unlike Mark Twain's weather, education is having something done about it other than just talking.

COMPLACENCY DANGEROUS IN INTERNATIONAL MONETARY AFFAIRS

Mr. JAVITS. Mr. President, in his superb article entitled "Hard Choices for the Embattled Dollar" published in the Saturday Review of November 22, the distinguished lawyer-economist, Richard N. Gardner, warns us against complacency in our international monetary affairs. Professor Gardner points to the difficulty the United States continues to face in reducing our chronic balance-of-payments deficit and warns that "huge deficits of the current magnitude cannot be sustained much longer."

He rightfully points to the necessity of new policies the "harmonize reserve policies so that central banks hold dollars, gold and SDR in agreed proportions" to prevent a variant of Gresham's law from operating through which bad money will drive out the good. The leading economist Ed Bernstein has also been in the forefront of advocating the necessity of combining the various reserve components into a consolidated reserve unit. These suggestions of Messrs. Gardner and Bernstein are worthy of serious consideration.

Prefessor Gardner also makes a strong case for linking the the SDR creation with developmental assistance as well as the need for the international community to take a new look at easing the exchange rate adjustment problem "through greater flexibility in exchange rates."

I commend Professor Gardner's article to Senators and suggest that it constitutes an agenda for international monetary problems for the 1970's.

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

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

HARD CHOICES FOR THE EMBATTLED DOLLAR

(By Richard N. Gardner)

At the recent annual meetings of the International Monetary Fund and World Bank in Washington this story was circulated about a conversation among three leading experts on the world economy:

"When is the next crisis coming?" said the first.

"Things are so mixed up," said the second, "we don't even know if we're in a crisis."

"Oh yes we do," said the third. "When we have to meet on a weekend, it's a crisis!"

The story makes an important point about the unease and confusion that now prevail about the future of the dollar and the international economic system. Although a number of important steps have been taken to repair the system, the experts are still deeply divided on whether there is a crisis, and if there is one, what should be done about it.

This state of affairs is understandable. The United States has a deep balance of payments deficit by one method of accounting and a modest surplus by another. After two decades of unprecedented growth and prosperity, the Western industrial countries feel threatened by both inflation and depression. The growth in the living standards in the less-developed world as a whole is disappointingly slow. To complicate matters further, the fantastic growth in international capital movements and in the activities of multinational corporations poses new challenges to conventional economic wisdom.

The layman may be confused by the mysterious language in which experts debate these questions and may feel that the answers do not really concern him. Yet what is done to defend the dollar and the international system of payments and trade can directly affect his cost of living, his freedom to travel and invest abroad, his ability to buy foreign goods, and possibly even his chance to keep or find a job. These decisions also affect the ability of his government to deal with its urban and racial crises, to maintain troops overseas, and to play its full part in aiding less-developed countries.

The stock of gold possessed by the United States now has shrunk to about $11-billion, while foreign official and private dollar holdings have reached some $40-billion—a dramatic reversal of the situation that prevailed at the end of the Second World War. Then the United States had more than $20-billion in gold and less than $10-billion in short-term dollar obligations. This extraordinary alteration in our liquidity position has been the result of large balance of payments deficits sustained almost without interruption during the 1950s and the 1960s.

At first, the U.S. deficits were benign rather than malignant—they helped revive a devastated world economy by making dollars available as reserves to supplement the world's sluggishly growing stock of gold. Without these deficits the unprecedented growth in income, trade, and employment enjoyed by the industrialized nations since World War II would not have been possible. The problem, of course, is that such large deficits cannot go on forever; the United States cannot indefinitely be the world's central banker any more than it can be the world's policeman. In both cases, a broader sharing of responsibility is a political as well as an economic imperative.

But reducing the chronic U.S. payments deficits has proved much more difficult than anyone expected. In the first half of this year the deficit was over $5-billion by the traditional liquidity method of accounting. The total for the year probably will be close to $8 billion—an all-time high. To be sure, few experts believe it necessary to reduce the deficit to zero, since modest annual increases in foreign private dollar holdings may appropriately reflect the attractiveness of the dollar as a currency for trade and investment. The steady growth in the Eurodollar market is partly a reflection of the growing activities of U.S.-based multinational companies that need access to foreign dollar balances.

Still, huge deficits of the current magnitude cannot be sustained much longer. Much of this year's extraordinary growth in foreign private dollar holdings has been due to unusually high U.S. interest rates. (Our interest rates have actually pulled dollars out of foreign-government and central-bank holdings to feed the private demand for dollars, thus creating a U.S. payments *surplus* on the "official settlements" method of accounting.) When the interest rates decline, as they inevitably will when our economy begins to cool off, private foreign dollar holdings also will decline. Foreign governments and central banks may acquire some of them, but there is a limit—probably not too far distant—beyond which foreign countries will not want to increase dollar holdings. Beyond that point they will want to redeem their dollars in gold.

Why, after years of pledging to eliminate or reduce the deficit, does the United States now seem further than ever from this objective? One answer is the growth of the multinational company. Another is the frightening evaporation of our trade surplus. We need a surplus of exports over imports to finance our substantial payments for foreign aid, foreign military spending, and private foreign investment. In 1964 this trade surplus was about $7-billion. This year we will be lucky if it reaches $1-billion. This trade-surplus shrinkage is the most dramatic international economic consequence of our tragic military involvement in Vietnam and our failure to pay for it in time with taxation. After years of relative price stability, we have had four years of accelerating inflation—now at an annual rate of 6 per cent.

Trade figures for the last few years show eloquently how far the United States has lost its competitive position. Between 1964 and this year, U.S. imports have nearly doubled, while U.S. exports have increased by less than half. Inflation is the principal reason, but the multinational company also may be partly responsible, in that foreign markets formerly reached by exports now are being reached through foreign-based branches or subsidiaries of U.S. companies, and some of this foreign-based production is being sent back to the United States.

What is to be done about it? As always, there are those who would solve the problem by unilateral measures—by imposing import quotas or higher tariffs, by cutting off foreign aid, or even by declaring the dollar inconvertible into gold. But all of these measures would tear the fabric of international cooperation, bring foreign retaliation, and diminish our own welfare and that of other countries. If we are to avoid these regressive possibilities, we must forge a foreign economic policy equal to the new challenges that confront us. This means facing—and implementing—hard decisions on four main fronts:

First, we must bring our domestic inflation under control. This is the fundamental prerequisite for restoring our export surplus so we can resume our proper role as a long-term capital exporter and pay for reduced but essential military commitments that we decide to maintain in Europe and elsewhere. This year, notwithstanding the virtual disappearance of our trade surplus, we avoided a crisis by attracting, with high interest rates, vast amounts of foreign capital into dollar holdings. As our economy levels off and interest rates decline, we must increase our trade surplus sufficiently to make up for the outflow of these short-term funds—no mean accomplishment.

The dilemma of the Nixon administration is painfully obvious. As one member of the administration has put it, the economy must be slowed by steady pressure on the brakes—but not such drastic braking as to throw it into a ditch. Even a 4 per cent unemployment rate may mean a rate of 10 to 12 per cent in the urban ghettos. Certainly we must accept some increase in unemployment, but very fine economic tuning will be necessary to keep the social costs within acceptable bounds and prevent a slackening of inflation from becoming a depression. It is doubtful that the administration can find a depression-free inflation cure without taking a more active role than heretofore in persuading labor and management to limit wage and price increases.

Second, we must find ways of sharing our inherited role as central banker to the world. Fortunately, we have taken belated steps in this direction with the activation of the new plan for "paper gold." The International Monetary Fund will distribute $9.5-billion in Special Drawing Rights (SDRs) to its members over a three-year period beginning in 1970. The SDRs come none too soon. Almost everyone now agrees that the fantastic growth in world trade and capital flows has so greatly increased the need for international reserves that needed increases cannot be satisfied by the world's inadequate supply of gold.

To be sure, a few people still argue that the reserve problem should be met by doubling or tripling the price of gold. But this would accelerate inflation; it would increase reserves in a most arbitarary way, giving windfall profits to the gold-producing countries

(South Africa and the Soviet Union) and countries holding reserves mainly in gold (e.g., France); it would make nations less willing to hold dollars as reserves in the future; and it would undermine the whole present endeavor to adjust reserves gradually through intergovernmental cooperation in the new SDR facility.

The SDR plan makes possible financing the continued growth of trade and production mainly from SDRs rather than from continued large increases in foreign dollar holdings. Reserves thus can be created through cooperative decision-making without a further large deterioration in the U.S. liquidity position. But several problems related to the SDRs lie ahead. One is the relation between SDRs and the flow of development assistance. Some bold spirits have proposed that a portion of the SDRs be issued to international lending agencies for relending to the less-developed countries. The process of reserve creation thus could automatically provide funds for development aid without the need for annual Congressional appropriations.

Unfortunately, the more conservative European countries insisted on eliminating this very possibility during negotiation of the SDR plan, so it cannot be done in the near future—certainly not during the first three-year allocation of "paper gold." But the idea deserves to be revived. Moreover, we should certainly pursue the alternative suggestion offered by the Italian government that the developed countries (which are getting the lion's share of SDRs) promise to increase their foreign-aid contributions by some portion of their SDR allocations.

Another item of unfinished business is international reserve management. Though the SDR facility will help increase the total volume of reserves, it will not prevent dangerous shifts from one reserve asset to another. There is nothing, for example, to prevent governments and central banks from cashing their dollars and SDRs into gold. One solution to this "confidence problem" is harmonization of reserve policies so central banks hold gold, dollars, and SDRs in agreed proportions. A more ambitious approach would be to have countries turn in dollar and gold reserves to the International Monetary Fund for combining with SDRs into "consolidated reserve accounts." Countries then would have to draw proportionately on all reserves in making international settlements.

Such a plan would forestall a run on Fort Knox gold stock, but would also limit our power to pump dollars into world reserves through payments deficits. The dollar-holding countries, in return for losing their freedom to cash in dollars for gold, would receive a guarantee of the value of their dollar balances and be given a reasonable voice in deciding the total amount of new reserves to be created. They would be freed of pressure to finance our payments deficits through continual increases in their dollar holdings.

These plans involve difficult negotiations and a greater explicit surrender of national sovereignty than the United States and its trading partners have hitherto been willing to make. Yet, in the middle and long run, the United States needs the security of a consolidated reserve system, and other countries will want assurance that reserve creation will take place primarily through the SDR process, in which they have a reasonable voice, rather than through U.S. payments deficits, in which they do not.

The Nixon administration does not yet regard as a priority matter reserve consolidation or the linking of SDRs to development aid. Perhaps this is justifiable today. But the two ideas will deserve serious consideration at the highest levels of government before we are far into the 1970s.

The third area requiring leadership is improvement of the international adjustment mechanism—the system by which deficit and surplus countries restore balance in their international accounts. The U.S. and British currency plans drafted during the Second World War provided for far-reaching international control over the economic policies of deficit and surplus countries. But in negotiations before the Bretton Woods Conference of 1944 these provisions were removed because of differences over the relative emphasis on the responsibilities of deficit and surplus countries—and because of the fear that too explicit qualifications of economic sovereignty would prevent approval of any plan by Parliament and Congress.

The Bretton Woods compromise ruled out adjustment by exchange controls or by freely fluctuating exchange rates. But it said very little about how adjustment was to be achieved. The hope was that, with the aid of resources from the International Monetary Fund, deficit and surplus countries could be relied on to correct a "fundamental disequilibrium" within a relatively short time by reasonable domestic policies and by occasional changes in exchange rates. But the system hasn't worked that way.

One way to improve the international adjustment process would be to give international agencies the kind of influence over the economic policies of deficit and surplus countries that was envisaged in the original U.S. and British currency plans. There could be, for example, more regular and systematic consulation among senior government officials so that international adjustment is given greater weight in national policymaking. More progress could also be made in the adjustment of national policies on military spending, foreign aid, and private capital flows to help reduce imbalances of payments. In the years immediately ahead, however, it is unlikely that the adjustment problem will be fully resolved by measures of this kind. Economic sovereignty dies hard. Deficit and surplus countries are reluctant to sacrifice domestic economic objectives for external balance; even when prepared to do so, they do not always have the policy instruments available to get quick results. And there are limits to their willingness to adjust foreign spending in the interest of payments balance.

For these reasons the international community is taking a new look at easing the adjustment problem through greater flexibility in exchange rates. The present "adjustable peg" system of the International Monetary Fund permits changes to take place, but only after the political leaders of a country find them necessary to cure the fundamental disequilibrium. For reasons of prestige or domestic politics, national leaders are frequently reluctant to devalue or revalue a currency; as in the case of the pound sterling and the mark, they tend to postpone changes too long and to make them only after a currency crisis has developed.

In an effort to provide a greater measure of flexibility, the United States and other countries are now exploring an idea known as the "crawling peg," under which a currency could move up or down one or two percentage points a year through a series of tiny changes every week or so. The changes would occur in response to a formula, thus taking the responsibility off the shoulders of political leaders. Another suggestion being studied is to permit exchange rates to fluctuate within a "wider band"—2 per cent on either side of parity rather than the 1 per cent allowed under the present system. Although some have argued that greater exchange flexibility will unsettle the confidence of international traders and investors, a modest combination crawling peg and wider band should appeal to the financial community as a desirable substitute for the present arrangement. After all, a substantial risk of a very small rate change may be preferable to the small (but far from negligible) possibility of a very substantial change that exists at present, particularly if the new system makes exchange and trade restrictions less likely and eases the adjustment problem of a troubled world economy.

Various technical, economic, and political questions on the subject are now being studied by the International Monetary Fund. If the study yields a sufficient measure of agreement, the matter will be taken up in the "Group of Ten"—the key financial countries that negotiated the agreement on paper gold. If all goes well, a new plan for greater exchange flexibility could be ready for approval at the annual meeting of the International Monetary Fund in September 1971. Technical as this matter may seem, it could determine whether the United States can balance its international accounts without resorting to harmful trade and payment restrictions or a straight jacket on domestic growth. This is why many (though by no means all) key advisers in the Nixon administration consider the crawling peg the No. 1 priority for international monetary reform.

The fourth area where action is needed is reduction of trade barriers so that the United States can solve payments problems in a climate of trade freedom rather than trade restriction. The challenges to U.S. trade policy have never been greater than today. We have lost our traditional export surplus; key sectors of American industry, such as steel and textiles, are demanding increased protection against a flood of competitive imports. The Common Market continues a protectionist agricultural policy that threatens U.S. farm exports. Our exports of manufactures are also obstructed by a host of non-tariff barriers—for example, tax systems or government purchasing arrangements that discriminate in favor of home production. The refusal of our European trading partners to grant full equality to Japan as a trading partner has forced us to take a disproportionate share of low-cost goods. And little has been done to remove trade restrictions in Europe and the United States on the exports of the less-developed countries.

An appropriate strategy to cope with these challenges will probably have to unfold in two stages. The first stage, covering the next two or three years, should be used for modest but not unimportant action—fighting off protectionist demands, starting an international assault on non-tariff barriers, and adopting "housekeeping" trade legislation to enable us to complete and safeguard the work of the Kennedy Round of tariff renegotiations. The second stage, which could begin in 1971 but is more likely to have to wait until 1973, should involve the launching of a bold new approach to the reduction of trade barriers on a world-wide basis. The best method would be a free-trade treaty calling for annual percentage reductions in industrial tariffs across the board (for example, reductions by 10 per cent a year for ten years) and the complete elimination of non-tariff barriers.

Adoption of such a plan would eliminate or at least reduce the discrimination against American exports resulting from the European Common Market and the European Free Trade Area—a discrimination that could grow to very serious proportions if the two groups merge or make a special trade arrangement without U.S. participation. Moreover, a free-trade treaty could provide for accelerated reductions in trade barriers on behalf of less-developed countries.

The clearing away of barriers to exports and imports, however, will not be sufficient to assure cooperation between governments in support of free trade. Thanks to the growth of multinational companies, the United States now reaches foreign markets more through foreign-based production than through exports. We need to consider new ways of dealing with the problems that arise when, for example, the United States seeks to force on foreign subsidiaries of American corporations U.S. balance-of-payments con-

trols, U.S. concepts of competition, or U.S. regulations on trade with communist countries, or when there is discrimination against such firms by host governments.

At the very least, the General Agreement on Tariffs and Trade (GATT), established in 1947, should be a forum for discussion of such problems, and GATT could be amended to include some general principles in this area. Looking further ahead, we might envisage the registration and supervision of multinational corporations by an international agency. The problem of the multinational corporation can be made more manageable, of course, if these corporations become multinational in fact as well as name—with foreign participation in ownership and management of the parent company as well as in ownership and management of the foreign subsidiary.

These ideas add up to an ambitious agenda for the reshaping of international economic policy. It is far from certain that we will have the wisdom and the will to implement them—to curb our inflation without sliding into depression; to develop a more equitable system of international reserve management; to devise a new arrangement for the timelier adjustment of exchange rates; to negotiate an effective regime of free trade. Yet, we have no choice except to try. At stake is our ability to realize our most valued domestic and international objectives in the years ahead.

THE LAOS-THAILAND AMENDMENT

Mr. CHURCH. Mr. President, today's Washington Post contains an editorial commenting upon our vote last Monday which would bar the use of appropriated money to finance the introduction of American ground combat troops into either Laos or Thailand.

The editorial is not only very favorable in its reaction to our vote amending the Defense Department appropriation bill to bar funds for introduction of combat troops into either of these two Asian countries, but also urges the Nixon administration to accept "all reasonable moves in the direction of restoring congressional control over foreign commitments"—including the resolution of the Senator from Maryland (Mr. MATHIAS) which would repeal the Gulf of Tonkin joint resolution.

Mr. President, I ask unanimous consent that the editorial be printed in the RECORD.

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

SENATE BIDS FOR LOST POWER

Once more the Senate has expressed its deep distrust of what has been going on in Southeast Asia. Its 73–17 vote to forbid the use of defense funds "to finance the introduction of American ground combat troops into Laos or Thailand" grew out of fear that the current limited military operations in those countries might escalate into large scale war. That is what happened in Vietnam. The Senate wants to make sure that it will not happen again in Laos or Thailand.

The significance of the action is not changed by the fact that the White House approved the wording of the amendment in advance. It has been obvious ever since Senator Cooper won unanimous approval of a somewhat similar restriction in September that restraints of some kind would be applied. When the Kentucky Senator again pressed his amendment this week, acting through Majority Leader Mansfield because of the illness of his mother, the Senate shied away from his language, which was deemed to be ambiguous. But the bipartisan substitute introduced by Senator Church looks in the same direction. Presumably it would leave the military free to bomb access trails used by the North Vietnamese in Laos and to give air support to the Royal Laotian Army. Only American ground combat troops in the two Southeast Asian countries would be forbidden if the conference committee should accept this Senate amendment.

The action on Monday may well contain a clue as to what the Senate will do when the more comprehensive Mathias resolution comes before it, possibly next year. Logically the Mathias resolution should have preceded the Church amendment, for it is designed to wipe out the basis for American intervention in Laos and Thailand while approving the presidential policy of liquidating the war in Vietnam. It is well to remember that the so-called Tonkin Gulf resolution, which Senator Mathias would repeal, is not restricted in its terms to Vietnam. Rather, it puts Congress on record as favoring a free hand for the President in the use of American armed forces "to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom."

Thailand is a member of SEATO. Laos is a protocol state under its terms, although that mercurial country once refused to accept any protection through SEATO. If the Tonkin Gulf resolution is repealed and if a policy of withdrawal from Vietnam is formally approved by Congress, presumably the President would have to go to Congress for authority for any operations by American armed forces in Laos or Thailand not immediately connected with the war.

There are, of course, substantial gray areas that cannot be suddenly wiped out when Congress decides to reclaim its power to control limited wars during the liquidation of such a war. In Laos, for example, the Communists violated the Geneva agreement from the start by giving military aid to the Pathet Lao, and the United States long ago sought to counteract that move by providing equipment and training for the Royal Laotian Army. This cannot be suddenly wiped out without serious losses to the cause of stability in that country. Nevertheless, all reasonable moves in the direction of restoring congressional control over American foreign commitments should be welcomed. The administration would do well to accept the broad policy of the Mathias resolution as assurance to the country that it will not engage in secret and unauthorized military operations anywhere.

NEED TO MAINTAIN OIL IMPORT PROGRAM

Mr. PEARSON. Mr. President, I am deeply disturbed by newspaper stories of yesterday and today to the effect that the Cabinet task force on oil imports has decided to recommend to the President that the present oil import quota system be replaced by a tariff mechanism. I would hope that these press accounts are not accurate and that the task force has not made and will not in the future make a final decision to recommend the abolishment of the mandatory oil import program, because I am firmly convinced that such action would not only be disastrous to a great number of small domestic producers and inland refineries but contrary to the long-range interests of the Nation as a whole.

The present mandatory import control program was initiated by President Eisenhower in 1959 after the voluntary control approach proved inadequate. It was based on the very proper and sensible proposition that such controls were needed to preserve a healthy domestic petroleum industry for purposes of national security.

Mr. President, it would seem to me that the demands of national security still require a healthy domestic oil and gas industry and that an effective import quota program is necessary to assure the accomplishment of this goal. We must, it seems to me, maintain a ratio between domestic and imported supplies which will enable the domestic industry to meet the essential national demand.

Mr. President, most all agree that there are weaknesses and inequities in the present mandatory oil import control program. But to say as much is not to say that it should be abolished. We need to refine it and to improve it. We should not abolish it.

GOOD CONSERVATION START; NOW LET US FINISH IT

Mr. DOLE. Mr. President, we are hearing much these days in the Halls of Congress about improving the quality of the environment. I agree that solving environmental problems is essential to the future welfare of the Nation.

But all is not bad in this world. Some good things are going on. Everything that is being done in the field of soil and water conservation has a definite bearing on the environment. Much good soil and water conservation work is being done in Kansas and throughout the Nation.

An appraisal of this work in Kansas was made in an editorial published in the Wichita Eagle-Beacon of December 7. It appeared under the headline, "Good Conservation Start—Now Let Us Finish It." I ask unanimous consent that the editorial be printed in the RECORD.

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

GOOD CONSERVATION START—NOW LET US FINISH IT

In the midst of seemingly unsolvable problems, it's good for Americans to take an occasional backward look, to see what happened with problems that loomed up discouragingly years ago.

Back in the 1930s, when Kansas was the center of the dust bowl, and when dust storms blackened the sun and invaded homes, there were many who sincerely believed that Kansas was doomed, that the first explorers were right when they called it "the great desert."

It's refreshing, more than three decades later, to take a look at the state's beautiful countryside and clear skies. The doomsayers were wrong. But it wasn't chance that saved Kansas and other dust bowl states, it was hard and concerted work. That was well brought out when the Kansas Association of Soil Districts held its annual convention here.

Kansas has one of the leading conservation programs in the nation, a federal Soil Conservation official, William B. Davey of Washington, D.C., told the Kansas meeting. It has more miles of terraces and diversions, and more acres of grass waterways than any other state. One-fourth of the national total of stubble mulching of cropland is practiced here. Kansas leads the nation in the proportion of federal cost-sharing assistance devoted to permanent conservation measures. Its progress in small watershed development "has been inspiring."

It's nice to bask in the pleasant thought of

something accomplished, as in Kansas' soil consrvation effort. But in America today, there isn't time to bask. There are too many other pressing problems to be solved.

Another speaker to the conservationists, Richard C. Longmire, pointed out that they must look ahead to solving the big conservation problems dealing with non-agricultural usage. With the growing population, there will be more land needed for recreation, homes, schools, transportation and reservoirs. There will be more water used. There will be more need than ever for soil conservation, and for anti-pollution efforts to keep waterways clean and usable.

He urged rural soil conservationists to offer their expertise in leading to a rural-urban cooperative effort to solve these problems. It will take all the people working together, he pointed out, and it's going to take a lot of federal money. Rural conservation was accomplished by federal-state funding. New conservation needs pose a task of even larger proportions, and will demand even greater funding.

It's a good idea. It's certain that if Americans determine to solve their problems of conservation, they can do it.

After all, how long has it been since we've seen a dirty, choking, mile-high dust storm sweep across Kansas?

PERU'S MILITARY REVOLUTION

Mr. CHURCH. Mr. President, over the past 5 days the Washington Post has published a series of articles written by Post foreign correspondent John M. Goshko on the Peruvian military revolution—now 14 months old—which has had such impact on Latin America.

The Post has provided a great service in running this series. Mr. Goshko's articles go far toward dispelling some of the mystery of the Peruvian revolution. He has given us considerable background into the personalities of the generals who made the revolution and a firsthand look at the nationalism—pervading not only Peru, but much of the rest of Latin America as well—which bears such a remarkable resemblance to Nasserism. In addition, these articles dispel some of the myths that surround the Peruvian experiment with revolution, notably the regrettable idea that there is no possibility for this country to work out an accommodation with the Peruvian Government to our mutual best interests.

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

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

AMERICAS WATCH PERU'S GENERALS

(By John M. Goshko)

LIMA.—Throughout Latin America today, one cannot talk to politicians, soldiers, diplomats or intellectuals without hearing a strange new word—"Peruanismo." It means Peruvianism, and it refers to the forces at work in this Andean country since Oct. 3, 1968, when the armed forces overthrew a civilian government and replaced it with a military regime under the presidency of Gen. Juan Velasco Alvarado.

Like other Latin military juntas, the Velasco regime immediately proclaimed itself a "revolutionary government" committed to the transformation of Peruvian political, social and economic life. But where other Latin juntas have been proceeded to maintain the status quo, the Velasco government behaved in startlingly different fashion.

Despite the threat of serious economic reprisals from Washington, it began by expropriating the American-owned International Petroleum Co. In the year since, it has reinforced its radical image by seizing American fishing boats, opening diplomatic and commercial relations with the Soviet Union and other Eastern European countries, moving to nationalize communications and promulgating the most sweeping land expropriation in Latin America since Fidel Castro's takeover in Cuba.

An unceasing stream of ultranationalistic rhetoric cries "Arriba Peru"—"Up with Peru"—and shouts about "antirevolutionary" conspiracies organized by the "oligarchy" and "foreign economic interests." Not since Castro led his bearded columns into Havana 11 years ago has a movement gained as much attention as Peruanismo—the concept of a populist-oriented military that will lead the Latin masses to reform, modernity and national self-respect.

Outside observers tend to describe the Peruvian regime as "Nasserist," after the military dictatorship in Egypt. Sen. Frank Church (D-Idaho), chairman of the Senate Subcommittee on Inter-American Affairs, observed recently: "The really significant political change currently taking place in Latin America, in such places as Peru, is the rise of a kind of Nasserism."

But what Church and others regard as the basic elements of Nasserism—military authoritarianism, reformist zeal, a predisposition toward state socialism and central planning, bellicose nationalism at home and neutralism abroad—are not really that new in Latin America. A decade before the world heard of Nasser, that concept was pioneered by Argentina's Juan Domingo Peron.

However, although Peron came out of the army, he was ahead of his brother officers in his ideas and had to build his power base in the labor movement. After Peron's downfall, the populist impulse went into a decline; now, in Peru, the pendulum has started to swing left again.

A SPREADING CONCEPT

Almost every week brings new evidence of the idea's pervasiveness. In neighboring Bolivia, a military coup was led by a general who turned his back on his past record of conservatism and close association with U.S. interests to announce that his government was the "ideological brother" of the Peruvian revolution.

In Panama, another military regime has taken some lessons from Peru. Even among the region's more traditional military governments, Peruanismo is showing its influence. In Argentina, a number of junior officers face expulsion from the army on grounds that they espoused "procommunist" ideas—charges that appear to stem in part from their outspoken admiration of Peru.

When the military-backed president of Brazil was recently incapacitated by a stroke, the senior officers chose as his successor a general of traditional conservative views. But the top brass first had to stave off the challenge of younger officers backing another general whose ideas sounded strongly akin to those of Peru.

At the State Department and in the board rooms of big American corporations with sizable Latin investments, Peruanismo has provoked considerable nervousness. But there also are Americans who view the phenomenon more positively.

Richard N. Goodwin, who as an aide to President Kennedy helped to create the Alliance for Progress, wrote a generally admiring article for The New Yorker. Largely affirmative appraisals can be heard from U.S. academicians. In the journals of the New Left, there is a growing tendency to describe Velasco and his colleagues in the glowing terms once reserved for Castro and Che Guevara.

In his report on Latin America for President Nixon, Gov. Nelson A. Rockefeller described the Latin military as "a new breed of officers who frequently are a constructive force for social change." His plea that the United States accept Latin military dictatorships for what they are and assist their populist impulses was a long step away from past U.S. preachments about hemispheric democracy. And when Mr. Nixon made his Latin American policy declaration, he left the clear impression that his administration would not be provoked by Latin nationalism but would try to reach an accommodation.

Behind much of this attention is the thought that the Velasco example may inspire other Latin armed forces to break with conservatism and espouse military-directed reform. Considering the hard fact that traditional democracy and civilian leadership have not been very effective in solving Latin America's problems, it is easy to see why many people regard Peruanismo as a promising new force.

But at close range, Peruanismo turns out to be less a clear-cut ideology than a phenomenon filled with contradictions. For example:

The Velasco government says its raison d'etre is to improve the wretched conditions of the workers and peasants who comprise the bulk of Peru's 13 million people. But it is following the most conservative fiscal policies in South America—policies that will stagnate growth and increase unemployment.

In the name of land reform, it has been expropriating private farm land so fast that not even the government seems to know how much land has actually been taken. But not one peasant has yet acquired a single additional foot of land.

The regime said it seized power in part because "powerful foreign economic forces . . . had been frustrating the popular will for reform." It has talked publicly of freeing Peru from "economic colonialism" and has pointed to its expropriation of International Petroleum as proof. But it has been telling the international business community that IPC was a "special case" and has been lobbying with near desperation for new loan assistance and investment from abroad.

The government boasts of how it has brought military efficiency and discipline to Peru's governmental bureaucracy. Undoubtedly the regime has curbed bureaucratic corruption, had made civil servants get to work on time and has cleaned up some infamous paper logjams. But its desire to discredit the former administration also prompted a McCarthyite witch-hunt that drove the best-educated and most capable technocrats out of the career service. Now many top positions are filled with "yes men" for the generals.

PREFERRED OLIGARCHS

The Velasco government talks very tough about breaking the power of the oligarchy and it began its land reform program by confiscating the vast estates of the "sugar barons" of Peru's northern coast. But it seems to regard some oligarchs as more equal than others.

A much-heralded "nationalistc" measure limiting the activities of foreign banks in Peru was literally dictated by one of the most prominent oligarch families, the Prado clan, and had as its chief practical effect the protection of the Prado banking interests from foreign competition.

Another well-known family, the Miro Quesada, has transformed its rigidly right-wing newspaper El Commercio into a virtual propaganda mouthpiece for the junta. Such prominent names from the business and financial oligarchy as Cisneros, Banchero and Oleachea enjoy cordial relations with the regime and do business at the same old stands.

What all this adds up to is that Peruanismo is far from the single-minded concept that it seems to admiring outsiders. For one thing, Peru's military masters are far from unanimous on how to bring about

the revolution. Some are clearly extreme leftist and advocate very radical solutions for Peru's problems.

Probably the largest group favors state socialism but would apply it in gradual and moderate doses aimed at modifying rather than tearing down existing structures. Still others prefer the capitalistic approaches of the military regimes in Argentina and Brazil.

EXPEDIENCY RULES

Events, unfortunately, have not waited for the generals to work out a unified philosophy. Thus, despite constant talk about planning, most of what happened in the past year has resulted from seat-of-the-pants reactions to situations.

The regime had no choice but to expropriate IPC because the main pretext for its coup was public resentment of the company's special status. The move against the big sugar haciendas was prompted not by considerations of where the need for land redistribution was most urgent but by a desire to whip up popular support with a grand gesture.

The establishment of relations with Communist countries was largely an attempt to stave off U.S. sanctions over the IPC seizure by playing the old Cold War game. And fiscal austerity was forced on the regime by a huge budgetary deficit, lack of confidence among foreign investors and inability to meet payments on the foreign debt.

Finally, the generals tend to cling to the military idea that one can give an order and sit back with the assurance that it will be carried out. For example, they sought popular support by putting a ceiling on the price of such staples as potatoes. They failed to take into account that the bureaucracy lacked the resources to enforce such an edict.

As a result, Peru has a black market in potatoes. Either no potatoes are on display in grocery stores or those put out for sale at the regulated price are rotten. But the customer knows that the storekeeper has plenty of edible potatoes in the back room and that he can buy all he wants for a stiff under-the-counter price.

Similarly, the regime decided that meat importers were unnecessary middlemen, so it assumed control of all meat imports—with the result that not one lamb chop or steak was on meat counters the following day.

Sometimes this attempt to run Peru as though it were an army regiment can achieve comedy. For instance, the regime promulgated a health code that with military thoroughness informed Peruvians of the standards that would be expected of them in everything from prenatal care to burial.

Actually, many of the regulations were badly needed; they stopped the sale of harmful drugs and forced a cleanup of unsanitary restaurants and dairies. But the generals in their zeal proclaimed that "a mother's milk is the property of her child" and ordered all women to nurse their children unless they could provide medical evidence of their inability to do so.

Just how this provision was to be enforced, the code did not say. Public speculation over this point has produced a lot of crude jokes and the hiring of wet nurses continues to thrive.

LOW-KEY AUTHORITARIANISM

That incident illustrates the curious ambivalence with which most Peruvians seem to view their military government. In contrast to Brazil and Argentina, where military rule is provoking restlessness, the Velasco regime has not stirred any widespread emotions of either support or hostility.

In part, this is because Peruvians have become accustomed throughout their history to military dictatorship and the present regime has kept its authoritarianism at a fairly low key. No one has been executed, and there has not been a large number of political arrests, expulsions and strong-arm incidents.

Peru is very clearly a dictatorship, however, and most of the lapses in that direction are associated in the public mind with Gen. Armando Artola Azcarate, who as Minister of the Interior controls the police and the national security apparatus.

In contrast to most of his fellow generals, who project an image of briefcase-toting technocrats in uniform, Artola—with his bald, bullet-shaped head, his bull neck and his fondness for dark glasses—looks, acts and sounds like the movie stereotype of the Latin American dictator.

Moreover, he has a short-fused temper and the zeal of a manhunter and head-breaker of the old school. Twice Artola has closed Peru's leading magazine, Caretas, and punished its respected editor, Enrique Zileri Gibson. Zileri was first jailed without charge for several days and another time was put aboard a plane for Europe and not allowed to return for two months.

Zileri's first sin was publishing an unflattering photo of Artola and noting that the general was known behind his back as "Mamita"—a nickname deriving from the rumor that his grandmother ran a bawdy house known as "Mamita's." The other time, Zileri published the fact that the military regime had decreed a hefty pay raise for military officers, a news item that the rest of the Peruvian media found it more politic to ignore.

Most of the other strong-arm stuff that has taken place here, such as the exiling on treason charges of a prominent anticommunist journalist, Eudocio Ravines, and the use of clubs and riot hoses to break up the first signs of student or union demonstrations, seem directly traceable to Artola.

He also has been the most vocal figure in the government, outdoing even Velasco when it comes to shouting about conspiracies against the regime. And he is the chief guardian of national morals, appearing frequently on TV to harangue Peruvian youth about such evils as smoking marijuana.

Such antics have made Artola both the most feared individual in Peru and the butt of most of the jokes about the regime. Some observers think the other generals are deliberately using him as a lightning rod.

While Artola plays the bogey man role, the rest of the military is able to portray itself as a stern but benevolent force that allows political parties to keep functioning (in a powerless vacuum that has seen the closing of congress and the banning of all elections), that permits the judiciary to retain a measure of independence (it has ordered the release of several political prisoners) and that is trying to rule Peru with as little repression as possible.

OPINIONS ARE WEIGHTED

Given this situation, it is extremely difficult to gauge how Peruvians really feel about their government. The opinions one hears must be weighed against the economic and social status of the person speaking and the way he has been affected by the events of the past year.

Among the business and professional middle class, for example, Velasco has his admirers within the "salon rojo" ("parlor pink") intellectual fringe. But most members of this group are angry because the regime's economic policies have pinched their pocketbooks, worried about what all the talk of socialism bodes for their future and bitter over the austerity program's cutoff of the luxury imports that helped make middle-class life here pleasant.

At the opposite extreme, in the poverty-ridden Indian villages of the high Andean backlands, questions about the revolution usually evoke only a blank stare. These are the people who theoretically would benefit most from land reform and the proposed integration of the Indians into the mainstream of Peruvian life. But these plans still exist only on paper, and it will be a long time under the best of circumstances before they intrude on the centuries-old isolation of the sierra.

The coastal region north and south of Lima contains most of the population. And it is there—among the shop clerks, school teachers and office workers of the lower middle class, the laborers and factory workers from the barriada shanty towns ringing Lima, the small farmers and plantation hands—that the regime must seek support.

These groups have generally applauded such moves as the IPC seizure, the government's defiance of the United States, the land reform and the attention that these acts have attracted outside Peru, and there is no question that the regime's popular support is considerably stronger today than it was immediately after the 1968 coup.

MUTED HOSANNAS

Still, considering the drum-fire of rhetoric that the regime has directed to these key segments of Peruvian society, there seems to be an element of reserve in this support. When Velasco and his cabinet barn-stormed the northern coast in October to celebrate the first anniversary of the IPC expropriation, breathless accounts appeared in El Commercio and other pro-Velasco newspapers. But while almost every blank wall in every town was covered with tributes to the revolution, it was obvious that this outpouring was less a result of spontaneous enthusiasm than of advance organization.

The crowds were large, but they were swelled by a lot of people who came out mainly for the parades, the free refreshments or because there was nothing else to do. In the city of Trujillo, reporters overheard the police chief urgently telling his lieutenants that the turnout was too small and that more spectators had to be rounded up.

Whenever Velasco spoke, the crowds cheered and shouted "Viva" on cue, but there was a perfunctory ring to it all. To anyone who has seen some of the more spellbinding civilian politicians in other Latin countries, the reception hardly qualified as a demonstration of deep-seated popular support.

The crowds obviously approved of what Velasco said and wistfully hoped that all his extravagant promises might someday come true. But there were strong hints of confusion about the regime's more contradictory maneuvers, anxiety about a future that will see Peru leaving the old, familiar ways and a realization that all the tumult of the past year has not yet done anything to change the basic circumstances of the Peruvian masses.

Despite all the interest it has aroused outside Peru, Peruanismo is still confronted by a populace whose attitude says: "We're waiting to be shown."

A LAND OF EXTREMES

LIMA.—Fifth largest of the 21 Latin American countries, with an estimated population of 13 million, Peru, has all the social and economic problems common to most of its sister republics.

Approximately 88 per cent of the people are either Indians or a mixture of Indian and Caucasian strains in which the Indian blood predominates. Although recent years have seen a heavy migration of the Indians from their traditional homes in the Andean highlands to Lima and the other cities of the coast, these people still remain largely unincorporated into the mainstream of Peruvian social, economic and political life.

Peru's annual per capita income is 244, the rate of illiteracy is 39 per cent and the average life expectancy is only 46 years. Away from the coast, Peru's magnificent but forbidding terrain of precipitous mountain peaks, inaccessible rolling uplands and vine-chocked jungles make isolation a way of life and perpetuate systems of feudalism that seems out of another century.

It is a country of brutal extremes where the wealth and privileges of a tiny elite stand in stark contrast to the poverty for the many and where the surface glitter of Lima is magnified by the primitiveness of the backlands. In short, it is a country crying out for the physical development and the spiritual sense of self-purpose that the Velasco government has vowed to provide.

PERU'S MILITARY REFORMERS—II: RADICALS AND MODERATES JOIN TO SHAPE NEW LIMA POLICIES

By John M. Goshko

LIMA.—If they have done nothing else during the past year, the generals ruling Peru have proved that they are a new breed of military men—perhaps the most unusual ever seen in Latin America.

The junta headed by Gen. Juan Velasco Alvarado did seize power in the classic way, a coup. However, it has wielded this power not to defend the military's traditional allies in the conservative civilian establishment, but in a determined bid to smash the centuries-old social and economic stratification of Peruvian society.

It was a reversal of potential significance for all of Latin America. It has triggered great interest throughout the Hemisphere about the nature of his new military breed, in the forces that shaped its thinking and the directions it is likely to take.

Are the Peruvian soldiers well-schooled in the art of government and motivated by morality, patriotism and reform? Or, are they consumed by chauvinistic nationalism, unsophisticated in administration and finance and "little Castros in uniform"?

On the record of the Velasco regime's first year in power, it is possible through judicious selection of facts to make a fairly convincing case in support of either of these assessments. This is because Peruanismo—as the Peruvian experiment has come to be called—is still essentially evolutionary with many contradictory ideas and influences struggling for supremacy.

Peruanismo did not spring suddenly from nowhere. It was an inevitable, logical development of changes that have been taking place in many Latin American armed forces in the last two decades.

The most important of these changes was the transformation of the formerly ill-trained and rag-tag officers corps of the larger Latin armies into highly professional groups. As a result of this increased professionalism, the officer corps as a collective entity gradually displaced the old-style "strong man" type of general as the source of power in the Latin military.

Coupled with this evolution into a new institutional force came a rethinking of the military's political role. In this, it was heavily influenced by U.S. military advisers who taught that national development programs should be part of the arsenal—along with tanks and planes—against Castroite guerrillas.

INTERVENTIONISM TYPICAL

The typical Latin American army has always felt it had a duty to intervene in politics when it decided that civilian leaders were acting contrary to the national interest. Such interventions were usually brief and had limited objectives such as frustrating a specific policy or overthrowing a politician regarded as dangerous.

In the early 1960s, however, this doctrine began to give way to a new one—that the officers corps, with its cohesiveness, patriotism and self-image as ultimate arbiter of national values was the group best-equipped to lead national development.

This new political militarism was put to its first major test in 1964 when the army seized power in Brazil. Two years later, a similar coup followed in Argentina.

In both cases, the military immediately made clear that it would not play its old brief caretaker's role and then step aside for civilians. Both Brazil and Argentina were told that the armed forces had set themselves the goal of reforming national life and were moving in indefinitely.

The Peruvian coup, in October, 1968, was the third major link in this chain. Although the underlying motivation was the same, the Peruvian generals have elected, however, to approach the problems of development from a very different angle than their Brazilian and Argentine colleagues.

In Argentina and Brazil, the military regimes are working from the conservative premise that rapid industrialization is best achieved in close collaboration with foreign and domestic big business. Both aim essentially to creating attractive investment climates by placing on the masses the burden of austerity and dislocation inherent in the economic development process.

At least theoretically, the Peruvian military have chosen to attack many of the long-entrenched prerogatives of local big business. It is also putting its main stress on redistribution of wealth and privileges. Thus, *Peruanismo* represents a radicalization of the political militarism that began five years ago in Brazil.

The big question is how far this will go and where it will lead Peru. To answer, the personalities behind the still abstract concept of *Peruanismo* must be examined. What sort of men constitute the officer corps?

In strict military terms, many outside observers regard them as perhaps the best soldiers in Latin America. The army they command is a trim well-trained force that won the last war fought in South America, (a brief 1942 clash with Ecuador) and that more recently swiftly and ruthlessly crushed a Castroite guerrilla uprising.

55,000 MEN

The active strength of the army is estimated to be 35,000 to 40,000 men. The navy and air force each count about 10,000 men. An armed forces total of approximately 55,000 men, about 4 per cent of the population.

Peruvian officers work hard. Unlike some countries where promotions are based on political influence or rote seniority, they advance on merit. Of the generals on active duty between 1940 and 1965, about 80 per cent graduated in the top quarter of their military academy classes.

Contrary to popular supposition in the United States, most officers are not wealthy but come from lower middle-class, provincial background. Velasco is the son of a poor family and began his army career as an enlisted man.

Shortly after the Velasco government took office the president and his ministers made public declarations of their incomes and assets. What these portfolios revealed was a financial profile of the officer corps that bear far less resemblance to the landholding aristocracy than to Peru's small professional and entrepreneurial upper middle class.

Perhaps the most singular thing about the Peruvian officer corps is its emphasis on advanced military education. The army's network of officers' post graduate schools has made Peru a leader in evolving Latin military theory and doctrine.

On the cliff overlooking the Pacific in one of Lima's southern suburbs is a gray, two-story building that houses the most important of these schools, the Center for Higher Military Studies (CAEM). It is the fountainhead of the thought that produced the Peruvian revolution.

CAEM GRADUATES

Velasco and more than half of his cabinet are graduates of its one-year program. So, too, are five of the nine officers of the presidential advisory committee that serves the regime as a "think tank."

As a diplomat here points out, "Imagine a situation in which the President of the United States and the majority of top officials in his administration were all graduates of the National War College or the Command and General Staff School at Fort Leavenworth, then you have a rough idea of CAEM's importance."

Originally devoted to traditional military subjects, CAEM's curriculum has been expanded in recent years to intensive study of Peru's development problems and the military's role in their solution. "Students are exposed to courses in economics, social planning, Populism and Marxism.

Admirers credit the school with creating a new generation of uniformed technocrat managers qualified to direct civilian government. Most of the ideas being put into practice here were born in CAEM classrooms.

Others think that CAEM influence in the regime illustrates the old maxim about a little learning being a dangerous thing. In their opinion, the school gives an unsophisticated, surface view that leads to simplistic solutions.

The school's largely civilian faculty includes men with extreme leftist and ultra-nationalist predilictions. Much of the material, particularly in economics, is polemical.

The thinking at CAEM is perhaps best personified in the jolly, white-maned figure of Alberto Ruiz Eldredge, an attorney who lectures there frequently.

Many Americans here consider him a Communist. But this is a gross oversimplification. An extremely complex man, he is close in his thinking to Bertrand Russell. He says he is both a radical left-wing socialist (although he rejects Marxism as such) and an intense nationalist.

STRONGLY ANTI-AMERICAN

He is strongly anti-American, believing that "the might of the dollar" has been used to subjugate Latin America. He equates the Soviet Union with the United States as an imperialist power, but is an admirer of Fidel Castro.

For years, Ruiz Eldredge was among the most tireless advocates of expropriating the U.S.-owned International Petroleum Co.

Some persons think his influence is not as great as presumed. The relative moderation of the regime's current policies tends to support this argument. But his ideas have left a deep impression on many younger officers.

Ruiz Eldredge is not an isolated figure at CAEM. Many others have helped implant in the Peruvian officer corps an essentially statist economic outlook that tends to view development as a struggle by the poor, raw-materials producing countries to free themselves of domination by industrial nations.

The regime's first finance minister, Gen Miguel Angel Valdivia Morriberon, quickly realized that his military aides were unequipped to cope with Peru's innumerable economic problems. Accordingly, he began to rely on a group of U.S.-trained economists who were influential in the civilian government ousted by the coup.

This created a clash with the more radical CAEM-oriented officers, and Valdivia was forced out of the cabinet. His successor was considered to be much more in tune with the Young Turks, but the economic realities have slowly pushed him, too, toward more traditional economics.

The Valdivia incident was not the only clash between the radical group eager to implement CAEM and a more cautious faction that regards some of these ideas as impractical. The regime, for all its surface unity, has polarized into at least two fairly distinct camps.

CENTRAL FIGURE

The central actor in this drama is, of course, Velasco, who as commander of the army led the 1968 coup and became president of the revolutionary junta. Virtually

unknown to the public before, he remains enigmatic after a year in power.

This is partly because the Peruvian regime projects an image of representing the collective will of the officer corps rather than any one person. Shortly after the coup, the military even promulgated a special statute providing for removal of the president any time the officer corps decides it is necessary.

But Velasco is now clearly the first among equals. His somewhat erratic behavior during the past year has been responsible for much of the confusion about what *Peruanismo* really stands for.

A short, mustachioed, 59-year-old infantry officer with a gruff manner and a mercurial temper, Velasco gives outsiders very few clues about what he thinks. Unlike other Latin military dictators who have traded their braid for mufti, he wears his uniform at all times. He is fond of bull fights, tiny but strong black cigars and rather coarse barracks humor.

In his public pronouncements, he has varied between the extremes. At one point, he threw the country into near-panic by shouting from a balcony that "blood would run in the streets" if anyone tried to oppose the regime. Yet, to visitors, he repeatedly stresses the "peaceful nature of the revolution."

Similarly, on the first anniversary of the coup, he gave an address charging that a conspiracy of oligarchs and foreign business interests was trying to topple the regime. A few weeks later, in a long, reasoned speech to businessmen, he said the government wanted to develop Peru along essentially capitalistic lines.

This same kind of abrupt switch in signals has characterized his relations with the United States, his approaches to the Communist world and many of the regime's most fundamental domestic policies. For a time, in the early days of the regime, many people wrote him off as "lacking stature" and predicted he would be shunted aside by some other general.

BARRACKS POLITICIAN

His endurance has prompted considerable reassessment. To many, he now appears as an adriot barracks politican. Such maneuvering leaves unanswered the question of where Velasco stands on the aims of the revolution. The general impression is that his sympathies are with the radically inclined officers. But in recent weeks the regime has been following the more gradualist policies of the moderates.

The foreign minister, Gen. Edgardo Mercado Jarrin, has emerged as the leader of the moderates. He is probably the most cosmopolitan and is also the most openly pro-American figure in the all-military cabinet.

Increasingly allied with Mercado is the new minister of economy and finance. Gen. Francisco Morales Bermudez. He is the son of a general who was one of the Trujillo martyrs—a group of army officers who were murdered during a 1933 uprising by supporters of the Apra political party in the city of Trujillo.

Because of the reverence accorded his father's memory by the army and because he is one of the youngest generals, Morales Bermudez has long been regarded as a man to watch. His name has always figured prominently in speculation about future presidents. When he replaced Valdivia, it was assumed he would side with the radicals. Responsibility for paying the bills apparently proved sobering for him.

CONTACT WITH WORLD

Mercado and Morales Bermudez are the two cabinet ministers whose jobs make them most aware of the outside world and its role in the ultimate fate of the revolution. From where they sit, there seems to be no hope that Peru can solve its severe financial problems and pay for the revolution unless it tones down the over-aggressive, ultra-nationalistic image it now has in Western financial and diplomatic circles.

On the other side, are the CAEM-influenced radicals, mostly younger men. In the cabinet, their principal spokesmen are the minister of transport and communications, Gen. Anibal Meza Cuadra Cardenas, and the minister of mines and energy, Gen. Jorge Fernandez Maldonado Solari. To their number must also be added Gen. Jose Graham. While technically not a member of the cabinet, he heads the influential presidential advisory commission charged with formulating long-range policies.

These younger officers refer to themselves in private as "the earthquake generation." They have displaced many generals with far greater rank and seniority. When the coup took place, both Meza Cuadra and Fernandez Maldonado were obscure colonels.

Five days later, on Oct. 8, 1969—a date the Velasco government has since officially designated "The Day of National Dignity,"—it was Fernandez Maldonado who stood up before the generals and admirals in the presidential palace to read the proclamation nationalizing International Petroleum.

Fernandez Maldonado is considered the most articulate and forceful advocate of radical, nationalistic policies. Now that Morales Bermudez appears to have become a moderate, most informed opinion is that if the Peruvian revolution ever entered a more drastic second stage, Fernandez Maldonado would emerge strong man.

Although their CAEM training has given them fascination with computers and the tools and jargon of planning, the radicals do not yet seem to have a clear consensus on where they would take Peru if they had full control.

If there is a common thread of radical thinking, it is probably "devil theories" to explain Peru's problems. The radicals believe foreign and domestic interests have long conspired to steal Peru's riches.

This manifests itself in a latent streak of anti-Americanism and hostility toward private business. Even when they are on their guard and trying to speak warily before strangers, these feelings appear.

Thus, Gen. Graham, the grandson of a Scottish immigrant, will remark to a visitor: "I look like a gringo, and I have a gringo name. But I don't think or talk like a gringo." Fernandez Maldonado can say of foreign investment by that "we are reversing the sentiment that what's good for General Motors is good for the country. Now, what is good for Peru will have to be good enough for private enterprise."

There seems to be little question that the radicals would probably command the majority of the officers corps' rank-and-file in a showdown. Most political sources here think that if they wanted to push the revolution into a more extreme stage, they could compel Velasco to go along, or oust him if he balks.

Many sources close to the government, however, contend the radicals would prefer to put the burden of finding solutions to the immediate problems on the moderates and even agree that a reasonable low profile may be the best shortrun expedient.

There are those who think such a truce cannot last and that the two camps are destined to clash eventually over whether the revolution should favor capitalism or statism. If the moderates fail to stave off a financial crisis, the temptation for the radicals to take over will be great.

[From the Washington Post, Dec. 16, 1969]

PERU'S MILITARY REFORMERS—III: NATIONALIZATION OF PLANTATIONS BRINGS FEW CHANGES

(By John M. Goshko)

LIMA.—Following the coast of Peru north from Lima takes the traveler along a narrow ribbon of sandy desert so parched and windswept that one almost expects to see Lawrence of Arabia come riding over the dunes.

At frequent intervals though, the aridity is broken by swatches of vivid greenery. These oasis-like areas are created by many tiny rivers flowing out of the Andes Mountains to the east.

About 100 miles from the capital, one notices the tall stalks of sugar cane. By the time the traveler reached Trujillo, some 450 miles to the north, the profusion of cane absorbs almost every inch of land, for there is water to make things grow.

PLANTATION COUNTRY

This is the heart of a region that produces approximately 800,000 tons of sugar a year. It is plantation country, some of them small and some covering miles of land.

The biggest—the fabled Casa Grande hacienda of the Gildemeister family—is the size of Delaware. Two others are almost as big as Rhode Island.

Two of the most important, the Paramonga and Cartavio haciendas, were the property of an American firm, W. R. Grace and Co. But most belonged to a Peruvian landed gentry known as the "sugar barons."

All that came to an end last June 25, when the military government of President Juan Velasco Alvarado promulgated an agrarian reform law. Its first effect was the expropriation of the sugar estates on the northern coast.

Nothing done by the Velasco regime—not even its Petroleum Co.—has represented so bold a step toward carrying out its pledge to revolutionize the structure of Peruvian life.

MANY NEW SEIZURES

With a barrage of confiscation orders, the government has been swallowing the haciendas so rapidly that not even the officials at the Agrarian Reform Institute have an up-to-minute figure on the amount of land seized. All they can say is that hundreds of thousands of acres are now under government supervision.

Only in Fidel Castro's Cuba has Latin America seen a recent nationalization of land on such a scale.

What has been done so far in Peru has nothing to do with land reform in terms of how those who would better the lot of the Latin masses usually describe it—the transformation of a marginal peasant class into prosperous small farmers.

This is because the sugar estates, while dealing in an agricultural commodity, are really enterprises that operate along industrial lines. Their concern is with mass production, and to achieve it their workings must be geared to the economy of large-scale operations.

Hence, if the expropriated lands are to continue producing sugar in great quantity, they must be kept together as large units and operated in essentially the same manner as before.

LIKE FACTORY WORKERS

Cane cutters, refiners and other employees on sugar estates bear less relationship to farmers than to assembly-line factory workers. Each has a specific job to do and few are acquainted with other facets of the estate's operation or the techniques of more general farming.

Moreover, with few exceptions, workers in the sugar industry have no interest in the long, irregular hours and economic uncertainties of independent farming. Their preference traditionally has been for a regular work day paid on an hourly basis and such fringe benefits as the housing, schools and commissaries provided by the bigger haciendas.

For these reasons, most neutral agronomists do not regard the sugar estate nationalizations as an adequate test of the Velasco regime's ability to effect a meaningful agrarian reform. Although the government

talks of encouraging the workers to transform the estates into cooperatives, the experts contend that the cooperative framework as it is known in the United States or in Israel cannot be applied to the Peruvian sugar industry.

TOKEN SYMBOLS SEEN

There is a feeling that the estates eventually will be designated as "cooperatives," with worker representation on management councils, titular ownership in the name of the cooperative and perhaps even some form of profit sharing.

But observers think these things will amount to little more than token symbols. They see the need of a strong, centralized management. About the only thing expected to change in the foreseeable future is the shift from private to state ownership.

A visit to such haciendas as Casa Grande and Cartavio bears out this impression. In the executive offices, most of the old managers are gone (a few have stayed on as advisers for a transitional period); and their desks have been taken by officials from the Agrarian Reform Institute.

Life and work seem to go on much the same as before. The new administrators are obviously the best men the regime was able to throw into the breach. The long, hard hours they work underscore the pressure they are under from their superiors back in Lima to keep up production.

"WORKERS' STRUGGLE"

A few have been caught up in the mystique of revolution and talk about the "workers' struggle," much as Soviet agricultural managers did 30 or 40 years ago.

At Cartavio, for example, one young Peruvian who was a management executive for Grace and has signed up with the land reform program tells visitors: "Before I felt diminished as a man because I was working for a foreign master. Now I work harder for less money, but I am working for my country."

A British journalist who recently visited the Casa Grande estate tells how the local agrarian reform officials got him confused with a Pravda correspondent they were expecting. On his arrival, the Englishman was greeted by a young graduate of Lumumba University in Moscow, who embraced him boisterously shouting "tovarich" and launched into a torrent of Russian before realizing he had the wrong man.

However, most of the administrators appear to be technicians not unlike the county extension agents or instructors at a land grant college in the United States. In contrast to their bosses in Lima, they seem more interested in talking about techniques of growing and refining sugar than discussing revolution.

This air is also evident among the people who live and work on the sugar estates and who theoretically will be the big beneficiaries of expropriation. To be sure, there are those who have become ardent supporters of the revolution, and everyone likes the idea of the workers' becoming the "owners" with its implied promise of greater earnings.

NOTHING REALLY CHANGED

Still nothing has really changed for the workers except their bosses. They do the same work, collect the same pay and live in the same way as before. Some are even worried that the change might deprive them of what they already have.

Certainly, if the junta had been choosing its priorities on the basis of real economic and social need, the north coast was hardly the region where the need for land redistribution was most urgent.

To an outsider, life on the sugar estates appears feudal. On some haciendas, workers were treated like serfs. Even where the owners had a progressive outlook, the atmosphere was paternal at best.

HAVE STRONG UNION

Nevertheless, the sugar workers have what is in many respects the strongest union in Peru. Their wages and living conditions were among the best in the country's agricultural community. They were better off than those who still lead lives of peonage as tenant farmers or who work land in the mountains so marginal that they are constantly on the edge of starvation.

By contrast, an estate like Cartavio or Paramonga or Casa Grande traditionally has been a microcosm of the welfare state that provided for its inhabitants from the cradle to the grave. The work, particularly for the cane cutters, can be back-breaking and one's senses are constantly assaulted by the overpowering, sickeningly sweet, burnt molasses odor that belches from the chimnies of the refineries.

But on the estates whole towns are laid out in rows of brick and adobe houses. To a stranger, these owner-provided dwellings—usually consisting of a living-dining room, two or three bedrooms and a tiny kitchen—might seem spartan and rudimentary.

BETTER LIFE FOR MANY

To those who live in them, however, they are a considerable step up from the primitive Indian villages they came from. On the larger estates, there are commissaries where the old owners provided food at low cost, little freelance grocery stores and other shops, restaurants and corner bars, churches, playgrounds and schools.

Although the theorists of the revolution criticised these things as outmoded vestiges of paternalism, they did offer their residents a better life than most other segments of Peruvian agriculture.

So far, this life has been relatively unchanged. The big question is whether the government can keep sugar production at profitable levels, pay the workers the increased earnings promised by land reform and continue the benefits the workers now enjoy.

THE OUTLOOK NOW

Present indications are that the government, capitalizing on the work and investment of the old owners, will be able to maintain normal production, for at least a year or two. Beyond that, some pessimists think it may be in for some painful experiences.

The sugar estates have been productive in the past only because of a large investment in irrigation and other facilities and a high degree of technical management skill. The question is whether the government can afford this investment and can muster enough talent to keep things working efficiently.

There is also the unresolved problem of Peru's difficulties with the United States over the International Petroleum Corp. expropriation. Peru now sells almost three-fourths of its sugar production to the United States at the premium price established by the U.S. sugar quota.

However, failure to settle the IPC compensation impasse could trigger provisions in the U.S. law that would cut off Peru's share of the quota. Since prices on the open world market are less than Peruvian production costs, this would mean the virtual destruction of the sugar industry here.

Even if Peru surmounts the threat of a forced cutoff by Washington, there are indications the United States may phase out the preferential sugar quota system over the next few years. Thus the regime faces the possibility that someday, it will no longer have the advantage of a premium U.S. price for its sugar.

DIVERSIFYING URGED

Many persons already are urging the government either to diversify out of large-scale sugar production or find some other use for it. (Grace, for example, was primarily interested in growing sugar for more profitable manufactured items such as rum or paper made from the cane fiber residue.)

Many agronomists think the government erred by beginning agrarian reform in the sugar-growing areas. They believe the regime may find itself forced to concentrate so much attention and resources on proving it can run the estates that the extension of the program to other parts of Peru may suffer.

Why did the regime choose to begin with an attack on the sugar haciendas? The belief is that it was motivated by political considerations.

It could find no better target than the "sugar barons" whose vast holdings had long made them the most visible symbol of a landed oligarchy that represents only .8 per cent of the total number of landowners but controls 83 per cent all ariable land. Velasco had boasted: "With this move, we have broken the spine of the oligarchy."

THE JOB AHEAD

There is no doubt that the move paid off politically. However, the junta now faces the hard part of the job—moving agrarian reform into programs that will benefit small farmers raising a broader range of food and cash crops.

The blueprint for this is the June Agrarian Reform Law. Almost all experts agree that on paper it represents a carefully planned approach to the problems of land redistribution.

To finance the expropriation of land, the law provides that all payments to the former owners be in long-term bonds. This eliminated a provision in an earlier land-reform law authorizing compensation in bonds for confiscated land but stipulating that payments for all improvements and installations on the land had to be cash.

Elimination of this old requirement is of fundamental importance to the success of the junta's program. Previous governments, chronically short of cash, were unable to make any headway on land reform because they lacked funds to cover this pay-as-you-go provision.

CAN PAY LATER

Now the junta has rid itself of the need to find large-scale financing as a precondition to taking land. In effect, the law allows it to expropriate whatever land it deems necessary in exchange for what amounts to a promissory note.

Understandably, this has not endeared the program to those whose property is being taken. They charge that inflation, possible political changes and all the upheavals to which a country like Peru is subject will probably make the bonds worthless by the time they reach maturity in 20 to 30 years. They see the law as a device to allow the regime to grab land without paying for it.

INGENIOUS PROVISION

Nevertheless, the government put a rather ingenious provision in the law designed to pasify the landowners and spur development on another front. This idea is attributed to Father Romeo Luna Victoria, a Jesuit priest of radical socialist views who is influential with many of the regime's leaders.

It provides that bonds paid in compensation for expropriated land can be used for investment in Peruvian industry. The idea is that most bondholders will elect this course and thereby pour considerable capital into industrial expansion.

Although millions of dollars theoretically are involved, the government has still not completed its evaluation of the expropriated estates and payment has yet to be made to those whose property has been taken.

It is likely that an organization like Grace, which has many other interests in Peru besides sugar growing, will choose to reinvest here whatever it gets for its two lost haciendas.

EX-OWNERS GET BUSY

Where individual families of Peruvian landowners are concerned, the prospect of an amicable settlement is less clear. The Gildemeister family, for example, is known to have used its influence with the German banks that formerly financed Casa Grande's production to cut off future credit to the estate.

The Gildemeisters and the other "sugar barons" apparently hope to force the regime into a settlement more to their liking.

The main thrust of the land program is to break up big estates and end absentee landlordism through such measures as forbidding a corporation to own agricultural land and providing for the loss of land that is kept out of production by its owners.

It decrees that no farm shall be less than 7.2 acres. Most agronomists agree this is the minimum necessary to support a typical farm family.

But, while the emphasis is on the creation of small farms, the law also recognizes the economies inherent in large-scale operations and envisions the cooperative as a key mechanism for future agricultural development. The idea is that the new class of farmers will pool their efforts to market their production, buy seeds and tools, obtain credit and benefit from technical assistance.

REGIME CONTROLS WATER

Finally the regime has ended all private ownership rights to Peru's scarce water supplies. The allocation of water is to be governed by the state in ways that will advance land redistribution.

A big problem involves the massive investment in technical expertise required to make the reform work. There are between 700,000 and 1 million families in Peru eligible for the benefits of agrarian reform.

Even the most zealous members of the government concede the program will at best be able to accommodate no more than half this number in the forseeable future. Yet, this presupposes a staggering burden of money and education.

At the request of the government, the U.N. Food and Agriculture Organization recently made a study showing that Peru will have to muster a minimum of one technician active in the field for every 100 families involved in the agrarian reform.

If the program is to move ahead at the planned rate, Peru will need 600 new technician a year for the next two to three years and even more later. Yet, the country is now producing only 300 new technicians a year. To temporize with the problem at least, the EAO study recommended an immediate crash program to turn out technicians in record new numbers.

Another cost will be salaries attractive enough to induce people into this work.

But the money probably would have to come from outside sources like the U.S. aid program, the Inter-American Development Bank or the World Bank. The outlook for winning such support is not favorable.

Peru's current strained relations with Washington, coupled with the reaction against foreign aid in the U.S. Congress, make it highly unlikely that the Velasco regime can count on very much direct help from the United States, which is also the principal contributor both to the IDB and the World Bank.

PERU'S PROBLEMS

To be judged a success, Peru would have to emerge from its experiment with a new agricultural structure centered around small to medium-sized farms able to support the families on them, to bring Peru reasonably close to self-sufficiency in food production and to add to the country's over-all prosperity by producing marketable agricultural exports.

But the country is far from such a goal. Most persons would probably rate Peru's chances of making it as exceedingly slim. But, as the military men of the Velasco regime rightly point out, it probably will take two decades or more to tell whether the race has been won or lost.

PERU'S MILITARY REFORMERS—IV: LIMA'S ECONOMY IS LIKE "BEGGAR ON A THRONE OF GOLD"

(By John M. Goshko)

LIMA, PERU.—In the words of its own inhabitants, Peru is "a beggar sitting on a throne of gold." Nature made its subsoil rich in minerals and other resources, then cruelly prevented their full exploitation by covering it with physical barriers to transportation and communication.

About two-thirds of the country's 13 million people are clustered around the coastal cities and towns where the resources for earning a living are most limited. The rest—Andean Indians descended from the great Inca empire—live outside the national economy in barren isolation.

The average individual income is about $280 annually. The total national production is worth approximately $4 billion a year—less than the annual sales of some of the big international corporations that historically have dominated the Peruvian economy.

With its great extremes of poverty, with a growing and dissatisfied population, Peru is the sort of powder keg country that could easily explode into revolt.

The rumblings of discontent had reached the stage last year where they prompted the armed forces to overthrow the civilian government of President Fernando Belaunde Terry. Then the generals, acting from motives of nationalism and self-preservation, decided that their only hope of staving off upheaval lay in mounting a revolution from the top.

THREE NEW GOALS

As a result, the program of the new military regime headed by Gen. Juan Velasco Alvarado centered on three main economic goals: Creation of national prosperity through full development of Peru's resources, more equitable distribution of the resultant wealth among the masses and the lessening of foreign dominance over the economy by giving the state much greater control over the exploitation of resources.

From the outset, the Velasco regime knew that Peru by itself could not muster the capital and technical expertise necessary for so massive an undertaking. There was an even more immediate problem; the junta had inherited a severe fiscal crisis.

Budgetary deficits, depressed exports, falling foreign exchange reserves and increased debt had caused the currency to plunge 40 percent in value. This and mounting inflation had left Peru unable to meet the payments in its foreign debt service. Moreover, debased earning power and increased unemployment contributed to widespread unrest.

SCARING AWAY FRIENDS

In grappling with the immediate crisis, the Belasco regime's initial actions could hardly have been more calculated to alienate the very forces whose assistance it needed.

By expropriating without compensation the International Petroleum Co., a Standard Oil of New Jersey subsidiary, the junta showed it was really serious about governing along radical lines. This increased its domestic political support and gave it a leadership status among nationalistic forces throughout Latin America.

But it put Peru in danger of losing U.S. foreign aid and its share of the premium-price U.S. sugar quota. The mere threat of these sanctions caused Peru's stock to plummet in the eyes of the international financial community.

Nor was the regime's position helped by its bellicose stance toward Washington. It made veiled threats of responding to sanctions with reprisals against other U.S. business interests in Peru and turning to Communist countries for assistance.

CRASH AVERTED

In the end, however, the crash that seemed so imminent was averted. This was due in part to the Nixon Administration's decision to back away from a showdown and defer the invoking of sanctions.

Instead, the Administration opted for a combination of negotiations and legal moves in the Peruvian courts that enabled Washington to postpone sanctions indefinitely. This has helped lift some of the more ominous clouds of uncertainty hovering over the Peruvian economy.

Of equal importance has been the junta's ability to modify the image of wildeyed radicalism that it projected during its first months in power. This does not mean that the military is any less serious about creating a far-reaching revolution in Peruvian life.

But the generals seem more aware of the economic obstacles that must be overcome if they are to succeed in this aim. For the moment at least, the moderates in the regime are calling the shots on economic policy. The result has been not only a muting of statist ideas but the adoption of more conservative programs.

RECLAIMED PROGRAM

In fact the Velasco government has more or less adopted, as its own, the fiscal recovery program of the Belaunde government. This program aimed at arresting the recession by refinancing the foreign debt, cutting the huge budget deficit through reduced spending and increased taxes and easing the drain on foreign exchange reserves by curbs on imports.

The program also envisioned higher export earnings by attracting new foreign investment to the copper mining sector of the economy.

Through application of these measures to its own ends the regime has relieved some of the bleakness of its financial position. By reaping the benefit of the tax measures passed in the last days of the Belaunde government and by a slash in spending, the junta has reduced considerably the budget deficit.

As the result of the holddown on imports and high prices for Peruvian minerals and fishmeal exports, foreign exchange reserves reached $150 million at the end of July, up almost $64 million from the same period in 1968.

LONG WAY TO GO

But despite these improvements, Peru still has a long way to go before it is out of the woods. The most pressing problem now involves the need to refinance Peru's short-term foreign debt.

Shortly before its overthrow, the Belaunde government had arranged to reschedule this debt—about $800 million—over the five-year period from 1970 to 1975. When it grabbed power, the military charged that the 6 percent interest agreed to by Belaunde for the debt refinancing was exorbitant and represented a sellout to the U.S. and European banks involved in the deal.

Now the junta has found that, even with the refinancing, Peru will be hard pressed to meet the average annual payments of between $155 million and $170 million required over the next four years. As a result, the finance minister, Gen. Francisco Morales Bermudez, has been making desperate efforts in New York and the major European capitals to get creditor banks to stretch the refinancing for another five years to 1980.

THINGS LOOK BETTER

When the regime was talking tough about a show down with the U.S., the prospects for this didn't look promising. However, it now appears the Peruvians will get what they

want, mainly because the banks don't want to risk losing their money by having Peru default on its debt.

But the price will be high. Banking sources say the Velasco government will be lucky if it gets its own refinancing program through at a rate of 10 percent.

Now the regime faces an even greater source of concern and embarrassment. Although it came to power promising prosperity for all Peruvians, it is saddled with a recession much worse than in the darkest days of the Belaunde period.

This is partly the price the junta must pay for its fiscal recovery program. By reducing government spending to a minimum and squeezing imports so hard that even raw materials and machinery for local industry have been effected, the government in effect is carrying out a policy of enforced stagnation.

LITTLE NEW INVESTMENT

Compounding this problem is the fact that the regime's past radical image has frightened foreign investors to the point where virtually no new investment has come into Peru in the past year. For the same reason, Peruvian businessmen have found their access to traditional money markets tightening up.

Reflecting these conditions, Peru's gross national product increase was only 1.7 per cent in 1968. Since the country has an annual birth rate of 3.1 per cent, this was a deficit in terms of real growth. For 1969, the picture is even bleaker; the GNP increase by year's end is expected to be less than one per cent.

Evidence of this virtual standstill is apparent everywhere. Buildings under construction at the time of the coup look today exactly as they did a year ago, with not a single new brick added. Retail stores report the sales far down; restaurants are virtually empty.

Unemployment is estimated at about 10 per cent, even higher outside the Lima area. Partial work weeks and other forms of underemployment are common.

SEEKING INVESTMENT

To combat this situation, the regime is following the Belaunde prescription of trying to entice new investment, especially in the mining area. Velasco says his government welcomes foreign business willing to "respect Peru's laws," and is even willing to provide tax breaks and other special incentives to win investments.

Desipte such offers, the regime has shown that it can use an authoritarian stick in dealings with foreign business. This it made clear in its approach to the American mining companies whose investment is regarded as crucial.

ULTIMATUM TO MINING FIRMS

Prior to the coup, the Belaunde government had lined up about $700 million in new investment to bring several untapped copper deposits into production. But when the military came in, all this money was held back by the worried mining companies.

After trying reasonableness and getting nowhere, the general in September handed the mining companies an ultimatum: Develop the concessions to which they held title within 18 months or they would be seized.

The threat was effective. On Oct. 28, the Southern Peru Copper Corp., a consortium of U.S. mining interests, announced it had reached agreement with Peru to develop its vast Caujone copper deposit. To bring the mine into production capable of yielding 140,000 tons of copper a year, Southern Peru is expected to invest an initial $355 million, with its total development costs climbing eventually to $500 million.

The regime is expected to reach agreements soon with other U.S. companies, such as Anaconda and Northern Peru Copper, that would swell the sum of new copper investments close to $1 billion.

THE BIG "IF"

That would be the greatest economic gain scored so far by the Velasco regime—one that might provide it with a springboard for success of the revolution. But this and the other copper agreements are all continuing. Many financial sources are doubtful that Southern Peru and the other companies will find lenders willing to put $1 billion into a country that offers so many question marks as Peru. Originally, it was hoped that a large part of the financing would be assumed by the Export-Import Bank, a U.S. Government entity whose functions include assisting U.S. business abroad.

Technically, Export-Import loans are not included in the legally prescribed sanctions that could be invoked against Peru over the IPC expropriation. Even though Washington does not intend to apply sanctions, however, its relations with the Velasco regime still are far from cordial. There could be strong objections within the United States to a big Export-Import Bank loan to benefit Peru.

OTHER LOANS NEEDED

Unless the Export-Import Bank picks up a large share of the financing, there is strong doubt that Southern Peru could go ahead with its commitment to develop Caujone. Even if it gets that loan, the company still must find sufficient private banks in the United States, Europe and elsewhere willing to underwrite the rest of the financing.

When asked what will happen if the American companies cannot arrange the financing, Peruvian officials say they will be regarded as having defaulted on their agreements and will have their concessions taken away. Peru, they say, will then turn to other mining concerns in Europe or Japan to develop its copper deposits.

This, however, looks like an empty threat. There has been no real sign that European or Japanese mining concerns are interested in big investments in Peru. They, too, would face the financing problem—with probably even less chance of solving it than the Americans have.

Thus it will be several months before the question of sizable new copper investment is answered gets answered. Depending on which way the answer goes will be the further question of whether the government moderates can continue to maintain the tenuous upper hand they now hold.

SWING LEFT POSSIBLE

If the moderates can't make good on their pledge to get the economy moving through traditional means, the results could be another swing of power back to those advocating more radical approaches. Then could be expected more of the vague but alarming talk about stripping foreign companies of their mining concessions and of nationalizing such areas as banking and the fishmeal industry.

Such talk can be heard even now. However, the fact remains that a year in power has actually seen no radical economic moves by the Velasco government except for the expropriation of the IPC and the promulgation of an ambitious agrarian reform program.

There have been subtle changes, of course. The regime's current attitude of welcome contains the proviso that the state must have a greater voice in the direction of economic activity and a larger share of the profits.

But, on form, the justice seems to have decided for now that it needs foreign private enterprise to create new jobs and develop Peru's resources. Whether, in the long run, this decision will be compatible with the nationalistic impulse that originally brought the regime to power is something that will take more time to tell.

PERU'S MILITARY REFORMERS—V: U.S. RELATIONS WITH GENERALS—STILL UNEASY, STILL VITAL

(By John M. Goshko)

LIMA—Early this year, several officials of the U.S. Embassy here were quietly detached from their normal duties and assigned to an urgent secret project.

Their instructions: To plan a telephone and radio warning system that would get most of the approximately 7,000 American citizens living in Peru to the Lima airport on an hour's notice for evacuation out of the country.

At the time, the precaution seemed well-advised. In Oct., 1968, Peru's new "revolutionary" military government had confiscated an American-owned oil company. All of Latin America was waiting with growing apprehension to see whether the Nixon administration would retaliate by cutting off Peru from U.S. aid and from its shore of the preferentially priced U.S. sugar quota.

U.S. sanctions very likely would have touched off a violent outburst against the lives and property of Americans here. The results could have been the worst hemispheric crisis since U.S. Marines went to the Dominican Republic in 1965.

The two sides moved toward the April 9 deadline for the sanctions, but at the last minute Washington blinked. The sanctions were "deferred."

TENSION RELAXED

Now, eight months later, Peru still refuses to pay compensation and the Nixon administration has not ordered the reprisals prescribed by U.S. law.

Actually though, the impression that the crisis has somehow disappeared is illusory. To be sure, Washington's decision's to avoid an atmosphere of deadlines and threats has taken much of the tension from the situation.

The dispute is still very much alive, but both sides have an interest in resolving it. That interest goes far beyond the relations between the dominant power of the Western Hemisphere and a poor, relatively small Latin American country.

Among the things at stake is whether radical or moderate forces will control Peru's revolution. The moderates, who now hold a tenuous upper hand within the military government, are trying to solve problems in ways that depend to a great extent upon the goodwill and assistance of the United States.

DANGERS AHEAD SEEN

If they fail in their attempt to develop Peru within an essentially capitalist framework, they almost certainly will be displaced by others who advocate more extreme, statist solutions. These radicals are motivated more by nationalism than by Marxism, but they fear they might set Peru on a leftist course that would get out of their control and veer toward communism.

These fears are not without foundation. Orlando Castro Hidalgo, a Cuba intelligence agent who defected to the United States early this year, reportedly told U.S. officials that Cuba regards the Peruvian regime as the most promising prospect in Latin America for subversion from within.

Also on the fringes of the situation is the Soviet Union, which now has an embassy in Lima. The Russians already have started to use this toehold in an attempt to drive a wedge between American interests and the Peruvian government and push the military regime farther left.

From these cross-currents spring the 1968 coup that saw the armed forces overthrow President Fernando Belaunde Terry and replace him with the junta headed by Gen. Velasco Alvarado.

Although the coup was rooted in a complex sequence of economic and political problems, its immediate pretext was the Belaunde government's attempt to reach an accord with the Standard Oil of New Jersey's subsidiary, the International Petroleum Co., resolving a decadees oil dispute over IPC's title to an oil field in northern Peru.

Having denounced the agreement as a "betrayal of the national interest," the junta immediately expropriated the company's property. It also charged that IPC owed Peru $690 million for "illegal enrichment"—an allegation that made clear its determination not to pay for the company's seized assets.

Thus, before it had been in power a week, the Velasco regime was in conflict with the United States. By refusing to pay off IPC, it had contravened the provisions of the so-called Hickenlooper Amendment to the Foreign Aid Assistance Act and a companion amendment to the U.S. sugar quota law.

These provisions stated that unless Peru made "adequate compensation" within six months it would lose U.S. financial aid that had been flowing at the rate of $61 million a year and its share of the sugar quota, worth about $45 million annually.

JUNTA GOT TOUGH

Most observers agree that the two sides could have found a mutually face-saving solution at the outset.

Instead, the junta took refuge in nationalistic polemics where the slightest concession would appear a surrender of principle. Also in the early months, it seemed to go out of its way to hurl new provocations at Washington.

The regime talked ominously of moving against other large U.S. business interest here if the Hickenlooper sanctions were invoked. Also it resumed aggressive enforcement of Peru's claim to a 200-mile territorial waters limit, seizing U.S. fishing boats within this boundary and even riddling one with bullets.

Finally, although Peru's foreign policy traditionally had centered on close cooperation with the U.S., the generals announced a new "neutralist" position whose "sole determinant in foreign affairs would be the national interest of Peru." This was quickly followed by the opening of diplomatic relations with the Soviet Union and all other European Communist countries except East Germany.

Actually, this approach to the Communist bloc had started during the Belaunde period and was aimed at broadening the market for Peru's exports. The Velasco regime's purpose, however, was obviously to blackmail Washington; implying that application of the Hickenlooper sanctions would turn Peru to the Communists.

U.S. ATTITUDE

On the U.S. side, the early stages of the dispute were characterized by an attitude that flexibility was paralyzed by the Hickenlooper amendment. There was pressure from hardliners in the U.S. Congress, who were threatening even more punitive legislation against Peru.

There was also the feeling of many U.S. officials that the Velasco government was so heavily influenced by persons of extreme leftist and anti-American views that an accommodation seemed impossible.

The dispute was reaching serious proportions when the Nixon Administration took office. Preoccupied with other problems, it let months pass before it gave top-level attention to Peru.

Just as this joint failure of communication and diplomacy appeared to be making a collision inevitable, counter-pressures appeared.

TROUBLES IN PERU

The heady, nationalistic binge of the regime's first weeks was giving way to reality. The dispute with Washington was having economic effects that went far beyond the threatened loss of aid and sugar sales.

It was generating a lack of confidence among investors, creditors and lending institutions whose assistance was needed, both to solve the immediate financial crisis and to carry Peru through the development promised by the revolution. Wherever the Peruvians sought help—not only in New York but in the major money markets of Europe—they were told the same things: First make your peace with Washington.

At the same time it was becoming clear that Moscow was not disposed to make anything more than token gestures toward helping Peruvian development and trade.

Finally, the Velasco government started coming under pressure from other Latin American countries. The frenzied pace and rhetoric of the Peruvian revolution were attracting a lot of attention and the generals were even thinking of themselves as leaders of a new ideological force within the Hemisphere.

This had led them to believe that in a showdown they could muster a united front of all the Latin nations in forcing Washington to back away from sanctions. However, the other countries were not exactly enthusiastic about involvement that would hurt their own relations with the United States. They began to drop discreet but pointed hints that Peru should try negotiation before confrontation.

MODERATES TAKE OVER

Gradually, the confluence of all these factors shifted the upper hand in the Velasco regime to those who advocated moderation. The word was passed that Peru was willing to talk things over. The Nixon Administration, finally awake to the implications of the situation, hastily dispatched to Lima a Wall Street lawyer with experience in international negotiation, John N. Irwin.

Irwin found an atmosphere that would have disheartened most people. Suspicion, belligerance and intransigence affected the highest levels of the Peruvian government when the negotiations began last March.

Nevertheless, Irwin, a low-key individual of infinite patience, eventually succeeded in establishing a rapport with Velasco.

Irwin since has had two additional rounds of talks with the Peruvians. His efforts unquestionably have had great effect in reducing the tensions. It is known, however that he has made no progress toward a solution and is pessimistic that the Peruvians will ever give sufficient ground to remove the shadow of the Hickenlooper Amendment problem.

This leaves the question of what will happen in the future. From the U.S. standpoint, the amendment for all practical purposes has been invoked. Except for previously programmed projects, the inflow of U.S. aid has dried up, and the director of the AID mission and most of his once-sizable staff have left without replacement.

On the diplomatic side, Washington has sent an able and urbane new ambassador, Taylor Belcher, to Lima. He has energetically tried to follow Irwin's lead in reducing friction, but a decided chill remains.

The embassy staff has been noticeably reduced, with many key positions vacant.

On the other side, the Velasco regime has won considerable political prestige at home and in the rest of Latin America for its apparent victory in forcing the United States to back away from sanctions. Privately, however, the Peruvians are quite aware that their victory could turn out to be Pyhrric.

Many officials of the regime admit that the unresolved nature of the dispute continues to hinder their pursuit of the investment and credits necessary to get the sadly depressed economy working again.

While continuing to insist that the IPC issue is settled and not subject to further negotiation, they have been trying to talk softly and reasonably both to the United States and to the international business community.

Lately, there have been signs that the stirrings toward accommodation have been having something of a reassuring effect on foreign businessmen. It now seems likely that Peru will succeed in winning a badly needed refinancing of its foreign debt, and the American mining companies operating here are committing themselves to a tentative big new investment in copper production.

Still, it will be several months before any one can tell whether the moderate-directed policy of trying to get along with Washington is paying off. The radical, leftist-oriented faction of the revolution still remains strong, and a power struggle leading toward a definitive break with the United States is possible any time this group decides that the policy of accommodation is hurting the pace of reform.

This is something that the new 14-man Soviet embassy here obviously has in mind. The Russians have moved openly to revive the nearly moribund General Confederation of Peruvian Workers, which is controlled by the technically illegal Peruvian Communist Party.

In addition, the Soviets have been pressing "cultural" programs within the universities, traditionally a big source of leftist sentiment, and the Russian news agency Novosti is distributing material to newspapers. Most ominously, the Soviets are known to be working hard at cementing their ties with the radical officer factions and those civilian advisers to the regime with a strong leftist bent.

While the possibility of a sharp new swing left cannot be discounted, most observers here think Velasco was expressing the true sentiment of his government when he said in a recent speech: This government is not Marxist . . . it is nationalist, it is revolutionary, but it is non-Marxist."

Perhaps the one thing that a year in power has taught Peru's generals is that their revolution needs a patron. Everything they have committed themselves to do—refinancing the foreign debt, bringing Peru's rich but untapped mineral reserves into production, carrying out a full-scale agrarian reform—is going to cost far more money than Peru can generate on its own.

To get this money, Peru needs the friendship of a bigger and richer country that can give it cash and technical assistance from its own resources and that can use its good offices to help Peru obtain additional help from private business and international lending organizations.

By now, the Velasco regime has had ample opportunity to look around for such a friend. And it has found that inevitably and inexorably all roads lead it toward Washington.

For Peru, this could mean a tacit recognition that its nationalism can be maintained only at the price of forfeiting the aid necessary to carry out its revolution. For the United States, it would mean giving up a lot of the old paternalism and economic domination that historically characterized its relations with Peru.

If the generals found themselves going down, they almost certainly would move desperately toward the left. At the very least, this would mean new attacks on U.S. interests that could inspire echoes in other parts of Latin America.

Out of the resultant chaos could come the eventual establishment of a new beachhead for communism within the Hemisphere.

EXPANSION OF FOOD STAMP PROGRAM

Mr. DOLE. Mr. President, this morning the Nixon administration announced a major step forward in the attack on hunger in America.

Secretary of Agriculture Clifford Hardin disclosed that the food-stamp pro-

gram is being substantially expanded and will see a considerable increase both in participating counties and people receiving stamps.

I trust the significance of this action will not be lost on those who have been so vocal in their criticism of the administration's efforts in the areas of poverty and malnutrition. Without waiting for passage of new legislation, the administration has moved to reduce the cost of family allotments as far as permitted by the present law, and has in many cases more than doubled the bonus paid to very low income families.

Today's action, better than unsupported criticism, will put more food on the tables of needy Americans. Today's action, better than publicity-seeking diatribes, will move us toward the end of hunger in the United States.

Mr. President, the administration is demonstrating its commitment and dedication to eliminating hunger and malnutrition through its deeds and its programs, not merely by its rhetoric. The critics should do likewise.

ANNUAL REPORT

Mr. PERCY. Mr. President, I have been disturbed about the number of times I have heard the first session of the 91st Congress referred to in disparaging terms. We have in some respects failed to measure up to our responsibilities and have regretfully passed some irresponsible legislation. But all has not been negative. I would like, therefore, to make an accounting to my constituents of my senatorial activities during 1969 and my outlook on the vital issues now facing our Nation. This accounting could be looked upon as a year-end report to the people of Illinois. Such a report is especially timely because the past year has seen the coming to power in Washington of a new administration whose outlook in many ways reflects a needed break with previous policies and outworn solutions. The emphasis is on reform.

The most urgent priorities facing President Nixon are the need to end the Vietnam war, which in the past 5 years has taken a terrible toll in American lives and drained our national wealth; to bring about a reconciliation at home so that as a united people we may move forward to deal effectively with pressing domestic needs, and to curb the current inflation through sound fiscal management, thus laying the essential groundwork for a stable economy and a sound dollar.

These issues have been major themes in my work this year in the Senate. At the year's end, I have mixed feelings of gratification and disappointment regarding this session of Congress. It is gratifying to have been able to help launch some important legislation, much of it requested by the administration, as a member of the Banking and Currency Committee, the Government Operations Committee, the Joint Congressional Economic Committee and the Select Committee on Nutrition and Human Needs.

But the session was disappointing because its overall record was characterized by legislative lag and a failure to come to grips with the two major domestic problems facing our country—inflation and national reconciliation.

The death last summer of our beloved colleague, Everett McKinley Dirksen, was a loss for the Senate and for the people of Illinois. To commemorate the late Senate minority leader, I have introduced together with Senator RALPH SMITH legislation that would designate Interstate Highway 74 as the "Everett McKinley Dirksen Highway" for the segment of the road that runs through Illinois. I also introduced a bill to name the Federal building and courthouse in downtown Chicago in honor of Senator Dirksen and was pleased to have more than 80 Senators join me in this legislation.

VIETNAM

In 1969, President Nixon succeeded in reversing the escalation of the Vietnam war, reducing the level of violence and the number of American battle casualties. By the end of the year, the President had ordered a total reduction of 115,500 U.S. fighting men since he took office. I fully support the steps he has taken and his plan for "the complete withdrawal first of all U.S. combat ground forces."

I have continued to consult with the President, Secretary of State William Rogers, Dr. Henry Kissinger and their staffs in their effort to spur the stalemated negotiations in Paris and to bring about an early disengagement of American forces in Vietnam. I have also worked to put pressure on the Communists to reveal the names of the American captives in their hands, to treat our prisoners-of-war humanely and in keeping with international treaties, and to arrange for the exchange and release of prisoners.

As the year draws to a close, I continue to support accelerated withdrawal of American combat troops from Vietnam as a means of requiring the Government in Saigon to assume the main burden of the fighting and to bring additional non-Communist leaders into the Government, thus broadening its popularity and base of support. I also cosponsored a resolution in the Senate urging Saigon to adopt meaningful land reform.

NATIONAL SECURITY

I want the Department of Defense to be so efficient and our military policies so wise that there will be no further reason for attacks on the so-called military-industrial complex. I want the men of our Armed Forces honored for their profession, and I want our veterans adequately taken care of by a grateful people. The alleged massacre in Vietnam is shocking to us all. Justice must be done, and procedures adopted so that similar incidents can never occur again.

We must also examine anew our overall military strategy within the context of U.S. foreign policy and come to a better understanding of which commitments and what weaponry are truly necessary to the security of the Nation and what is simply just wasteful or worse. I shall continue to work for Government Accounting Office auditing of defense contracts, for a commission on national priorities, and against deployment of weapons systems which are not ready for deployment.

In March I cosponsored the Draft Reform Act of 1969, which would provide for extensive revisions in the selective service laws. It calls for random selection of inductees, establishes categories of selection, sets out broad guidelines for deferments, and vests in the President the authority to prescribe rules regarding deferments. Thereafter, I worked hard for the passage of this legislation, which recently became law.

The most vital security problem facing President Nixon and his administration—aside from the need to conclude the war in Vietnam and to prevent one in the Middle East—is a need to reach an effective accord with the Soviet Union to limit the further spread of nuclear arms. Thus, the current preliminary talks with the Russians in Helsinki must be viewed in the broader context of global arms control and the search for peace.

Great risks are involved in seeking to negotiate an arms limitation agreement with the Soviet Union. The difficulties inherent in and the necessity to verify compliance; the continuing problem of China; the large numbers of tactical short-range delivery systems on both sides; and the shifting international climate and political tensions all pose high challenges that must be overcome. Yet all the risks we will encounter in trying to forge an effective pact with the Russians must be weighed against the risks that the lack of such an agreement will impose on us in the ensuing decade.

There are hopeful signs as well as problems ahead on both sides of the barrier that divides us and the Soviet Union.

With their rapid buildup in strategic forces within the past few years the Russians are able to negotiate without conceding inferiority or exposing themselves to the possiblity of being frozen in an inferior position.

On the American side, there is an acceptance by the President and his chief advisers of the concept of nuclear "sufficiency." Our leaders realize fully that beyond a certain point additional nuclear force cannot be converted into useful political pressure.

In my judgment, President Nixon has also accomplished a great deal in moving decisively away from an ABM system ostensibly geared to defend the cities against missile attack and capable of expansion, through the expenditure of untold billions of dollars into the full-scale illusion of a "thick" ABM. To the extent that such a "thick" system is ever accepted as having achieved an effective screen against enemy missiles, it becomes an offensive weapon, since it releases our policymakers from the restraints imposed by the Soviet second-strike counterforce capacity.

Moreover, the President has managed to move us away from the "thick" system without encountering any divisive outcry from the military and its partisans in Congress. For this he also deserves high credit and earnest praise.

Nevertheless, I opposed the deployment of the Safeguard anti-ballistic-missile system at this time because it

has not been adequately tested; because I firmly believe that deployment may escalate the nuclear arms race; that because it is technically deficient, it will not increase our national security; and because it represents a long-term commitment in energy and budget that could be far better spent in the urgent task of nation-building at home.

FOREIGN AFFAIRS

President Nixon's policies abroad and particularly the doctrine of restraint announced in Guam will help greatly in preventing the outbreak of fresh Vietnam-style conflicts in Asia. In two trips to Western Europe and one trip around the world in 1969, I was convinced that the administration is highly regarded in world capitals and that American prestige is generally high.

In the turbulent Middle East, I note with satisfaction the President's determination to support Israel's legitimate aspirations for peace and security in the face of the Soviet-backed Arab States. I am urging the administration to provide credits to Israel for the purchase of modern jet aircraft, since Israel's dollar reserves have shrunk to the danger point and the Arabs have a 6-to-1 edge in jet aircraft over Israel. Should the Arabs continue to enjoy such a vast quantitative superiority in jets, they may be tempted to unleash another war. A proper balance of forces can help prevent an enlarged war.

I support the President in the arrangements he has concluded for the reversion of Okinawa to Japan in 1972, while maintaining U.S. military bases on the island. At the same time, I have spoken out strongly, both in Washington and Japan, against Japanese import quotas that bar American goods. I have told the Japanese that we cannot long tolerate discrimination against American goods at a time when we are Japan's best customer and while we provide for Japan's defense.

One of the chief threats to the stability of the dollar arises from the cost of maintaining U.S. troops overseas. Vietnam, fortunately, is being scaled down, but in Western Europe more than 300,000 U.S. troops plus their dependents cost $15 billion a year and cause a balance-of-payments drain of $1.5 billion a year. Working within the North Atlantic Assembly of NATO, a resolution I proposed was unanimously adopted in October by legislators from all the NATO countries calling for all official U.S. expenditures to provide for the common defense in various West European countries to be paid for by those countries instead of the United States. Now this proposal must be implemented by the executive branches of the governments. In this way, the United States could save large sums of money both in the Federal budget and in our balance of payments.

FOREIGN AID AND TRADE

The Senate approved legislation this year that I supported which expedites the export of peaceful nonstrategic goods to all nations and permits the United States to compete on a firmer footing with West European and Japanese industry in export markets. Goods of a military or strategic nature would still be barred from export. This legislation, I believe, will permit American firms to cut down on the burdensome bureaucratic procedures that prevent them from competing more effectively in world markets.

The United States must now take positive steps to stimulate trade. Specifically, we must make provision for liberalized adjustment aid for workers affected by rising imports, put an end to the current disparity in rates for outbound ocean freight and on domestic rail rates on goods bound for export, allow for new flexibility in the operations of the Export-Import Bank, offer tax relief for exporters and create a new international fund to insure businesses against expropriation.

I have supported the continuation of the foreign aid program, though on a reduced scale as proposed by the administration. The entire program urgently needs to be reviewed and the Foreign Relations Committee plans to study thoroughly and revamp foreign aid in early 1970. Two brighter aspects of the foreign aid program is legislation calling for the creation of a private investment corporation to help channel private money into developing countries and to remove the Government from the picture to some degree. Another encouraging provision which I cosponsored is the increasing of funds for population control from $50 to $100 million. Population control is an urgent necessity in developing countries.

GOVERNMENT ORGANIZATION

No one who has watched the activities of the 91st Congress can be satisfied with the pace at which the people's business has been conducted. While it is in the public interest to debate fully the great issues of our time, much can be done to expedite legislative matters and to improve the legislative process. Consequently, I am cosponsoring a bill to reform the operations of the Congress. This proposal would make more democratic the procedures of the Congress, reduce the influence of the seniority system, improve congressional fiscal controls and oversight on budgetary matters, develop more open procedures on appropriation matters, and generally improve housekeeping functions. In line with the above concept, I voted for easing the cloture rule in order to enable the Senate to curtail filibusters.

Moreover, on the State and local front, I have cosponsored legislation to share Federal tax revenues. Through this means, revenue collected by the Federal tax system can be passed through to State and local governments to enable them to undertake programs with high local priorities. We have learned in recent years that the Federal bureaucracy cannot solve all our social and economic problems. Centralized control frequently causes a drying up of innovative and experimental programs. Enabling State and local governments to receive sufficient sums of money to attack their individual problems not only contributes to the general welfare but also strengthens that spirit of diversity which is so essential to a more dynamic society.

In this same vein, I have cosponsored grant consolidation legislation which will enable the President to put into effect, upon congressional approval, executive reorganization plans that would streamline Federal programs. Overlapping and duplication of hundreds of Federal financial assistance programs can thus be curtailed to the benefit of States, local governments, and individual grant recipients.

ILLINOIS AFFAIRS

Not the least of my senatorial duties is to assist the governmental units of our State and the people of Illinois in dealing with the thousands of programs, services, and bureaus in the Federal Government. In 1969, my office received thousands of letters, telegrams, and telephone calls seeking help with specific and often complex Federal problems. These requests included such areas as the armed services, social security, veterans affairs, immigration, education, employment, conservation, highway, development, and postal matters.

Whenever possible, I have sought to expedite loans and grants to Illinois communities. With this goal in mind, I organized a meeting in Washington of more than 150 mayors and city managers of major cities and towns in Illinois to discuss with leading members of the Nixon administration ways of strengthening the Federal-State partnership for the development of Illinois. As an integral part of the conference, I sponsored a workshop session that dealt with specific loans and grants.

Despite severe constraints that have been imposed on the Federal budget—restraints that I support—I was moderately successful in helping to secure funding for worthwhile public projects in Illinois. Congress finally approved $70 million for the national accelerator project in Weston. The city of Danville received more than $4 million to carry forward an urban renewal project that had been stalled in the Housing and Urban Development Department. Springfield sought $1.4 million in Federal funds for a low-income housing project and our office was instrumental in obtaining the needed aid.

In an effort to be helpful to qualified Illinoisians who have sought to serve in the new administration, my office has been available as a channel between the applicants and the executive branch. I am proud of the high calibre and dedication to public service of the approximately 40 men and women, many of them young people, whom I have recommended for service on national advisory commissions.

This year, I opened a new office in Springfield to better serve the needs of downstate Illinois and to coordinate more closely with Governor Ogilvie and the State legislature.

During the year, I returned to Illinois three or four times a month, often spending the weekend meeting with constituents at "Listen-Ins" throughout the State; consulting with regional Federal officials on specific problems, such as the development of highways in the Quincy area; meeting with the Army Corps of Engineers, whose emergency dikes pre-

vented a major spring flood in the Quad-Cities area, and conferring with community leaders from all walks of life.

Over the Memorial Day weekend, I joined Governor Ogilvie in a camping tour of Shawnee National Forest. The primary purpose of the trip was to study potential development of the National Forest to aid in the economic growth of Southern Illinois. At the time, I announced my sponsorship of a 7-year $46.1 million program to build scenic roads and recreational areas in Southern Illinois to enhance the value of the National Forest. The keystone of the federally financed development program is the George Rogers Clark Scenic Drive, which would stretch for 160 miles across the National Forest from Grand Tower on the Mississippi River to Cave-in-Rock on the Ohio River.

In April, I spent a week touring 10 college campuses throughout the State. To a degree perhaps unsurpassed by any previous generation in modern times, the young people on Illinois campuses are seeking, sometimes painfully, to experience firsthand a meaningful relationship between learning and life and these campus talks resulted in a valuable exchange of views. As we move into the new decade, we have every reason to be proud of the mainstream of the new generation—with whose active participation Illinois will continue to grow and prosper.

ENVIRONMENT

Our Nation faces many urgent priorities today: quality housing, better health care for our people, a sound education system, combating crime and exercising drug control and providing ways and means to assure all those willing and able to work with an adequate income while providing financial assistance to the sick and the old.

There can be no higher priority, however, than our survival. And the fact is that our survival is being threatened today. Pollution is befouling the air we breathe, the water we drink, the sights we see and the din we hear. The problem is not made any easier by rapidly expanding birth rates which increases the burden on our society and serves to undermine our efforts to restore and preserve a harmonious environment. Increasingly, our people are becoming aware of the threatening disaster and beginning to take action.

Congress recently appropriated $800 million to provide matching grants to the States to construct water treatment plants. Technological advances have been made in recent years to curb water pollution, but they have remained largely academic due to a lack of money. This year, for the first time, Congress demonstrated its serious concern over water pollution by appropriating four times the previous level of funds. This will still leave Illinois short of matching grants to meet even current needs, but it represents a step forward. Perhaps we will be able to prevent Lake Michigan from going the way of Lake Erie and becoming a dead sea.

Forward-looking action has also been taken to fight air pollution. Congress this year extended the Clean Air Act to broaden research and to fund fuel combustion research. High sulfur content fuels and automobile fumes are a major spoiler of our atmosphere. Increasing research must be devoted to preventing all forms of air pollution and this legislation contributes to this effort. The Nixon administration has just announced a new program for the development of antipollution measures from autos and motor vehicles.

Our inland lakes and streams are not the only water sources being polluted. Pollution is caused by oil and sewage discharges from vessels and leaks or seepages from oil wells. To meet this condition, Congress is preparing to enact the Water Quality Improvement Act, which directs the Secretary of Interior to designate Federal standards of performance for marine sanitation sewage treatment devices on vessels. The act also prohibits vessels from causing oil pollution and authorizes the Secretary to enter into contracts or grants for the development of new or improved methods for prevention of pollution on the Great Lakes.

The myriad problems facing our environment are so extensive that greater efforts are required to coordinate existing and proposed new areas of action. To this end, the Water Quality Improvement Act establishes an Office of Environmental Quality to provide such direction and coordination. A similar proposal is contained in the Environmental Quality Improvement Act. An even more ambitious structure has been proposed in the creation of a Council on Environmental Quality which not only will have coordinating and directional responsibility, but will also engage in research and surveys concerning the Nation's ecological system, natural resources, and environmental quality. The establishment of some form of improved structure is almost certainly assured.

Finally, the Congress is beginning to assume greater responsibility to develop adequate family planning and population programs. The Senate has passed legislation to create a Commission on Population Growth and the American Future which the President has proposed. The work of this organization will enable the Government and the people to survey the course of population growth, the effect of population growth on the activities of government, and the means to deal with such growth. In addition, important legislation is pending to upgrade population and family planning responsibilities within the Federal Government and to authorize financial grants to expand research, training, construction, and operation grants. The success of these programs will go far in determining whether our environmental efforts will succeed.

My concern over the future of our environment has led me to sponsor the environmental legislation before the Congress and to seek its early adoption.

In the decade ahead, improvement of our environment should receive the highest priority.

HOUSING, EDUCATION, AND THE CONSUMER

The right to a decent home has finally become a recognized need. In years past, promises have been made to provide each American with adequate shelter. As a rule these promises have been broken. It is now apparent, however, that a healthy social and economic environment cannot exist without satisfactory housing conditions. In 1968, Congress enacted the Housing and Urban Development Act, calling for the construction or rehabilitation of 26 million housing units during the next 10 years. This goal is in danger, however, because of the current inflation which has dried up mortgage credit and led to a rampant increase in construction costs. Both problems are being met by the President's anti-inflation program. Additional steps are also being taken, including efforts to develop technologically improved construction methods and to increase the supply of skilled labor.

In addition, steps have been taken to provide an additional supply of money for home financing and to lower money costs. I cosponsored legislation to authorize the Treasury to make an additional $3 billion available in loan funds to savings and loan associations to increase available mortgage money.

I have also introduced a new homeownership program which is presently under consideration in the Banking and Currency Committee. This program authorizes the Secretary of Housing and Urban Development to increase mortgage limits of various mortgages insurable under the National Housing Act whenever the cost of housing increases or decreases by 3 percent or more. It removes present limitations on the making of assistance payments in existing dwellings or dwelling units in existing projects under the act and gives preferences to homeowners receiving assistance payments under the lower income housing provisions of the act for counsel in services and mortgage insurance assistance.

In the Housing Act of 1969, mortgage insurance limits on most programs were increased 10 to 20 percent. Additional assistance authority was also extended to rent subsidy, rent supplement, urban renewal program, and related program assistance for lower income families. The value of Model Cities programs was recognized through an increase of an additional $600 million for 1970 and the application of this program to smaller cities. Federal insurance program authority was also increased in order to provide greater assistance to home mortgage purchasers.

The 1969 Housing and Urban Development Act, in turn, provides on-site authorization authority for Model Cities programs as well as better funding of urban renewal, rent supplement, college housing, and homeownership and rental assistance mortgage credit programs. The National Homeownership Foundation program which I authored was initially funded this year by the Senate Appropriations Committee. Unfortunately, it was deleted in a conference with the House. But a new effort to gain funding for this important housing concept will be made next year. I was pleased with the level of funding provided for homeownership itself.

In the area of urban development, the

Senate Banking and Currency Committee on which I serve has recently reported out urban mass transportation legislation. This provision is vital to any realistic development of our urban areas which are now clogged with auto traffic, circled by cement expressways, choked with smog, and in danger of being deserted for more suburban areas. Under a compromise amendment worked out by the administration and the committee, $3.1 billion has been authorized for construction of rapid transit systems, with the funds rising from an initial amount of $80 million in 1971 through an aggregate of $1.86 billion by 1975 with the balance to be spent thereafter.

In the consumer field I have introduced comprehensive protective legislation that would establish an Office of Consumer Affairs in the Executive Office of the President. The Consumer Affairs Office would be authorized to coordinate Federal consumer operations, engage in research, represent consumers before Government agencies, initiate hearings, act upon consumer complaints, and disseminate information helpful to consumers, such as test results and technical data. The proposed legislation would also establish an independent Consumer Advisory Council to oversee and evaluate the consumer affairs of the Government. It authorizes the National Bureau of Standards to test products at the request of businessmen for the information of consumers.

I have also sponsored legislation proposed by the administration to create a Consumer Affairs Council, to establish a Consumer Protection Division within the Department of Justice, to increase the authority of the Federal Trade Commission to move against consumer fraud activities, and to ease the way for the institution consumer class action designed to protect large numbers of individuals subjected to fraudulent commercial practices.

Credit reporting practices have raised protests on the grounds that improper or unfair adverse credit reports can seriously damage a person's economic and personal welfare. To correct such abuses, the Senate recently enacted the Fair Credit Reporting Act which was reported out of Banking and Currency Committee and which I supported. Finally, I supported the Senate-passed amendments to the Hazardous Substance Act which would require the adequate labeling of childrens' toys that may be subject to electrical, mechanical, or thermal hazards.

On the vital education front, I have cosponsored a measure providing a $325 tax credit per student for anyone paying the expenses of higher education. The measure will be of most help to low- and middle-income taxpayers. It passed the Senate as part of the Tax Reform Act. I also cosponsored a bill providing incentives to banks to make available more student loans for higher education. The bill has been signed into law.

TAXES

The Tax Reform Act of 1969, as passed by the Senate, contains many excellent features which will greatly benefit low- and middle-income individuals and families while closing a number of inequitable tax loopholes. Among these are a low-income allowance removing lowest income taxpayers from the tax rolls entirely, more equitable tax treatment for single persons, tax credits for higher education, a minimum tax on those who have previously avoided paying a tax, reduction of the oil depletion allowance, and increased payment and inspection requirements for private foundations. could not, however, support as fiscally sound, an increase in personal exemptions to $800 without balancing revenue receipts against revenue losses. Moreover, this increase eliminated all tax rate reductions and eliminated any increase in the standard deduction. The effect would be to cause a $6 billion loss in the next 2 years at the very time when the President is attempting to curtail inflation. I offered an amendment which would have granted individuals a $750 personal exemption graduated over 3 years. It would also have provided tax-rate reductions and a standard deduction increase from $1,000 to $2,000. The revenue loss would have been far lower and the inflationary impact would be minimal. I also support a 15-percent increase in social security benefits. However, I could not vote for the inflationary provision which ultimately passed the Senate.

I voted against the tax bill in the hopes that sounder and fairer legislation will be worked out in conference with the House that I can fully support.

COMMERCE AND INDUSTRY

I have cosponsored legislation to improve the operations of the Small Business Investment Act, to expand sources of investment capital available to small businesses, to authorize the Small Business Administration to purchase debentures of small business investment companies—a proposal which has already passed the Senate—to develop improved equal business opportunities for business concerns situated in high risk areas, and to incresae the ceiling on loans that can be outstanding to state and local development companies. Efforts are also proving successful in placing limits on the formation of one-bank holding companies while at the same time not punishing those that were organized earlier on good faith.

I have worked to retain the business investment credit provision to enable business to receive adequate depreciation reserves to enable them to modernize the Nation's industrial plant. The phasing out of this concept has led to a move to develop more uniform and equitable depreciation rates. It is only through the encouragement and development of modern business plants that our Nation will be able to compete effectively in foreign markets in the coming decade.

A sound economy and a stable society depend in great measure on employment opportunities and job training. In May, I introduced a bill to provide a tax incentive for private employers to meet the wage costs of employees who were in need of on-the-job training before they could contribute to the business output of the employer. In addition I cosponsored another bill to provide tax incentives for private employers to offset the costs of the job training programs. I support the retention of the Job Corps and increased funding for the Equal Employment Opportunity Commission.

In December, I conducted a week of hearings to examine in great detail the status of minority enterprise in America. These hearings are among the most extensive that have ever been conducted by the Small Business Subcommittee of the Senate Banking and Currency Committee, in terms of probing the problems and opportunities of minority enterprise. We heard from struggling entrepreneurs, from Government administrators, from educators, and from representatives of the private sector who have put much of their time and money on the line to seek solutions to these problems.

In February, I introduced a bill to permit airlines to set special air fares for young people, the handicapped, military personnel, and persons aged 65 and older. The bill gained more than 40 cosponsors. The proposal would authorize the Civil Aeronautics Board to allow the airlines to charge reduced air fares to these groups on a space-available basis. In addition, the measure provides for special fares for military personnel, for persons aged 65 and older and for the handicapped, as defined by CAB regulation.

Older people face a special problem of loneliness caused, in part, by being cut off from their family and friends by the high cost of transportation. Moreover, the handicapped often also live on reduced incomes, with limited mobility and they too have special needs to be reunited more frequently with family and friends and are able to travel at off peak travel times. Our senior citizens and the handicapped often must live on pensions and other forms of fixed income and therefore deserve special consideration in traveling by air in return for traveling at times when the seats would otherwise go empty.

I am also cosponsoring the Federal Coal Mine Health and Safety legislation that provided the proper health and safety protection to the miners, and that takes cognizance of the legitimate economic interests of the coal producers.

In the area of uniform relocation assistance and land acquisition procedures, I have cosponsored legislation designed to eliminate inequities in payments made to individuals and business which are relocated or bought out by programs financed with Federal funds such as urban renewal and highway construction. The legislation provides for a uniform schedule of payment to such people to be adhered to by all Federal agencies and State agencies operating with Federal funds. The bill has passed the Senate.

Perhaps of greatest importance is the need to curtail the inflationary cycle our country presently finds itself in. It is only through this means business can operate an effective economy, make adequate profits, maintain high employment, and compete abroad on equal terms.

To support the administration's effort in this vital program, I have not pressed to implement certain legislative proposals. They may be worthy, but not at the expense of fueling inflation. I have voted against many others.

ADMINISTRATION OF JUSTICE

Nearly 50 percent of those persons arrested for criminal offenses in 1968 were under the age of 18. It is sad indeed to realize this represents only the beginning of a life that is at odd: with society and the law. What is needed today if we are to achieve meaningful results in curbing youth crime is a single body—an independent agency—to coordinate activities in the field and better equip those who work with young people to deal with "offenders." In view of soaring crime rates, I have introduced legislation in the Senate which Representative RAILSBACK of Illinois had introduced in the House to create an Institute of Continuing Studies of Juvenile Justice. By disseminating information and training individuals connected with youth crime, the Institute would most effectively use its resources to combat juvenile crime and rechannel young delinquents into living purposeful and constructive lives. This is a vital goal for our society as a whole. As the President's Commission on Law Enforcement and the Administration of Justice has said:

America's best hope for reducing crime is to reduce juvenile delinquency and youth crime.

In May, I joined the late Senator Dirksen in cosponsoring two bills aimed at controlling the traffic of pornographic materials through the mail or interstate commerce. One would protect minors from the undesirable influence of materials neither solicited nor wanted, but which are sent in such a way as to threaten the minds of children. The other extends its protections to all would-be victims since it makes it an offense to use the mail to distribute an advertisement or solicitation designed to appeal to a prurient interest in sex.

I have long advocated lowering the voting age to 18. In light of interest cosponsored a Senate joint resolution proposing an amendment to the Constitution extending the right to vote to citizens 18 years of age or older.

In February, I joined Senator BARRY GOLDWATER of Arizona in introducing a resolution to make uniform the residency requirements for purposes of voting for the President and Vice President. It also directs the States to provide for the registration of qualified residents who apply 30 days or more before a presidential election.

Recently I directed my staff to make a careful study of all the electoral college reform proposals now before the Senate in order to be certain that the soundest amendment to the Constitution is advocated for adoption.

SOCIAL REFORM

In August, President Nixon boldly proposed a wide-ranging program that would completely reform the present welfare system—a system that is burdensome to the taxpayer, degrading to the recipient and discredited in the eyes of our people. I have joined in sponsoring the administration's reforms, which are known as the proposed Family Assistance Act of 1969.

The President's assertion that "the present welfare system has to be judged a colossal failure" is amply borne out in a poll of my Illinois constituents. Ninety-nine percent of those polled strongly disapproved on the welfare program. The President's reform, if enacted and properly funded by the Congress, could, perhaps, within a generation, break the terrible cycle of poverty and dependency on the dole that is the bitter heritage of so many broken welfare families. They look forward to the day when all able-bodied Americans may work in self-respect and lead useful and productive lives. They would permit the old, the blind, the infirm and others among us whose harsh circumstances in life are beyond their power to control to live out their years in dignity under an equitable insurance-styled program. They tell the working poor that America will reward their efforts to produce and give them a hand up. The best government should be that which is closest to the people. The revenue sharing program set forth in principle under the President's plan means that overburdened States and cities will at last have a chance to offer their people the highest quality services with local control.

After the President's Family Assistance Act was introduced in Congress, I offered an amendment authorizing funds for the construction and remodeling of facilities for day-care purposes. This concept represents a breakthrough in expanding day-care programs: All existing programs provide money for training and staffing for day-care purposes but not for construction or remodeling. All too often, the greatest obstacle to the operation of day-care programs is the failure of buildings such as churches and schools to meet the code requirements for such centers. My amendment would help solve this problem. It would provide funds to public and nonprofit private groups for the establishment of day-care centers. Most of the funds would be used to build centers in low-income areas to serve children of welfare mothers receiving job training or children of working mothers.

I have also sponsored a greatly expanded food stamp program which has been enacted into law. It provides food stamps to families with incomes of up to $4,000 a year and cost-free stamps to families with incomes of less than $60 a month. My work on the Senate Hunger Committee has convinced me that malnutrition and outright hunger remains as serious problem in our Nation. Food stamps are but one means of dealing with the needs of the hungry and making sure that yet another generation of malnourished children is not consigned to a life of disease and dependency.

I have introduced an amendment to title III of the Older Americans Act that would provide $20 million for the program rather than the $9 million recommended in the revised fiscal 1970 budget. It has been fully funded in the Labor-HEW appropriations bill. With title III funds, communities are able to offer such services as home health care, transportation, personal counseling and job training for elderly citizens. In addition, they can develop recreation and hot-meal programs, which are often run with the aid of older people. There is no earthly reason why in the wealthy America of the 1970's we cannot provide better support for low-income senior citizens who are in great need of receiving our help. These people need more than a social security or welfare check to make their lives meaningful. They desperately require programs aimed at meeting their specific needs and helping them find the dignity and satisfaction that comes from full participation in their communities, despite their advanced years.

There are more than 20 million Americans aged 65 or over in this country. Of these elderly Americans, 3.2 million are restricted in their movements or confined at home; 3 million are classified as illiterate or functionally illiterate; 4.4 million live alone, often isolated from community life, and 1.2 million are hospitalized or residing in an institution. The additional funds provided by my amendment can make a significant impact. For Illinois, they will make the difference between a $700,000 grant or $318,000—a decrease of nearly 50 percent from the previous year. The title III program has been able to assist 18,000 older Americans in Illinois through such projects as senior recreation centers, health aid, adult education, transportation assistance, and referral services.

Finally, I have introduced legislation providing for the establishment of Neighborhood Health Centers as part of an effort to bring good health care to residents of low-income areas. The centers are designed to eliminate the long lines of people who all too often attempt to obtain inadequate treatment at large and distant county hospitals. The Senate Labor and Public Welfare Committee has approved a Neighborhood Health Center amendment to the Hill-Burton Construction Act that has a good chance of congressional passage.

SOCIAL SECURITY

The administration has called for a 10-percent increase in social security benefits as well as other reforms and legislation incorporating such a raise, or perhaps a still higher percentage is likely to be forthcoming from the 91st Congress.

Beyond these rate increases, however, a need exists for a major overhaul of the Nation's social security system. Consequently, I have introduced a legislative package that would substantially improve benefits for dependents and widows, eliminate the present earnings limitations for the elderly, partially refund payroll taxes for the poor and provide for cost-of-living adjustments. Moreover, we must make a comprehensive review of social security, private pensions, tax laws, and income maintenance for the elderly. In the 30 years since operation of the social security program began, there has never been a full review of its purposes, direction, and impact on the economy of the Nation and its people. Pending a basic revision of policy toward the treatment of income for retired persons, I favor several immediate and responsible steps that can be taken to correct glaring inequities and respond to the very human needs of the millions who depend on social security:

Increase social security benefits whenever the Consumer Price Index rises by

3 percent or more. Experience has amply indicated that political considerations have too often dictated congressional action and therefore increases in social security benefits have lagged behind the rising cost of living.

Increase the earnings limitation for persons aged 65 and over from the present $1,680 a year to $2,400 a year in order to be eligible to receive full social security benefits. Over a period of 7 years, this legislation would eliminate the earnings limitation for the elderly altogether.

Permit the surviving spouse of a primary beneficiary to receive a full 100 percent of social security benefits. Under present law, a man can draw 150 percent of his monthly benefits if he is married or 100 percent if he is a widower. His widow, however, can receive only 82½ percent of his total monthly allotment. This situation creates a serious injustice. A widow's expenses are hardly less costly than a man's. It is a cruel blow for a widow when she loses not only her husband but also almost half of her income at the same time.

Establish a minimum dependent benefit of $30 so that for each child an additional $30 a month would be added to the overall family benefit. The costs of raising a family of four and a family of eight are just not the same and under the existing formula large families do not receive any additional benefits to compensate for their size. This legislation is needed to reflect the added expenses which large families must incur to achieve the same living standards as smaller families.

Adopt a formula by which up to 90 percent of the social security payroll tax currently paid by workers in the lowest income groups would be refunded. For millions of low-income families, social security is an ever-present tax burden with benefits a far-distant reality. A nation committed to the principle of progressive taxation finds that the social security payroll tax is increasingly regressive because the poor pay proportionately higher percentages of their incomes.

Until some of the present shortcomings in the legislation are corrected, social security will not adequately protect those citizens it was meant to protect. Only when we rectify some of the contradictory and self-defeating provisions in the present legislation will we finally be facing up to our responsibilities to our older citizens and to society as a whole.

RURAL LIFE

I continue to be disturbed about the decline in farm income and the fact that farmers in this country are not sharing in the growing prosperity and affluence of America.

For this reason I cosponsored and supported the creation of a Commission on Balanced Economic Development to look for ways to improve the economy of rural areas in our country. This is now law.

I also supported the Rural Job Development Act of 1969 to give tax incentives to attract jobs and new industries into rural areas of the country. This bill is still pending before the Finance Committee of the Senate.

The bill offers tax credits and other financial incentives to companies engaged in both commercial and industrial production that locate in counties which have no cities of more than 50,000 population and in which at least 15 percent of the families have incomes of $3,000 or less.

The proposed measure also cites employment requirements to be met before a firm can qualify for the newly available tax incentives. Thus, a company would be required to create at least 10 new jobs in the county and to secure at least half of its entire work force from the general area.

Recently I testified before the Tariff Commission protesting the proposed imposition of higher duties on potash imports from Canada. Such higher duties would have increased the cost of fertilizer to the Illinois farmer.

I strongly oppose the proposed action of European countries which would put a tax on soybean exports from the United States to Europe. Such a tax could severely harm Illinois' substantial soybean exports to Europe. Decision on such a tax has been delayed until at least next year and I am still seeking to halt this proposed action entirely.

ETHICS IN PUBLIC LIFE

Finally, let me comment on the Haynsworth nomination, which I could not support.

It would be ironic if the ethical searchlight that has been trained on this nomination were to be put out now that the case is closed. For the doubt in the minds of our citizens—doubt that I think has swelled to the level of a crisis in public trust—is by no means confined to the judicial and executive branches. Any legislator who reads his mail knows that Congress is in trouble in the ethics department.

Can we honestly contend that Judge Haynsworth's alleged behavior departed radically from accepted rules of behavior and from ill-defined standards that are now employed in the very body that failed to confirm his nomination? Should we have a totally different code for judges and administrators than we have for legislators regarding their association, their commitments and their obligations?

In seeking confirmation, Judge Haynsworth was obliged to disclose to the Senate Judiciary Committee and, ultimately to the public, his detailed financial history. No such obligation is required today of Senators or of candidates for the Senate. Unfortunately, the zeal of Congress to disclose private holdings and thereby prevent a conflict of interest in the executive and judicial branches does not extend to itself.

To restore confidence and to meet the crisis in public trust, I believe legislators, candidates for Federal office and their top aides should be required to make public at appropriate times a detailed statement of their financial affairs on a uniform basis.

A Commission on Ethics in Public Life should be appointed by the President. The Commission should consist of members of the executive, judicial and legislative branches of Government, as well as respected citizens from all walks of life. It should examine most closely the prevailing ethical standards of these three.

When I entered public life, I systematically divested my investment portfolio of any securities that might create an apparent conflict of interest. In the absence of full disclosure rules on legislation, I am going about placing my financial affairs in a "blind trust" that will be irrevocable for my term of public office. This means I will have no control of or knowledge of my holdings. Passage of the disclosure legislation which I advocate would, of course, make public the contents of this "blind" portfolio. I recognize that a "blind trust" may be impractical for many in the Senate. Disclosure legislation for all candidates and incumbents is, of course, still necessary.

More and more questions are being asked about the legislative conflicts-of-interest. And so long as legislators continue to vote on matters in which they have a strong personal stake without disclosing that interest, concern will grow among the people and an erosion of confidence will continue in our public institutions.

CONCLUSION

In summary, I believe that the major steps taken by the Nixon administration abroad in its first year have carried us a long way toward developing a foreign policy behind which the Nation can unite.

This includes a commitment to steadily deescalate our involvement in the war in Vietnam on an orderly programed basis and to make it clear that we do not intend to police the world. We will help others achieve their legitimate objectives but not relieve them of their own responsibilities. We intend to vigorously pursue a policy of reducing the danger of a nuclear arms race if there is adequate assurance of an agreement, the integrity of which can be insured.

On the domestic front, we must continue to reform our social institutions and governmental programs to make sure that they are responsive to the needs of our people. And we must never forget that all our efforts, whether abroad or at home, can be for naught unless we maintain a prosperous economy and relentlessly curb inflation.

With strong leadership and firmness of purpose in the White House, I look forward to a bright new decade for the people of Illinois and for our Nation.

POSTAL REFORM

Mr. McGEE. Mr. President, in these closing days in the first session of the 91st Congress, I believe it is encumbent upon me as the chairman of the Committee on Post Office and Civil Service to advise the Senate of the progress your committee has made on legislation to reorganize the Post Office Department.

On April 3, 1967, Postmaster General Larry O'Brien proposed that the Post Office Department be abolished as a Cabinet department and be reestablished as a Government corporation. In 1968, the Kappel Commission, appointed by President Johnson and led by the distinguished former chairman of the board

of American Telephone & Telegraph, Frederick R. Kappel, conducted an exhaustive study of postal service and issued a four-volume report endorsing Larry O'Brien's proposal and recommending legislation for a postal corporation.

This year, 1969, the Senate committee deferred action on any postal reorganization legislation until the new administration had an opportunity to consider the O'Brien-Kappel recommendation. It was not until May 28 that the President and the Postmaster General recommended legislation. The administration bill embraced the O'Brien-Kappel proposal for a postal corporation. In the meantime, the House Committee on Post Office and Civil Service had begun hearings on postal reform earlier in the year. After conducting the most extensive hearings on postal policy that I have ever known to be conducted. Chairman DULSKI began executive committee meetings on September 18; and the House committee has been in executive session ever since. In our committee, at the specific request of the Postmaster General, we delayed any consideration of postal reorganization until the new administration had a chance to present its own program. We began our hearings on October 6 and they were concluded last month. In my judgment, we have conducted exceptionally fine hearings on postal modernization. I think every member of the committee has come to understand, in depth, the problems of the postal service that must be resolved, whether by establishing a corporation or reorganizing the present Department.

There has been intensive pressure, both from within and without the Government, to enact a corporation bill. Some administration officials urged as strongly as they possibly could that the recent Federal employees' pay bill be attached to a corporation proposal. We decided not to do that.

Since the beginning of our hearings, I have made every effort I know how to maintain a genuinely nonpartisan and nonpolitical attitude toward postal reform. My distinguished and most helpful colleague on the Republican side of the aisle, Senator FONG, has joined me in insisting that we be above Democratic or Republican viewpoints in considering this legislation, and I think that we have succeeded in our effort. I congratulate my colleagues on the committee, and the Postmaster General and his staff for their faith and good judgment in avoiding partisan politics on this issue.

One reason, the most compelling reason, that I believe partisan politics should be kept out of the issue, has been my desire to look at the whole picture with an open mind and arrive at the best judgment that I, as a Senator and a chairman, can reach. And so, as we prepare to go home for a few days, I want to advise my colleagues here on the floor and those in committee, that as early as is possible, when we come back in January, I will schedule executive sessions in the Post Office and Civil Service Committee to begin a markup of legislation to reorganize the Post Office Department.

My goal, as chairman, will be simple. I want a bill that will do all that we can do to guarantee an effective, efficient, and responsive postal service for the American public. I want the best answer to every question that we can possibly give.

No legislation has received more careful scrutiny by our committee than postal reform. We have conducted hearings. We have listened to and read the testimony of every witness who appeared before the committee. We have discussed the matter publicly and privately with the Postmaster General and with other distinguished public servants. We have reviewed the recommendations included in the corporation bill on financing, rate making, transportation, parcel post, employee-management relations and basic administration.

There are serious questions in my mind on each and every one of these vitally important issues. Those questions can be answered, and the very important economic and social problems involved in a complete reorganization of the oldest agency in our Federal Government can be resolved. But the paramount issue is the control which the people must exercise over their Government.

I believe that it is not in the national interest to separate the people farther from the Post Office as an agency of their Government, than the distance that presently exists.

In the last analysis, if the people do not like the mail service, if they are dissatisfied with the distance of a rural route or the shutting down of window service on Saturday, there is one sure-fire action that they can take; and every man in this Chamber knows that the ballot box is not only an effective means of expression, but is the whole basis of American democracy. It would be easy to embrace the administration proposal. It would avoid weeks or months of wrestling with these problems. It would probably be popular; because many citizens have not listened to expert testimony on postal problems. The public might think that something different is something better. But in my judgment, a Federal agency which serves every hamlet, village, and city; which maintains more than 32,000 post offices; which operates 30,000 rural routes; which contracts for more than 22,000 substations and star routes; and which is, in truth, the only nationwide service the Government performs, is too important and too personal to be divorced from direct and continuing control by the elected representatives of the American people. We are a board of directors that our constituents can throw out.

The beauty of the administration proposal, of course, is that we could enact it and let it go its way without direct and continuing congressional responsiblity for the results it achieves. We, here in this Chamber, could always excuse its failure blaming a "faceless bureaucracy." I personally vote against that easy alternative. Instead, and I want to make this as clear as I can to my colleagues and to others who are interested in postal reorganization: Your committee will resolve these problems. No "package submitted" is going to be the answer. No "gentlemen's agreement" from outside the committee will be the bill that we recommend. It all boils down to the first article of the Constitution of the United States, that—

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

My oath, and my colleagues' oaths require that we uphold that democratic, historic, and constitutional principle.

The committee will write the bill.

I pledge my best efforts in the coming months to achieve the goal of the very best postal service we can devise. I pledge to the employees of our postal service the best job opportunity and the most worthwhile career that a postal service can possibly offer. I don't mean just glittering generalities. I mean pay, work schedules, advancement and recognition for dedicated career service and for a very positive progressive program of effective voices for the employees in the decisions that management makes regarding all aspects of the postal service. I pledge that we will get the job done if it can possibly be done as soon as possible, but only after the best wisdom we know how to apply shall have been applied.

I reject the argument that the executive leadership of our Government or the Congress is unable to cope with the Post Office or any other problem. Like any other problem, it is not a question of machinery, it is a question of whether we want to do it.

My decision is not based on my faith or lack of faith in any individual or any circumstances surrounding the Post Office Department today. My decision is based on my faith in the principle and my commitment to the republican form of government in this country. I know we can accomplish what we want to in the Post Office just as we can accomplish what we want to in resolving any of the other problems that exist in America today. In the long run, history will probably record little of the postal reorganization problems of the late 1960's; but also in the long run, how we resolve this problem—whether we adhere to the tried-and-proven democratic procedures that are the basis of American democracy—will prove the mettle of those responsible in this Chamber, in the Post Office and in the White House itself.

REPORT OF ADVISORY PANEL AGAINST ARMED VIOLENCE

Mr. TYDINGS. Mr. President, on September 23, I asked 13 of the most distinguished experts on law enforcement in the National Capital to advise me, as chairman of the Committee on the District of Columbia, as to how we can best combat the increasing violence in the Washington area. I asked these experts, who included U.S. Attorney Tom Flannery; Deputy Chief of Police Tilmon O'Bryant; executive director of the International Association of Chiefs of Police Quinn Tamm; and other law enforcement authorities of comparable stature, to serve on the Advisory Panel Against Armed Violence I was creating.

The report of that Advisory Panel Against Armed Violence was presented

to me December 3. That report contains a comprehensive series of well thought out, practical solutions to the armed violence crisis in the National Capital area.

The panel's report underscores the accelerating rate of armed crime in the District of Columbia. It makes clear that the criminal justice system has failed dismally to meet the challenge of that crisis.

The report points out that police clearance rates for armed robberies are at near record lows; that the court process is so bogged down that dangerous criminals are free on bond, often for a year or more, awaiting trial; that the correctional system as it exists today is more likely to generate crime than reduce it; that this city's handling of juvenile crime has, if anything, contributed to an increase in the amount of armed crime committed by juveniles.

This frightening situation affects the suburban communities of Maryland and Virginia as well as the District of Columbia. Many suburbanites, for example, own or work in businesses in Washington that are constantly victimized in armed crimes. Suburbanites, like Washington residents, are forced to pay higher prices because of the incredible toll taken by armed criminals, not only in the District, but in the suburban counties as well. Narcotics flowing freely out of the District of Columbia supply the Maryland and Virginia suburbs. A recent survey by the Council of Governments indicates that nearly two out of three suburban residents never come into their National Capital. Fear of crime is a major reason for their reluctance.

When I appointed the Advisory Panel Against Armed Violence, I pledged that, as chairman of the District Committee, I would do all in my power to see to it that the panel's recommendations were expeditiously implemented. I vowed at that time not to allow this panel's report to gather dust on the shelves of unresponsive public officials.

I am pleased that some progress toward the implementation of this report has already been made. The Senate has already passed legislation that would implement some of the panel's recommendations. Yesterday the District Committee ordered reported a juvenile procedures bill that incorporates some of the most significant recommendations.

Police Chief Jerry V. Wilson has acted expeditiously to begin implementation of recommendations that concern the Metropolitan Police Department.

But I am not content with the fact that progress is being made to implement some of the panel's recommendations. To expedite the implementation of the other recommendations of this report, I have asked the Attorney General of the United States to incorporate the recommendations of the Advisory Panel Against Armed Violence into the President's crime program for the National Capital.

In a letter I have sent to Attorney General Mitchell I told him that the urgent need for many of the reforms recommended by the panel was pointed out at the recent White House meeting with congressional leaders on crime in the Washington area.

I further emphasized that the incorporation of the panel's recommendations into the President's crime program for the National Capital would greatly enhance the likelihood of their being implemented.

I have also sent copies of the panel's report to Mayor Walter Washington, Police Chief Jerry Wilson, Chief Judge Edward M. Curran of the U.S. District Court, and Chief Judge Morris Miller of the juvenile court.

I have asked each of them to act expeditiously to implement the recommendations in the report.

I believe the report of the Advisory Panel Against Armed Violence is a well-written, concise document that offers sound solutions to the armed violence crisis in the National Capital. I commend it for study by all those interested in a reduction of armed violence here. I ask unanimous consent that the Report of the Advisory Panel Against Armed Violence be printed in the RECORD.

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

REPORT OF THE ADVISORY PANEL AGAINST ARMED VIOLENCE, DECEMBER 1969

On September 23, 1969, U.S. Senator Joseph D. Tydings asked 13 leading Washington citizens to participate in an Advisory Panel Against Armed Violence to advise him, as Chairman of the Senate Committee on the District of Columbia, on the steps the government can take to reduce the number of armed crimes being committed in Washington, D.C. The following is the report of that panel.

Chairman: Honorable Alfred Burka, Judge, District of Columbia Court of General Sessions.

Members:

Frederick H. Evans, Past President of the Washington Bar Association.

William T. Finley, Jr., Former Assistant Deputy Attorney General of the United States.

Thomas A. Flannery, United States Attorney for the District of Columbia.

Herbert J. Miller, Jr., Chairman, 1966 President's Commission on Crime for the District of Columbia.

Paul Miller, Dean, Howard University School of Law.

Luke Moore, Former Chief Marshal for the District of Columbia.

H. Carl Moultrie, Past President, NAACP, District of Columbia Chapter.

Tilmon O'Bryant, Deputy Chief of the Metropolitan Police Department.

William E. Rollow, Secretary and General Counsel, National Capital Area Council of Sportsmen, and President, District of Columbia Skeet Shooting Association.

James C. Slaughter, Director of the District of Columbia Human Relations Commission.

Quinn Tamm, Executive Director, International Association of Chiefs of Police.

Joseph P. Yeldell, Member, District of Columbia City Council.

INTRODUCTION

Armed crime is on the rampage in the National Capital.

Today, Washington ranks behind only four of the nation's five largest cities—New York, Chicago, Los Angeles, and Detroit—in the number of robberies on its streets.

Nationally, according to the National Commission on the Causes and Prevention of Violence, about one third of all robberies involve assailants armed with guns. In the National Capital, during the first six months of 1969, according to police statistics, 52.9% of all robberies were committed with guns.

In examining the armed crime problem, the Panel studied the Report of the President's Commission on Crime in the District of Columbia. It found that if many of the recommendations of the Commission had been implemented rather than ignored, the armed crime problem here today may not have reached the proportions it has.

The Panel found that the problem of armed crimes and crimes of violence is considerably more severe than it was at the time of the D.C. Crime Commission. That Commission reported, for instance, that in 1966, 50% of all murders, 22.7% of all aggravated assaults, and 29.9% of all robberies were committed with hand guns. During the first half of this year, 68.4% of all murders, 68.2% of all aggravated assaults, and 50.3% of all robberies were committed with the same weapons. In actual numbers, there were more murders and aggravated assaults and more than twice as many robberies committed with hand guns during the first half of 1969 than during all of 1966.

The consequences of this increased armed crime on the Washington business community has been devastating. Shoppers are afraid to come downtown. Businesses are closing. And, as a result of both, the city loses needed tax revenue.

Indeed, the Panel found a very bleak picture of the armed crime crisis. It found police clearance rates for armed robberies at near record lows. It found the court dockets so jammed up that dangerous criminals are free on bond and committing armed crimes—often for up to a year while awaiting their trials. The Panel found that the prisons, as they presently operate, more often generate than prevent offenders' recidivism. It found the juvenile criminal justice system an abomination of justice that has contributed to an increase, if anything, in juvenile crime.

This Panel has recommended ways to change these intolerable situations and to better protect the public from armed crimes and crimes of violence. It urges that all of its recommendations be expeditiously implemented.

EFFECTIVE LAW ENFORCEMENT

Effective law enforcement is essential if armed crime and crimes of violence are to be reduced in the National Capital.

The greatest deterrent to street crimes and crimes of violence is the fear of getting caught. Long prison terms, for example, cease to be a deterrent to committing serious crimes if it is unlikely that the criminal will ever be caught and have to go to prison.

Unfortunately, a fear of getting caught provides little deterrent to criminals in the National Capital. Criminals committing armed robbery—the most prevalent armed crime—stand a much better chance of getting away than they do of getting caught.

Police statistics reveal that during fiscal 1968, only 24.7% of the serious crimes in the National Capital were solved. That was a record low. During the first 10 months of calendar year 1969, police have reported solving slightly more than 1,000 of the more than 5,500 robberies that have occurred here. That's a clearance rate of only 18%, even lower than the 30.3% clearance rate for robbery during Fiscal 1968.

In recent months, it has become even less risky to commit an armed robbery. During the months of July, September, and October of this year, police solved only 184 of 3,329 reported robberies, a clearance rate of little better than five percent.

As slight as the chances of a robbery suspect being arrested are, the chances of his being convicted are even slimmer. During the five-year period between Fiscal 1964 and Fiscal 1968, only 910 suspects were convicted of robbery in U.S. District Court, the felony court here. This does not include persons convicted of lesser offenses growing out of

the original charge of robbery. That's scarcely higher than the number of robberies committed in an average month.

One factor that raises the odds that a criminal will be caught is the presence of a police officer on the street. A criminal is less likely to commit a crime if he sees an officer walking a beat nearby than he is if he believes no police are close enough to stop him.

Recently, the New York City Police Department conducted an experiment which proved the value of the officer on foot patrol. An entire graduating class of recruit officers was sent as footmen to the most crime-ridden area of the City to supplement that precinct's patrol. Within days, the crime rate dropped more than 70% and remained at a low figure during the term of the experiment.

In the District of Columbia, when additional officers were placed on the street as a result of an overtime authorization during two periods earlier this year, crimes in the District of Columbia decreased. This Panel feels that it is necessary that these additional patrolmen be kept on the streets and that money should be appropriated for that purpose. It endorses the decision of Police Chief Jerry Wilson to reinstitute these patrols.

Overtime patrols should no longer be necessary, however, when the police department reaches its present authorized strength. Currently the department is 300 men short of that authorized strength. Those 300 new officers should be assigned to street patrol.

Furthermore, the Panel believes that the Metropolitan Police Department should immediately reevaluate its manpower allocations. Far too many police officers are spending their on-duty time doing clerical and administrative work off the street instead of patrolling the street. During one period, the department reported that just half of the department's man work days were spent patrolling and investigating on the street.

Nearly 40% of its man work days during that same period were spent doing administrative, clerical, semi-clerical or technical tasks inside buildings and off the street. The Panel believes that civilian workers should be hired to perform all of the administrative and clerical tasks that do not have to be performed by police. The police officers could then be freed for additional patrolling and investigation.

Another way the department could reduce its police clerical force and free more officers for street work is to proceed immediately with the actual consolidation of its 14 precincts into six districts as recommended by the International Association of Chiefs of Police. If consolidation took place, police would only have to man six stations instead of 14. The additional officers could be placed back on the streets. Although the City Council has consolidated precincts into six districts, facilities are not available and police are still operating from 14 precinct buildings. They will continue to operate in these buildings until such time as the new facilities are available. This Panel believes that the facilities should be provided on a priority basis.

Even with the hiring civilian personnel and police consolidation, the Panel feels an additional 1,000 men should be added to the police department as recommended by the President. Because of the many ceremonial and non-law enforcement duties police are called upon to perform in the National Capital, it is the opinion of the Panel that the present authorized strength of the department must be increased if police are to provide sufficient protection for the public.

In addition, the strength of the Detective Bureau is being sapped of experienced officers because recently promoted detectives are transferred to uniform details in accordance with the department's program to develop "complete" officers rather than specialists. For example, of the 45 officers presently assigned to the Homicide Squad, 10 are new and 12 have less than one year's experience. Of the remaining 23, 13 are eligible for promotion to lieutenant and sergeant and could be transferred to uniform work. Four others are uniform men assigned to that squad on special detail. As a result, if all the promotions go through and the detailed officers are returned to their permanent assignments, only six experienced officers would remain in a most important assignment. The Narcotics Squad has already suffered greatly as a result of this policy.

The Panel also finds that the removal of detectives from the precincts and their consolidation into the Criminal Investigation Divisions East and West has resulted in a marked decrease in the effectiveness of the detective bureau. When detectives were assigned to precincts there was much more communication and flow of information between the uniformed officer on the beat and the plain clothesmen. The establishment of two CID districts has not only led to an almost complete cessation of communication between uniform men and detectives, but has created an artificial barrier which has resulted in the two CID districts not communicating with each other.

The Panel feels that the Criminal Investigation Divisions East and West should be abolished and the detectives returned to the district stations.

Citizen participation and cooperation with law enforcement authorities is vital if armed crime and crimes of violence are to be reduced in the National Capital. Unfortunately, this participation has been decreased because many people feel that a criminal will retaliate against a person who testifies against him.

In addition, prosecuting attorneys indicated that it is often difficult to get witnesses to appear in court because of the financial losses they incur because they must miss work to make the court appearance. This becomes a particular hardship on witnesses when cases are continued several times.

At present, witnesses in U.S. District Court receive no more than $20 for each day they actually appear in court. The Court of General Sessions is paying witnesses only a small portion of the amount Congress authorized it to pay them. A witness testifying in the General Sessions Court is currently paid $6 per appearance, instead of the $20 authorized by Congress. This Panel feels that it is necessary to make the daily payment to witnesses, not to exceed a maximum of $50, equivalent to the daily wage lost in order to insure that witnesses in serious crimes will appear. Without witnesses, it is impossible to prosecute the crimes that are terrorizing this city.

The Panel has found that the police do not receive the respect from the community that they need to operate effectively. In crimes like armed robbery where citizen cooperation is essential, many members of the community attach a stigma to "helping police." This lack of citizens' help is reflected in the low clearance rate for robbery. To help remedy this situation, this Panel believes a major campaign, led by the Mayor, should be undertaken to urge the public to cooperate with the police.

In addition, the Panel believes that law enforcement would be more effective in the National Capital if it were better coordinated. In 1953, the Congress created by statute a Council on Law Enforcement consisting of the principal officials in the criminal justice system. That council was supposed to coordinate law enforcement efforts here and make yearly reports to the Congress. That council has been inactive for several years. This Panel recommends that it be immediately activated, with appropriate staff.

In order to improve the effectiveness of the law enforcement effort here, this Panel recommends:

1. The police department should immediately survey its officers to determine how many of its officers are performing administrative and non-police functions. Civilians should be hired to replace officers not doing police work so that more police can be freed for work on the street.

2. The police department should bolster its effort to reach its present authorized strength. In addition, the President's request for the authorization of another 1,000 policemen should be granted.

3. Facilities should be provided immediately so that actual police consolidation, as recommended by the International Association of Chiefs of Police, can be effected.

4. An intensive, long-term program, led by the Mayor, should be undertaken to urge the public to cooperate with the police department. The Mayor should utilize noted sports and entertainment personalities as well as respected community groups in this effort.

5. Until the police department reaches authorized strength, overtime patrols should be authorized for high crime areas.

6. The Criminal Investigation Divisions East and West should be abolished and the detectives returned to the consolidated district stations.

7. Witnesses appearing in serious criminal cases should be paid the money they lose by missing work to appear in court, up to a maximum of $50 a day.

8. The Council on Law Enforcement should be reactivated and supplied with appropriate staff in an effort to better coordinate law enforcement efforts.

JUVENILES

A significant and ever-increasing number of armed crimes in the National Capital is committed by juveniles.

During fiscal year 1968, nearly 40% of the serious crime in Washington was committed by youngsters under 18 years of age. And juvenile crime increased in fiscal year 1969 by 29.4% over fiscal year 1968.

Specifically, during fiscal year 1969, juveniles were arrested in connection with 29 homocides—five more than in fiscal year 1968; 304 armed robberies—121 more than a year earlier; and 230 aggravated assaults—eight more than in fiscal year 1968.

In all, juveniles were arrested 443 times for crimes involving a gun, 100 times for crimes involving a knife, and 119 times for crimes involving unknown weapons. According to Police Chief Jerry Wilson, juveniles commit 45% of the armed robberies here.

Because such a large percentage of the serious crime in the National Capital is committed by juveniles, armed violence cannot be substantially reduced until the number of armed crimes committed by juveniles is sharply curtailed.

At present, juveniles are handled under a separate criminal justice procedure. All serious crimes committed by them go through the Youth Division of the Metropolitan Police Department and the Juvenile Court. Juveniles detained pending trial or sentenced for a crime are committed to institutions operated by the Department of Public Welfare.

In rare instances, a juvenile offender can be waived by the Juvenile Court into an adult court. As a practical matter, few juveniles are waived—only 10 last year.

The way the criminal justice system operates at present is an abomination of justice and, undoubtedly, a significant contributor to armed crime. The Juvenile Court proceeds so slowly in adjudicating its cases that juveniles often feel that it is "safe" to commit a crime, since it is often several months before he even sees a judge.

In his appearance this July before the Senate Committee on the District of Columbia, Chief Judge Morris Miller testified that there were 400 cases on the Juvenile Court docket for nine months or longer that had

not even come before the court for an initial hearing. This Panel finds that situation inexcusable and intolerable.

The court process itself is an accumulation of delays. When a juvenile is arrested, he is taken to the Youth Aid Division of the Police Department. After discussing the case with his parents, the police make the initial decision of whether or not the juvenile should be detained. If he is detained, he is taken to the Receiving Home where he remains until he is brought before the Court for a detention hearing.

The greatest delays involve the juveniles who the police decide not to detain. The police take juveniles they decide to release to the intake office of the Juvenile Court.

It then takes from four to eight weeks for the juvenile to be processed by the Court's intake office. After that processing, the case is sent to the Corporation Counsel's office for the petition charging him to be written. It then takes an additional six to seven weeks for the Court clerk's office to type the petition.

After the petition is typed, the juvenile is finally scheduled for his initial hearing—his first appearance before a judge. Actually getting that hearing usually takes another three or four months. At that initial hearing, the judge sets the date for the trial. If the case is to go to a jury, it will be another 11 months before it is heard. If it is to be tried without a jury, it will be tried within six to nine months.

In cases where the juvenile is detained at the Receiving Home, the delay in seeing a judge is not as great. But detained juveniles often face long delays in the adjudication of their cases. Within a few days of his arrest, the juvenile will go before a judge for a detention hearing. He is then likely to remain in the Receiving Home—supposedly a short-term detention facility—for several months before his case is adjudicated.

Those juveniles not detained initially can be ordered detained by the judge after their initial hearing. That means that dangerous criminals who need to be detained may remain at large for several months because of the delay in bringing them to their initial hearing. As of October 20, 1969, at least 20 percent of the juveniles in detention have been there over 2 months.

The Juvenile Court is so slow in processing cases of armed crimes that 13 of the 20 homicide cases brought before that court during fiscal year 1969 are still pending. Also pending are 86 of the 186 armed robbery cases brought before the Juvenile Court in fiscal year 1969, and 84 of the 166 aggravated assault cases brought before it during that same period. That means that, taking into account dismissals and cases dismissed without a finding, more than half of the crimes of violence involving juveniles brought to the attention of the Juvenile Court during fiscal year 1969 were, by the Court's own statistics, still pending in that Court as of October 15, 1969—three and one half months after the fiscal year ended.

There is little doubt that this court process of repeated delays contributes to additional juvenile crime. Of the 1,539 juveniles referred to the court between July and September 1969, 935 or 61 percent had previously been referred to that court. Of those 935, 387 had been referred to the Court four or more times before. Most significantly, 313 of those 935—or 34 percent—were still awaiting a disposition on their previous referral to the Court. In other words, 313 juveniles were referred to the Court during that 3-month period on a delinquency charge before they had been adjudicated on their previous referral to the Court.

There is no reason that a juvenile should have to wait as long as nine or ten months to get an initial hearing. Under such conditions, neither the public safety nor the rights of the defendant to a fair trial can be protected. It is the opinion of this Panel that in no case should the time lag between the apprehension of a juvenile and his initial hearing be more than 48 hours. It is also the opinion of this Panel that if a juvenile is to be waived to an adult court, the Juvenile Court must decide on that waiver during that initial hearing.

The slow process of the Juvenile Court is not new. In 1966, the D.C. Crime Commission made specific recommendations to speed up the process. Those recommendations have been ignored by the Court. In fact, Judge Miller testified before the District Committee that the three Juvenile Court judges had never met to discuss implementation of those recommendations. The continued existence of this condition represents a shocking disregard of minimal judicial standards.

The Panel finds that the experience of the Youth Aid Division of the Metropolitan Police Department is virtually totally ignored by the Juvenile Court and its employees. The advice of an officer is never sought. A typical example is the case of one officer with more than nine years' experience as a member of the Youth Aid Division who has referred an average of 185 cases each year to Juvenile Court and yet has not been called to testify nor been asked for his opinion regarding detention or any other matter even a half dozen times during that decade. It is as if the Court considers the members of the Youth Aid Division as enemies rather than associates. The only way a police officer knows what disposition is made regarding detention or trial is when he sees the juvenile on the streets again and asks him.

The Juvenile Receiving Home, the detention facility for juveniles, is no better off today than it was three years ago when the Crime Commission exposed its deficiencies. The blame for this situation must be shared by the Juvenile Court and the Department of Public Welfare. Not only is the Court responsible for not speeding up its trial process, but it is also responsible for not revising the guidelines for pre-trial detention of juveniles as was recommended by the Crime Commission.

The significance of the Court's failure to redraft the guidelines for pre-trial detention is underscored by the fact that 35% of the juveniles detained by the police are ordered released by the Court at their detention. That means that more than a third of the juveniles stuffed into an already teeming facility need not have been put there at all had the Court issued precise guidelines concerning who should and who should not be detained.

The Department of Public Welfare is responsible for failing to establish humane living conditions for juveniles in the Receiving Home. The Receiving Home, for example, constantly has several juveniles sleeping on the floor and has not gotten beds for them. In this Panel's opinion, the staff of the Receiving Home is undertrained and undersupervised to operate an adequate detention center.

The Welfare Department is also responsible for dragging its feet in the planning of the new Receiving Home which was recommended by the Crime Commission. Twice for fiscal year 1968 and also for fiscal year 1969, the Congress has appropriated money for the planning of the new facility. The Welfare Department, however, as of November 1, had spent only $48,856 of the $425,000 appropriated and was so far behind in the planning that the requested construction funds for fiscal year 1970 were deleted from the District budget by the House Appropriations Subcommittee.

The criminal justice system for juveniles is so clogged up by delay while many dangerous juveniles are roaming the streets and the Juvenile Detention Center is overcrowded, the juvenile correctional facilities are only half full. The capacity at the Children's Center at Laurel, Maryland is 943 beds. Yet, earlier this month, the population at that facility was just 521. In other words, the judicial system is breaking down before the juveniles even get to the correctional institutions.

The Panel has found a serious deficiency in the educational program for youngsters at the Children's Center. Under current conditions, a juvenile committed by the Children's Center does not receive credit in the D.C. public schools for the work he does at that institution. Three years ago, the Crime Commission recommended that an accommodation between the Welfare Department and the public school system be worked out so that a juvenile who returned to the public schools could receive credit for the work he did at Laurel. This Panel believes that agreement should be worked out immediately.

Another serious problem in the handling of juveniles is caused by the failure to have clear-cut guidelines to determine whether juveniles are delinquent, dependent, or neglected. The Crime Commission criticized the Department of Welfare for mixing dependent and delinquent children at the same institutions. For the most part, that practice has been stopped, but there are still some instances of dependent children being sent to the Children's Center. Under the current system for determining whether a juvenile is dependent or delinquent, Welfare officials complain that they often are sent juveniles adjudicated dependent by the Court who are, in fact, delinquent.

In an attempt to bring about maximum coordination for the exchange of views and the solution of common problems among the Juvenile Court and the agencies concerned with juvenile offenders, this Panel believes it is necessary to establish immediately a Juvenile Law Enforcement Council consisting of all the Juvenile judges, the head of the Youth Aid Division of the Police, the Chief Probation Officer of the Juvenile Court, the Director of Public Welfare, a representative of the Board of Education, a member of the D.C. City Council, and a representative of the Corporation Counsel's office.

It is clear that until the criminal justice system for juveniles is made more efficient, it is unlikely that there will be a marked reduction in the number of armed crimes committed by juveniles.

While this Panel endorses the concept of the Family Court as in the Senate-passed court reorganization bill, it feels strongly that the Juvenile Court cannot wait until House action on that bill or Congressional action on the Juvenile Code Bill takes place to begin reforming itself. The reforms of the Juvenile Court must begin immediately.

To make the criminal justice system for juveniles more effective, this Panel recommends:

1. The Juvenile Court must devote all its energies to reducing its current backlog and speeding up its trial process so that juveniles arrested for serious crimes will not face the alternatives of either becoming more hardened criminals during an extended stay in an inhumane detention facility or being released from custody to prey on the citizens of this area. To fail to take the necessary steps to accomplish this end would represent a shocking disregard by the Court for minimal judicial standards. Failure on the part of the Court to respond to this recommendation will signal the necessity of Congressional intervention.

2. The Juvenile Court must establish a rule requiring that all initial hearings, whether the juvenile is detained or released, be held within 48 hours of his apprehension. If a Juvenile Court judge feels a juvenile should be waived to an adult court, he should make that decision at the initial hearing.

3. The Court must redraft its guidelines for placing juveniles in pre-trial detention. These guidelines must insure that dangerous juveniles are kept off the streets but, at the same time, be sure that juveniles are not unnecessarily detained. The appropriate police officer must be consulted regarding detention, and if the Department requests, the officer must be given an opportunity to testify. The officer must be notified of all actions taken in the Juvenile Court within 24 hours after such action.

4. The Juvenile Court and the Department of Public Welfare must work out new guidelines for determining whether a juvenile is delinquent, dependent, or neglected. Only in that way can the Welfare Department be sure that it will not mix dependent and delinquent children.

5. The Department of Public Welfare must move immediately to correct the inhumane conditions at the Juvenile Receiving Home. At the same time, it must move as fast as possible to begin construction of the new Receiving Home.

6. The Welfare Department should take immediate steps to reach an accomodation with the public schools so that juveniles can receive public school credit for work they complete at the Children's Center at Laurel.

7. The concept of the Family Court as written in the Senate-passed court reorganization bill should be adopted by the Congress.

8. A Juvenile Law Enforcement Council should be established immediately to provide needed coordination in the criminal justice system for juveniles. This Council should consist of the Juvenile Court judges, the head of the Police Youth Aid Division, the chief probation officer of the Juvenile Court, the Director of Public Welfare, a member of the Board of Education, a member of the City Council, and a representative of the Corporation Counsel's Office.

PRETRIAL DETENTION AND SPEEDY PROSECUTION

Armed violence in the District of Columbia is being aided and abetted by the inadequate operation of our criminal justice system.

At present, justice is neither swift nor certain. Persons who are apprehended for crimes of violence remain at liberty for eight months to a year. Many of them commit additional offenses with virtual impunity knowing that they will again be released on bail after the second or third offense; that the offense committed on bail will not be reached for trial for a year or so; that the sentence, if any, will probably be concurrent; and that fugitivity in the District of Columbia is a fairly secure status which can postpone the day of reckoning for many more months.

The net effect of these circumstances is tragic. The public is victimized again and again—almost without recourse. The work of the police is undercut and correctional efforts are severely impeded.

Action is imperative. In the view of this panel, we cannot await long-range remedies. We must take steps which will have immediate effect in abating armed violence.

For reasons developed more fully below, we urge:

Enactment of bail legislation to permit pretrial detention of certain defendants who pose a danger to the community;

Accelerating the disposition of cases of armed violence by expanding the individual calendar program, by prompt indictment, by decreasing time for mental exams and by speedier sentencing procedures;

Expedited appeal in cases of persons charged with more than one crime of violence;

Development of better procedures to supervise persons on bail and to secure the return of persons who become fugitive; and,

Enactment of court reorganization legislation together with the proposed increases in judicial manpower and the creation of a court executive.

Pretrial detention

There is no doubt that accused felons free on bail while awaiting trial commit a significant part of the serious crimes in this city. Judicial Council Committee studies indicate that one of every 11 defendants who is indicted and released on bail is reindicted for another felony while awaiting trial. The police report that one out of every three armed robbery suspects released on bail is arrested for another offense before he comes to trial.

Further, it appears that persons involved in certain types of crime have a much higher rate of recidivism. Specifically, the District of Columbia Crime Commission found that persons charged with robbery, burglary and narcotics offenses were more frequently indicted for additional crimes on bail than were persons charged with other offenses.

Most recently, Police Chief Jerry Wilson has highlighted the bail problem. He reported to the President that there are about 100 professional hold-up men in the District of Columbia who are repeatedly released on bail and commit additional hold-ups. In his view, legislation authorizing pretrial detention of such persons is *item number one* on any list of action to abate armed violence. In fact, he states that if 300 dangerous criminals were removed from the streets, we could "almost cure" the problem of armed violence in Washington.

However, under existing law, there is virtually no way to remove these dangerous persons from the street in any less than eight months to a year. First, the Bail Reform Act of 1966 requires the release on bail of all defendants not involved in capital crimes no matter how dangerous. The only factor which the court may consider in setting bail is the likelihood that the defendant will flee. Second, the court system is so backlogged that crimes of violence cannot be prosecuted promptly. In fiscal 1968, it took an average of nine months for bank robbery cases to come to trial, an average of eight and one-half months for robbery cases to come to trial, an average of nine and one-half months for aggravated assault cases to come to trial, an average of ten months for second degree murder cases, and an average of fourteen months for first degree murder cases.

In view of this Panel, the only immediate recourse is enactment of legislation to authorize pretrial detention of certain persons who pose a serious danger to the community. We endorse legislation which will authorize pretrial detention of hard core dangerous criminals who are awaiting trial for armed crimes. Detention should be imposed in cases where the defendant's record for violence indicates high probability of additional crimes of violence if released on bail. Further, it is absolutely essential that any system of pretrial detention include all appropriate Constitutional safeguards. Finally, detention shall not exceed 60 days.

Pretrial detention is not a "cheap" solution to the crime problem. Properly limited, it is a Constitutional, realistic approach to our crime problem. First, it takes cognizance of the fact that even if speedy trials are provided, there are still persons who pose a great danger to the community if released on bail for any period of time. Second, it recognizes that our present system of justice will not be speeded up overnight. New facilities, new judges, etc., will be slow in coming. In addition to other personnel, an adequate public defender system should be established to insure adequate representation for the defendants. Finally, pretrial detention is a realistic way to deal with repeated crime in a system which encourages delay. Speedy trial efforts simply have limited efficacy in a system where delay is often the best trial strategy.

In sum, pretrial detention offers an immediate response to armed violence and adds long-range rationality to our criminal justice system.

Accelerating dispositions

Case backlogs and protracted lapses of time between indictment and trial materially lessen chances of conviction in cases of armed violence in the District of Columbia. Witnesses disappear, recollections grow dim, and "stale" cases have little jury appeal. As a result, perpetrators of armed violence may be discharged, free to commit additional offenses.

In recent years the time between indictment and disposition in the United States District Court for the District of Columbia has more than doubled. In FY 1965, the median time from indictment to termination was 4.2 months. In 1969, it exceeded nine months.

During the same time, the backlog has nearly doubled. At the end of FY 1965, the number of criminal cases pending was 610. In FY 1969, that number was 1714. Further, with 37% increase in crime in the first half of calendar 1969 in the District of Columbia, the situation could become more acute.

In the view of this Panel, total reorganization of the District of Columbia Courts will ultimately afford prompt disposition of criminal cases. In this connection, we endorse the proposal which the Attorney General submitted to Congress.

During the next year, however, additional measures must be taken to achieve speedy prosecution in cases of armed violence. These measures include:

Expansion of the individual calendar program to include two more judges.

Earmarking cases of armed violence for accelerated presentation to the Grand Jury.

Advancing cases of armed violence for trial where ever appropriate.

Decreasing the amount of time required for pretrial mental examinations.

Accelerating the process of presentence reports as well as detaining defendants convicted of armed violence pending completion of the report.

It is admittedly a bit early to determine the impact of the individual calendar on backlogs and delays. Preliminary results, however, are most encouraging. The new calendar system appears to be increasing the number of case dispositions per judge.

Nonetheless, we are of the view that two more judges should be assigned to the individual criminal calendars to assure adequate decrease in the backlog and eliminate of protracted delays. We fear that eight judges simply cannot guarantee the necessary result.

Specifically, past experience indicates that under the central calendar system judges averaged about 15 criminal case dispositions per judge per month. At this rate eight judges would only dispose of 120 criminal cases per month—60 cases per month less than the 180 criminal indictments which are usually returned.

While we have high hopes for an increased rate of dispositions under the individual calendar, we are not confident that the rate can be increased to such an extent that eight judges can meet the incoming workload and materially decrease the backlog. We therefore recommend assignment of two additional judges commencing in January.

Turning to our recommendations for prompt indictment and advancement for trial of cases of armed violence, we note that these recommendations lie within the administrative competence of the United States Attorney. We urge the establishment of a system in his office which will identify the repeated perpetrators of crimes of violence and guarantee appropriate follow-up.

We are aware that past efforts to identify and deal specially with the worst offenders

have not been successful. However, we are of the view that a system which singles out the worst offenders has merit in terms of crime control and can be successful if vigorously pursued by all concerned.

It should also be noted that one of the serious impediments to speedy prosecution in the District of Columbia is delay in obtaining pretrial mental examinations. During the October call of the calendar the United States District Court learned that 171 defendants were awaiting mental examination. Further it was learned that the staff of St. Elizabeths Hospital was inadequate to handle the necessary examinations.

Although there has been some increase in staff assigned to these mental examinations in recent months, it still is not adequate. The trial of some defendants is delayed for many months while they wait for examinations.

This Panel appreciates the necessity for mental examinations and the need for thorough, adequate examination. However, we urge St. Elizabeths Hospital to assign adequate personnel to this service with a view to completing all examinations within 30 days of the order of the court. If assigning personnel requires additional authorization, that authorization should be requested and granted.

Finally it should be noted that acceleration of case dispositions is going to put an increased burden on those who prepare presentence reports. Thus there is the possibility of a backlog of persons awaiting sentence.

Plainly a backlog pending sentence could be as dangerous as a backlog of persons awaiting trial. Those awaiting sentence can as easily commit additional crimes as those awaiting trial. Thus we urge action to accelerate preparation of pre-sentence reports including use of photo copies of prior reports with informal updating. We also urge the Courts to utilize their authority to detain convicted defendants pending pre-sentence report and appeal.

Expedited appeals

In the District of Columbia it is not sufficient to bring a case on for trial promptly. The process of acceleration must continue through appeal.

Approximately 90% of the defendants who are convicted in the United States District Court file appeals. Although the law permits detention of these persons, many of them are released on bail pending appeal and, as shown by the 1968 Judicial Council Committee studies, those who are released on bail pending appeal have a 30% rearrest rate.

We therefore recommend that the United States Court of Appeals expedite the appeals of defendants who are convicted of crimes of armed violence and who have more than one criminal case pending.

Supervision of persons on bail

Even assuming new systems for pretrial detention and accelerated prosecution, a large number of defendants will remain on the street for many months. These defendants are persons who may well be in need of supervision and rehabilitative services. Left with no supervision or guidance, they can and do turn to serious crime.

For these reasons, this Panel concurs in the recommendations of the Judicial Council Committee on Bail and endorses the Administration's legislation to expand the Bail Agency. The President correctly concluded that "Insufficient service by the Bail Agency is one of the contributors to crime by those on pretrial release."

The Bail Agency should be able to take an active role in preventing crime among persons released on bail. It should have adequate staff and resources to supervise persons on bail, to aid in securing employment, to arrange third party custodians and, if necessary, to inform the court and the United States Attorney when a person on bail fails to comply with his conditions of release.

Our pretrial release system should operate in a manner which better protects the public. Further the pretrial release period should be the beginning of supervision and rehabilitation for the defendants—over 75% of whom are ultimately convicted.

This Panel urges enactment of the Bail Agency legislation which is now before Congress. We also urge the Bail Agency and other governmental units to implement the many administrative recommendations of the Judicial Council Committee on Bail. All of them have crime control merit.

Fugitivity

During the October review of pending criminal cases, the United States District Court learned that 221 defendants were fugitives and could not be brought to trial. These 221 persons are approximately 10–12% of all persons awaiting action by the court.

The number of additional crimes which may be committed by these defendants has not been statistically measured. However, any listing by police of persons suspected of involvement in hold-ups always includes several fugitives.

This Panel concludes that special effort should be made to locate all fugitives and bring them before the court. The United States Marshal should give priority to service of bench warrants which are issued for fugitives. The Federal Bureau of Investigation should be brought in to assist whereever appropriate.

The United States Marshal's office is woefully understaffed and does not have the necessary manpower to devote a sufficient number of men to the task of apprehending fugitives. The Panel, therefore, also recommends that the United States Marshal's office be expanded in accord with the President's message of January 31, 1969 so that it can carry out its responsibility in apprehending fugitives.

Court reorganization

Thousands of words have been written about the need for a court system which can efficiently, promptly and fairly administer justice in the District of Columbia. Numerous groups have concluded that the inadequacies of our court system are contributing to the crime problem in this city.

The problems of our court system were first highlighted by the District of Columbia Crime Commission. It found that the division of criminal jurisdiction between the District of Columbia Court of General Sessions and the United States District Court had a detrimental effect on the handling of criminal cases. Cases bounced between courts without real regard for public safety. There were problems of allocation of judicial resources and schedules for trial in one court conflicted with schedules in the other court. The Commission recommended a unified court system.

Since that time, the District of Columbia Judicial Council Committee on the Administration of Justice has offered far reaching recommendations for reorganization of the court system.

Most recently, the United States Senate has acted on court reorganization proposals submitted to it by the Administration. These proposals call for transfers of jurisdiction from the United States District Court to a newly created Superior Court for the District of Columbia. They also provide for substantial increase in the number of judges assigned to the newly created court.

This Panel has reviewed the evidence concerning the need for court reorganization. We are persuaded that court reorganization is essential to adequate crime control in the District of Columbia. Only through thoroughly reorganized, efficiently managed courts can we achieve our goal of swift and certain justice. We therefore urge Congress to enact the legislation which is before it as expeditiously as possible.

Recommendations

In sum, to make the criminal justice system more efficient in dealing with armed violence, this Panel recommends:

1. Enactment of bail legislation to permit pretrial detention of certain defendants whom the court finds likely to commit additional violent crimes if released on bail,

2. Accelerating the disposition of cases of armed violence by expanding the individual calendar program, by prompt indictment, by decreasing time for mental exams and by speedier sentencing procedures,

3. Expedited appeal in cases of persons charged with more than one crime of violence,

4. Development of better procedures to supervise persons on bail and to secure the return of persons who become fugitive, and

5. Enactment of court reorganization legislation together with the proposed increases in judicial manpower and the creation of a court executive.

Panel member William T. Finley, Jr., believes that the pretrial detention of a defendant, even if accompanied by necessary Constitutional safeguards, should not exceed 30 days, and that by far the more desirable way to handle the problem is to take every possible step to ensure speedy trial of dangerous defendants.

Panel member Dean Paul Miller dissented from the Panel's recommendation concerning pretrial detention. His separate view is found in the Appendix to this report.

NARCOTICS

Though in the past narcotics addiction has seldom been connected with armed crime, it has become increasingly clear during the past two years that there is a direct relationship between drug abuse and the commission of armed crimes.

During the Senate District Committee's hearings on narcotics earlier this year, testimony of law enforcement officials revealed that between half and three-quarters of the serious crime in the Washington area is drug-related.

Subsequently, a study conducted by the District of Columbia Department of Corrections revealed that 45% of the suspects booked into D.C. Jail, who submitted to a urine test, over a one-month period were active narcotics users.

A similar study was conducted between September 8 and October 5 by the Metropolitan Police Department at the central cell block. During that period, 1,277 prisoners were processed through the cell block. Of those, 522 refused to be tested for narcotics. Of the 755 tested, 249—or 31%—proved to be active narcotics users.

Many of those suspects whose use of narcotics was revealed by both studies were then released on bond or personal recognizance to return to the streets and to drug addiction and crime.

At a recent White House meeting on crime in the National Capital, Police Chief Jerry Wilson reported that an increased number of armed crimes were being committed by narcotics addicts.

Chief Wilson indicated that many of these crimes were committed by narcotics addicts who were released on bail. He said: "There are, at this point, some 1,600 persons out on bail release, and our data . . . indicates that about 50% of these serious offenders are probably narcotics addicts. There is no question that the narcotics addict who formerly was involved strictly in crimes against property has moved to armed robbery. There is no question."

There is absolutely no way to reduce drug-related crime as long as narcotics continue to flow freely into this area and the National Capital has no treatment programs for addicts who commit crimes.

As three Presidential Commissions in the past six years have pointed out, simply sending an addict to jail does not solve the problem. Because he will receive little or no treatment for his addiction in prison, he will be returned to the street still addicted and still in need of committing crimes to buy his drugs.

There is absolutely no way that an addict can support his habit without turning to crime. It is not unusual for drug habits in the National Capital to cost more than $50 a day. To get that money, an addict has to steal that much each day in cash or four times that much in merchandise.

By the most conservative estimate, crimes committed by narcotics addicts cost the law-abiding citizens of the National Capital area upwards of $50 million a year.

There is no question that addicts, who heretofore were involved in non-violent crimes, have turned to armed crimes and crimes of violence. One reason is that the 1968 civil disorders so flooded the market with stolen merchandise that addicts found the prices were way down for the stolen goods they tried to peddle. As a result, they began turning more to cash crimes like armed robbery and bank robbery.

Presently, the D.C. Government has no adequate treatment programs for narcotics addicts arrested for serious crimes. The District is particularly lacking in treatment facilities for addicts released on bail or personal recognizance. Under current conditions, when an addict is released on bail or personal recognizance, he is free to roam the streets without any supervision. Then when his case comes up for adjudication, the judge has no alternative but to sentence him to prison, knowing that when he is released two, three, or five years hence, he is sure to commit more serious and violent crimes.

According to Chief Wilson (at the White House meeting), there is a great need for involuntary treatment for narcotics users pending trial. He said: "We need, more than anything else, other than bail reform, to institute the involuntary hospitalization of narcotics users. We need to take them off the street."

Only in recent months has the District Government recognized the seriousness of its drug problems. It is essential that it move as rapidly as possible to establish treatment programs for narcotics addicts. In doing that, it should utilize and cooperate with ongoing private programs that have proven effective in the community.

What is urgently needed is a system in which all persons arrested for serious crimes and crimes of violence are automatically diagnosed for drug addiction. If they are found to be addicted, they should not be released on bail or personal recognizance. Rather, they should be immediately committed to treatment pending trial.

When they come to trial, this system must give the judge the option of proceeding as in any other criminal case and sentencing them to prison or committing them to treatment for the length of the sentence he would have received for the crime. If, at the end of the treatment period, however, the judge and the doctors feel an addict is still dangerous, the judge must have the power to keep him in treatment until he no longer poses a threat to his community.

Treatment programs, however, are not enough on their own to end the narcotics crime crisis in the National Capital area. That is especially true because past treatment efforts have produced poor results. It is essential that law enforcement officials concentrate their efforts on stopping the flow of illegal narcotics into this region. That means the thrust of the law enforcement effort must be made against the major traffickers in narcotics who are responsible for bringing most of the drugs into this area.

Until a major narcotics ring was cracked by law enforcement authorities this August, it had been 17 years since a major narcotics trafficker had been arrested in Washington.

One of the problems law enforcement authorities have in getting evidence against major narcotics traffickers is that major dealers often do not even touch the drugs and keep themselves well insulated from the traffic on the street.

As a result, to gather evidence against a major trafficker, it is necessary to get the small trafficker on the street to tell from whom he bought the drugs he was selling. That process must be repeated up the line until the major trafficker is finally identified and arrested. In other words, law enforcement officers need the cooperation of low-level persons involved in drug traffic in order to get evidence against major traffickers.

One way this Panel feels such cooperation could be induced would be to rewrite existing narcotics laws to include a penalty structure flexible enough that a trafficker who cooperated with law enforcers could receive less severe sentence than one who did not.

In addition, the penalties under D.C. narcotics laws must be strengthened to make it unprofitable for anyone to traffic narcotics.

It is also essential that sufficient education and preventive programs be developed to turn youngsters away from drugs before they actually begin using them. Resources of the public school system must be used in this effort.

It is clear that armed crimes committed by narcotics addicts can never be reduced until the flow of narcotics into this city is cut off and adequate treatment programs are established to cure addict-criminals of their addiction. In order to accomplish that objective, this Panel recommends:

1. District of Columbia laws against trafficking narcotics should be substantially strengthened in an attempt to knock major narcotics traffickers out of the drug business. At the same time, those laws must remain flexible enough so that a judge can penalize a narcotics offender in accordance with the seriousness of his crime. In other words, he must be able to impose a tougher sentence on a professional criminal who is a major narcotics trafficker than a youthful drug experimenter. The penalties should also be flexible enough to allow a judge to give a less severe penalty to a trafficker who cooperates with law enforcement authorities than to one who does not.

2. District of Columbia law must be revised to require an automatic diagnosis for addiction of every suspect arrested for a serious crime prior to his being released on bail or personal recognizance. If the suspect is an addict he should be placed in treatment while awaiting trial of his case. Legal alternatives must also be established to allow a judge to send an addict convicted of a serious crime to treatment or to prison, as his case requires, instead of only to prison as existing law requires.

3. The District of Columbia must undertake massive treatment programs for drug addicts. This is the approach recommended by the President's D.C. Crime Commission, and, unless it is followed, there is little hope of ever reducing crime in the National Capital area.

4. The D.C. Government must establish extensive education and preventive programs in an effort to keep youngsters from experimenting with drugs.

CORRECTIONS AND REHABILITATION

There is a definite relationship between the failure of correctional institutions in the National Capital to rehabilitate serious offenders and the increase in armed crime.

The correctional system in the District of Columbia has a prominent role in the criminal justice process. It is the designated agency for converting violent offenders to useful, productive, law-abiding citizens. As such, it has a special responsibility in helping to stem the rising tide of violent crimes committed in the city.

Statistically, the dimension of the role of the correctional system within the criminal justice process is reflected in the following statistics:

1968—nearly 9,000 offenders were committed to D.C. Jail (most jail admittees were released after trial or court hearings); 2,500 offenders were sentenced and transferred to institutions within the correctional system.

Institutional population, Nov. 12, 1969

Institution:	*Offenders*
Jail	1,122
Lorton complex	1,202
Youth center	388
Women's detention center	91
Penitentiary	186
Shaw residence	56
Work release	127
Lorton's minimum security	262
Narcotics center	32
Community treatment centers	67
Parole supervision:	
Adults	612
Youths	16

An index to the current effectiveness of the correctional system and the impact that it has on the crime problem in the District of Columbia is the number of persons who must be returned to prison for crimes committed subsequent to their release

A recent study completed by the Department of Corrections Planning and Research Division revealed that nearly 50% of the persons released from the Lorton Reformatory—the main prison facility—during 1965 were recommitted to jail for committing other crimes within three years of their release. The rate of re-arrest accelerated at the end of the second year following release of persons from the institution.[1] Moreover, among inmates who were released directly from the institution without supervision, i.e., parole or conditional release, the rate of recidivism reached 57%. Obviously, such a performance record does not contribute to the reduction of armed crime in the city.

The Panel's study of the D.C. correctional system reveals that it lacks the essential resources and indeed the authority required for effective performance of its vitally important role—that of converting criminal offenders to useful law-abiding citizens in the community.

It is the judgment of the Panel that, in order for the D.C. Department of Corrections to meet its responsibility and help reduce violent crimes, it must be completely overhauled. It must be provided with massive resources, modified correctional structure, more flexible authority to utilize correctional procedures in dealing with prisoners. Additionally, bold and innovative changes must be instituted within the system that radically depart from traditional concepts and practices of rehabilitation and offender management. The department must expand its planning and research activity and seek the cooperation of universities and colleges in the city for correctional research projects.

Finally, if the D.C. correctional system is to become an effective instrument in reducing the crime rate in the Nation's Capital, its budget requests must be given a higher priority by the Congress and top city officials.

Resources

The appalling resources of the D.C. corrections system reveal deficiencies at the threshold. The District of Columbia Jail where criminal offenders are committed to await trial is a disgrace to the Nation's Capital. This archaic structure with a capacity of 700 is currently reeling with an overcrowded population of 1122.[2] As other studies have

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documented, the District of Columbia Jail is wholly without the psychiatric, psychological, social, counseling and correctional services minimally required for the treatment of inmates. It lacks sufficient personnel necessary for adequate security and safety of the community or the inmates.[3]

This structure needs to be replaced at the earliest possible time with a modern pre-trial detention and diagnostic center where all male offenders, including juveniles, youth, and adults awaiting court action may be confined. This structure must be secure enough to protect the community and also provide a comprehensive program in which inmates may undergo a complete diagnostic study to determine if they suffer from physical and psychological illnesses. The facility should be fully staffed with highly trained correctional personnel, psychiatrists, psychologists, counselors and social workers and other experts necessary to diagnose the cause of and provide treatment for antisocial behavior.

Even persons released on bail should be required, as a condition of release, to report to the diagnostic center on an "out-patient" basis for diagnostic study and evaluation tests. Additionally, the institution should be equipped with drug treatment facilities for treatment of offenders addicted to drugs. For security purposes the facility should be equipped with the latest electronic devices for detecting escape attempts, and closed circuit television for extensive surveillance of inmates activity and conduct. It should be compartmentalized to accommodate without co-mingling juvenile offenders,[4] young adult offenders and adult offenders.

The Women's Detention Center is similarly deficient and overcrowded.[5] This facility likewise should be replaced. Females awaiting court action should be sent to a Women's Division of the new pre-trial detention and diagnostic center.

There is also need for a modern facility for convicted females requiring institutional care. This facility should be equipped with all the resources necessary for proper correctional treatment in order to maximize rehabilitative capability. It should be designed to accommodate, in addition, juvenile female offenders.[6]

The Lorton complex, comprising the Reformatory and the maximum security unit where adult male felons are confined, reflects the same deficiencies as the D.C. Jail. It is dangerously overcrowded with a population of 1500—about 200 over capacity. Security personnel are too few in number and insufficiently trained. Moreover, the complex has neither the resources nor the programs to even begin converting felons into useful citizens. Academic and vocational training is below the minimal level.[7]

The prison industry, an essential adjunct in the rehabilitative process, is out-dated and inadequately equipped to provide sufficient job training and meaningful time spent by inmates.

These negative factors create an atmosphere in which rehabilitative success is virtually impossible. The entire operation at Lorton may be characterized as a "warehousing" of offenders. Even classification of inmates is hampered by the lack of background data and other pertinent information. As a consequence, diagnosis, classification and treatment prescribed, if any, for rehabilitating offenders are frequently based upon sketchy information obtained primarily from inmates. Obviously, this is a weak reed on which to predicate a course of treatment aimed at preparing offenders for returning to the community.

The Lorton facility either should be replaced, or its physical plant completely renovated and enlarged. It should be staffed with counselors (including counselors for families of inmates), psychiatrists, psychologists, and correctional specialists essential for applying the full range of treatment and services necessary to rehabilitate the offenders to law-abiding citizens. The correctional treatment prescribed should be predicated on background data covering childhood to adulthood obtained and compiled during the offender's confinement at the pre-trial detention and diagnostic center.

Some academic and vocational training ought to be mandatory for all offenders during their confinement at the institution. Even older offenders, or those with short sentences, may benefit from this mandatory requirement if incentives are provided.[8]

College training opportunities should be expanded for offenders who qualify and who show such aptitudes.[9]

Prison industries, utilizing the latest techniques, procedures and equipment, and in cooperation with private industry, would provide meaningful and useful on-the-job training for inmates. A full schedule of activities, including mandatory academic, vocational and on-the-job training would leave no time for idleness among inmates. For diversionary purposes, this program should include sufficient recreational and hobby development.

Rehabilitative goals such as training, vocational skills, self-motivation, attitudes, and other pertinent goals should be established for each inmate under the direction of correctional experts. When, in the judgment of correctional personnel, inmates have achieved these goals, and further, when in the judgment of these officials the inmates' release from confinement will not constitute a danger to the community, the director of corrections should be empowered to petition the court for reduction of the inmate's minimum sentence. By this procedure, the offender would become eligible not only for community-based treatment, but also for supervised parole.[10]

For security purposes the new Lorton facility should be equipped with the most modern electronic devices including closed circuit television to prevent escapes and provide adequate surveillance of conduct and activity of confined offenders.

Misdemeanants requiring institutional care are presently confined in a minimum security unit at the Lorton complex (known as the Workhouse). Part of this facility is used by the Department of Health for the treatment of alcoholics. This facility, too, lacks the essential resources and skilled correctional personnel necessary for rehabilitating offenders confined.

At present, most of these misdeameanor offenders are merely held until the expiration of their sentences. Application of proper rehabilitative treatment would prevent many of these offenders from graduating to the felony class.[11] Hence, an enormous opportunity exists for rehabilitating these offenders before they escalate to felons and become more dangerous risks to the community.

The correctional treatment prescribed for these offenders should likewise be based on complete background data covering childhood through date of offense; as well as the diagnosis developed at the Pre-trial Detention and Diagnostic Center.

For this treatment to achieve the maximum rehabilitative effect, more time may be required than the average sentence given misdemeanor offenders. For this reason, it should be a statutory requirement that misdemeanants be committed to the Department of Corrections for an indeterminate period not to exceed the maximum sentence allowable under the statute—usually one year. Correctional officials could then within that allotted time apply the full range of treatment, either institutionally or community-based as the condition of the offender would indicate.

Here again, this facility should be provided with the necessary resources in personnel and equipment to provide academic and vocational training for maximizing its rehabilitative capability.

A drug treatment program likewise should be available for offenders institutionalized in this facility.

The most hopeful sign in the depressing and deplorable state of correctional institutions comprising the D.C. Corrections system is the Lorton Youth Center where young adult male offenders are sent for treatment.[12] While recent studies prepared by the Department of Corrections reveal that Youth Center has achieved 70% success rate among offenders, it, too, is now overcrowded and needs additional treatment resources.

The unit's optimum capacity is 300 inmates. Currently, 388 young offenders are confined at the Center and its monthly intake is 12 offenders. At this rate of intake, the treatment services presently provided will deteriorate resulting in a correspondingly lower success rate.

To maintain and improve the high level of correctional services currently provided youth offenders, and to preserve the interpersonal relationships existing among staff and inmates, another facility for young offenders should be constructed. Moreover, additional treatment resources should be made available to the present facility.

At present some youth referred to the Center have open felony charges pending against them. Officials at the Center believe this condition presents a formidable impediment to successful rehabilitation of these youths. This is so because the treatment program may be abruptly interrupted by another sentence which requires the confinement of the youth at the Lorton complex.[13] Youths should not be sentenced to the Youth Center until all criminal charges pending against them are adjudicated.

Modification of correctional structure

Paralleling the need for additional resources is the correlative need for modification of the correctional structure and the need for more flexible authority of offender management.

Since the D.C. corrections system is the designated agency for converting criminal offenders to useful citizens, it ought to have the rehabilitative responsibility for all criminal offenders. This would include juveniles,[14] youth and adult offenders under the umbrella of the correctional system. Separate divisions, of course, would be provided for application of correctional treatment to the several groups.

The advantages flowing from this kind of integrated structure in the correctional system are threefold:

1. It makes possible the continuity in knowledge and treatment services for all offenders irrespective of age.

2. It avoids the fragmentation of correctional capability.

3. It facilitates the shifting of correctional resources to juvenile and youth corrections in a deliberate effort to prevent youthful offenders from ascending to the prison and multiple recidivist level.

The consequences of neglect or ineffective rehabilitative efforts for juvenile offenders are graphically manifested in the escalating rate of violent crimes in the city.

Recent testimony by law enforcement officials before the Senate District Committee revealed that 40 percent of crimes of violence are committed by juveniles.

The flexible application of treatment services to all offenders which this kind of integrated program facilitates would enhance the correctional system's effectiveness in reducing crime in the city.

Closely allied to the need for a broadened structure in the correctional system is the

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necessity for more flexible authority for offender management.

A rational approach to offender rehabilitation seems to dictate that all correctional services and offender treatment programs be integrated in one agency—the correctional department. (This is no less important than the broadened responsibility for the totality of offender careers, and the supportive rationale is equally applicable.)

Under the panoply of the D.C. corrections, an array of correctional activities would be provided for offender rehabilitation. These would include—preventive correction programs,[15] first offender programs,[16] offender rehabilitation programs,[17] probation supervision,[18] institutional care (confinement), work release, study release, community-based programs, parole supervision and conditional release. To utilize effectively this comprehensive range of correctional activities embraced within the department, correctional administrators must have authority sufficiently flexible to allow them to treat each offender in accordance with his needs. Moreover, this kind of flexibility allows administrators to place offenders in program types that will yield the most effective result at the least cost. Recent studies conducted by the Planning and Research Division, Department of Corrections, revealed that its community-based programs achieved a higher success rate among offenders at less cost than conventional correctional programs (prison confinement).

Currently, the Department of Corrections utilizes Work Release programs and study release programs which enable it to place misdemeanants and felons who have served their minimum sentences in the community during the day and to confine them in jail, halfway houses or other community centers at night. Because of the high success rate achieved with the use of these programs, correctional administrators, consistent with the necessity for protecting the public from criminal offenders, should expand these programs to felons who with proper supervision in community-based programs could be converted into law-abiding citizens at no danger to the public safety.

Regarding offenders in this category, the Director of Corrections should be authorized to apply directly to court for a reduction of the minimum sentence.[19]

As to misdemeanor offenders, the Director of Corrections, and not the courts, should have the discretional authority to place these inmates in work release programs.

Correction administrators are often constricted in their application of treatment of misdemeanants because of court sentences of these offenders to work release programs. While the decision to deprive a convicted offender of his liberty is a judicial function, the Correctional Administrator using well-developed diagnostic techniques and knowledge of the relative effectiveness of various treatments with different types of offenders should make the appropriate program assignment for sentenced misdemeanor offenders.

As hereto before explained, in the discussion of minimum security resources for misdemeanor offenders, courts should be statutorily required to commit these offenders to the Department of Corrections for an indefinite period. Correctional officials would have the option to detain the person for the application of corrective treatment for the maximum time allowed by the statute.

In sum, what the Panel endorses is the establishment of a system of jurisdictional sentencing, under which the court sentences an offender to the reconstituted Department of Corrections. The offender would then be under the jurisdiction of that department until his sentence runs out. The Department, however, in accordance wtih sound rehabilitative practices, would have the flexibility to assign the offender as its sees fit to any of the programs under its jurisdiction—whether imprisonment or community based—so long as it is consistent with the public safety.

Information, research and planning

The response of the D.C. correctional system to the increase of violent crime will rest in part on the techniques of scientific management.

The evaluation of existing correctional programs, the development of new programs, and the ascertainment of cost benefits of the various treatment programs must be ongoing projects in the correctional system so that successful techniques may be identified quickly and applied broadly in the system.

The existing planning and research unit in the Department of Corrections is competent but inadequate for the expanded correctional system outlined in this report. This unit should be enlarged commensurate with the expanded responsibility of the Department. Additionally, the D.C. corrections system should seek the cooperation of all colleges located in the city for correctional research projects. Further, it should endeavor to utilize undergraduate and graduate students in the Departments of Social Work and Psychology as interns in community-based treatment programs.

Budgetary consideration

Because of the extremely prominent role the D.C. correctional system has in the criminal justice process, and the enormous impact it can have in reducing violent crimes in the city, its budgetary request for resources and capital improvement should be given priority status in the budgetary planning and development for the city.

The Panel was pleased to note the high priority status which the District of Columbia recently accorded the construction of a new jail.

Recommendations

In order to convert the correctional system in the National Capital into a model for the country, and a positive asset in the war against armed violence, the panel makes the following recommendations:

1. The existing D.C. Jail should be replaced with a modern pre-trial detention and diagnostic center completely equipped with drug treatment facilities, the latest electronic detecting devices, and closed circuit television. It should be fully staffed with correctional experts—security personnel, counselors, psychiatrists, psychologists, social workers, and physicians. Funds for this facility should be included in the D.C. supplemental budget for 1970.

All background data pertaining to offenders from childhood to adulthood, including family circumstances, educational history, medical history, employment record, police statement of offense, and pre-sentence reports should be made available to pre-trial diagnostic center and accompany offenders during the period of their custody and treatment within the system. This information should become a permanent record.

Drug addiction tests should be mandatory for all persons committed to the D.C. pre-trial and diagnostic center. Arrestees, as a condition of release on bail, should have to report to the Center for outpatient diagnostic testing and evaluation and tests for addiction and drug treatment.

2. The Women's Detention Center should be eliminated and all female inmates awaiting trial transferred to a women's division of the pre-trial and diagnostic center. A new modern facility for female offenders requiring institutional care should be constructed.

3. The existing physical plant at the Lorton complex comprising the reformatory and maximum security unit should be replaced or extensively renovated and enlarged. It should be completely equipped with the latest electronic devices to detect escape attempts and closed circuit television for surveillance of inmate activity and conduct. It must be staffed with correctional experts, security personnel, psychiatrists, psychologists, social workers, physicians and recreational specialists. It should require mandatory vocational and/or academic training for all inmates. Its program should include incentive awards for educational achievement in the form of release points that may be converted to "good time" days.

Education should be supplemented with on-the-job training in meaningful trades. Prison training industries should be modernized with the latest equipment and procedures with the cooperation of private industry. Component services should be under the control of the superintendent.

4. The minimum security unit for confinement of misdemeanants should be renovated.

This facility should be staffed with correctional experts, psychologists, psychiatrists, counselors, and social workers with adequate resources to apply a full range of correctional treatment to misdemeanor offenders. Misdemeanants sentenced to confinement should be placed in the custody of the Department of Corrections for an indeterminate period not to exceed the maximum sentence allowable under the statute.

Vocational and/or academic training should be made mandatory for all inmates. There should be appropriate incentives for educational achievement in the form of release points convertible to good time days.

5. The population of the existing Youth Center should be limited to 300 inmates. Another Youth Center with the same capacity should be constructed.

Additional treatment resources for the existing Youth Center in terms of counselors, vocational and academic instructors should be provided.

6. Community-based programs that have achieved a lower recidivism rate should be expanded.

7. All rehabilitative services and treatment programs, including preventive correction, first offender counseling programs, probation supervision, institutional care (confinement), community-based programs, work release, study release, and parole and conditional release, should be integrated under a reconstituted D.C. Department of Corrections.

Such a reconstituted Department of Corrections is necessary for the system of jurisdictional sentencing the Panel endorses to be implemented. The jurisdictional sentencing system will allow the Department of Corrections to assign an offender in accordance with sound rehabilitative practices to any of its programs—whether imprisonment or community based—consistent with the public safety.

The probation department should be converted to a pre-sentence reporting unit for the Court. The rehabilitative responsibility of the D.C. correctional system should be broadened to include all offenders, including juveniles, young adult and adult offenders. Divisions within the correctional system should be created to avoid co-mingling of juveniles with other offenders.

8. Correctional administrators should be allowed statutorily to apply to the courts for reduction of minimum sentence for felony offenders who have achieved rehabilitative goals, responded to institutional treatment, but who are not eligible for community-based treatment and/or parole.

9. The name of the Department of Corrections should be changed to the Department of Correctional Services or the Department of Corrections and Rehabilitation.

10. Correctional administrators instead of courts should be granted the discretion to place misdemeanants in work release programs.

11. The planning and research unit in the

Footnotes at end of article.

Department of Corrections should be expanded commensurate with the Department of Correction's expanded integrated structure and enlarged rehabilitative responsibility. It should seek the cooperation of all colleges and universities based in the city in corrections research projects and the utilization of graduate and undergraduate students in community-based and institutional programs.

12. Congress and city officials should accord the budget requests of the Department of Corrections a high priority in their budgetary planning.

FIREARMS CONTROL AND MANDATORY MINIMUM SENTENCES

This Panel believes that any meaningful attempt to reduce armed violence must include strict controls over the possession and use of firearms. Those controls must incorporate the registration of every firearm and the licensing of every firearms owner.

This Panel believes that, in this report, it is not necessary to document again the case for registration of firearms and licensing of firearms owners. Three Presidential Commissions—the President's Commission on Law Enforcement and the Administration of Justice, the President's Commission on Crime in the District of Columbia, and the National Commission on the Causes and Prevention of Violence—have, during the past five years, given close scrutiny to the subject of crimes committed with firearms.

All three have concluded that the most effective method of reducing crimes committed with firearms is the registration of the weapons likely to be used in the commission of those crimes and the licensing of the owners of those guns. Indeed, the latter two of those three commissions have even gone so far as to suggest that in the case of hand guns, only those who can demonstrate a legitimate need be allowed to possess them.

The cost of registration and licensing

One aspect of registration and licensing, however, that the Panel does feel compelled to comment upon is the cost which the community would incur if such a system were instituted. Though alarmists have suggested that the cost of registering firearms and licensing firearms owners would be astronomical, more reasonable estimates have shown that the cost is not exorbitant. In any event, it is evident that the cost of a registration and licensing system must be balanced against the cost of firearms crimes against society.

Even a small reduction in the amount of armed crime would more than make up, from a cost effectiveness standpoint, for the cost of administering a system of registration and licensing. The cost to the Nation's Capital of not having effective gun controls is measured in terms of extra police time, extra prosecutorial time, and extra prison space. It is measured in terms of the loss of earnings that results when a bread-winner is wounded in an armed robbery, the cost in terms of increased welfare payments when the head of a household is killed, and the cost of the value of property stolen or destroyed in armed crimes.

By far the cheapest approach to the problem of armed crime is to prevent it rather than to attempt to solve it after it occurs.

Moreover, those who argue against registration and licensing solely on a dollars and cents basis totally disregard the more important values of living in a community free from the fear of armed crime and without the inestimable price of the human tragedy exacted by the high rate of firearms crime. In dollars and cents, what are 126 lives worth? [20]

Firearms and serious crimes

There is no question that firearms are the principal weapons used in the most serious and tragic crimes. As the National Commission on the Causes and Prevention of Violence (the Eisenhower Commission) reported:

"The deadliness of firearms is, perhaps, best illustrated by the fact that they are virtually the only weapons used in the killings of police officers. Police are armed. They are trained in the skills of self-defense. They expect trouble and are prepared for it. Yet, from 1960 to 1967, 411 police officers were killed in the course of their official duties—76 of them in 1967 alone. Guns were used in 96% of these fatal attacks on police."

Firearms also play an increasingly deadly role in the commision of armed robberies. The Eisenhower Commission pointed out that one of every three robberies nationally was committed with a gun, and the "fatality rate of the victims of firearms robberies is almost four times as great as for victims of other armed robberies." During the first six months of this year, firearms were used in 52.9% of all the robberies, 73.7% of all the aggravated assaults, and 72.3% of all the murders in the National Capital. These percentages increase drastically every year. In Calendar Year 1968, firearms were used in 46.8% of the armed robberies, 37.3% of the aggravated assaults, and 57.8% of the murders committed in the National Capital.

The District of Columbia firearms ordinance

Last year, the District of Columbia City Council passed firearms regulations for the National Capital. These regulations took effect on February 15 of this year, and required the registration of firearms, at a cost of $2 per weapon, and set requirements for the sale and possession of firearms and ammunition.

Conviction of a non-dealer for violation of this ordinance carries a maximum fine of $300 or imprisonment for not more than ten days. Conviction of a gun dealer carries a fine or not more than $300 or imprisonment for not more than 90 days.

This Panel believes that the D.C. City Council should re-evaluate that ordinance to determine if it imposes hardships on citizens that do not serve a corresponding law enforcement interest.

In particular, the ordinance should be reviewed and, if necessary, revised to insure that any firearms owner adversely affected by the implementation of the ordinance can obtain speedy judicial review of his case. In addition, the ordinance should be reviewed to ascertain that the standards it sets for the possession of firearms are precise and not susceptible to discretionary abuse. If there is unnecessary vagueness, it should be eliminated and specific standards should be established governing who can and who cannot possess firearms.

A more effective firearms law for the District of Columbia

Because the power of the City Council to impose penalties in an ordinance is restricted, this Panel believes that Congress, in its capacity as the legislative body for the National Capital, must pass a law requiring registration of every firearm and licensing of every firearms owner in this city. Only in this way can adequate penalties be imposed to punish those who fail to comply with firearms regulations.

At the same time, however, consistent with sound law enforcement practices, this law should not preclude the enumeration of a "bill of rights" for sportsmen. This, the Panel feels, would be desirable in order to assuage the fears of those who feel that effective gun controls inevitably lead to an end to the use of guns for legitimate sporting purposes.

The registration of all guns; the licensing of all firearms owners

There are several reasons why this Panel believes that *all* firearms—rifles and shotguns as well as hand guns—must be registered and all gun owners licensed. They include:

1. The cost and inconvenience to those who have to register long guns or obtain licenses to use them is slight when balanced against the gains for the public safety.

2. The purpose of registration and licensing is to keep criminals, insane persons, drug addicts, and others who cannot be trusted to use firearms responsibly, from possessing guns. Even though long guns are primarily the weapons of sportsmen, in the hands of a criminal, an insane person, or a drug addict, long guns are deadly weapons that are likely to be misused to the detriment of society. Registration of all long guns, and licensing of their owners, is the only meaningful way to control and prevent the misuse of such weapons.

3. Long guns are the weapons of assassins, and, increasingly in civil disorders, of snipers.

4. When restrictions are imposed on the possession and use of hand guns, long guns are likely to become the weapons of the armed criminal. It takes little effort to convert a long gun into a concealable weapon by sawing off its stock and its barrel.

Cheap, unsafe handguns

Beyond the general requirements of the registration of all firearms and the licensing of all firearms owners, special controls should be imposed on one category of firearms.

It is clear that a high percentage of armed crimes are committed with cheap, unsafe hand guns that have little value to anyone with a legitimate need for a firearm. Those cheap hand guns, often referred to as "Saturday night specials", are not even dependable weapons. Most are available on the market for less than $50 and often for less than $20. No self-respecting sportsman would have one.

Until last year, the primary source of these guns was Western Europe. After the passage of legislation last year prohibiting the importation of such weapons, domestic manufacturers have begun to make and distribute them in great numbers.

The Panel conducted a study of hand guns confiscated by police during the period between September 1 and November 1 of this year. That study revealed that the vast majority of those guns—between 70 and 80%—were of the cheap, unsafe variety. They were, by and large, of such poor quality that police, security officers, or store owners interested in protecting private property would find them too undependable to use.[21]

There is little justification for the continuation of the manufacture and sale of this variety of weapon. This Panel believes it desirable to establish standards (metallurgic, safety, and cost standards) to differentiate between hand guns that are used by sportsmen and others with a legitimate need for hand guns and the "Saturday night special", the principal purpose of which seems to be the perpetration of violent acts against society.

Hand guns that cannot meet these standards, once they are established, should be taken off the market. The manufacture and sale of these weapons should be prohibited. Proper compensation should be given to those dealers who are forced to turn in supplies of such weapons. Hand guns of this type that are currently in the public domain should be condemned and, if not relinquished for compensation, confiscated. The Panel recommends a grace period—perhaps six months—during which owners who voluntarily turn in such guns will be paid the original cost or present fair market value—whichever is higher—of their guns. After the grace period elapses, guns of this type still outstanding should be confiscated, and their possession made a criminal offense.

Mandatory minimum sentences

Present D.C. law calls for mandatory minimum sentences and increased prison terms for criminals convicted for the second time

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of armed crimes or crimes of violence.[22] That law allows a judge to sentence a second offender for an armed crime to up to life imprisonment. Present D.C. law also has a provision which states that any person who kills another person while committing or attempting to commit an armed crime of violence is guilty of first degree murder.

The sentences handed down for armed crimes or crimes of violence by the U.S. District Court average, in practice, in excess of the mandatory minimum prescribed in the D.C. law. The mandatory minimum for second offenders convicted of armed robbery, for example, is two years. The average sentence handed down for robbery during fiscal year 1968 by the District Court judge was 93 months—or just short of eight years. In other words, the judges were handing down sentences for robbery nearly four times as harsh as the mandatory minimum sentence prescribed by law for armed robbery on the second offense.

A more relevant question is whether criminals convicted of armed crimes actually serve their sentences or whether they are released from prison after serving only a small portion of them. The study conducted by the Department of Corrections revealed that convicts sentenced to prison for robbery and released during fiscal year 1966 served 58.6% of the time for which they were sentenced. Those 80 releasees were sentenced an average of 816 years in jail. They served an average time of five years apiece. It appears that in the case of other offenses as well, those convicted of armed crimes are, on the average, actually serving greater sentences than prescribed by the mandatory minimum provisions of existing law.

The Panel believes, in general, that the disadvantages of mandatory minimum sentences on the first offense outweigh the advantages. Mandatory minimum sentences, for example, impair the flexibilty of the court in dealing with suspects accused of serious crimes.

In addition, mandatory minimum sentences often inhibit the prosecution from prosecuting or a jury from convicting a suspect who perhaps does not deserve to be sentenced to a long prison term because of the "sympathetic" circumstances surrounding his misdeed, even though he may be guilty of crime.

One alleged advantage of minimum mandatory sentences is that dangerous suspects are removed from the street for a considerable period of time. However, until the correctional facilities and post-conviction supervisory procedures are substantially improved, this advantage may turn into a disadvantage in the long run, especially since 95% of those sentenced to prison are eventually released. Another section of this report reveals in detail that a long stay in a penal institution often results in the convict's being a more hardened criminal on his release than he was when he entered the institution.

Another alleged advantage to minimum mandatory sentences is the deterrent factor on criminals. With the backlogs in the courts that exist today, however, it is questionable whether a long minimum mandatory sentence looming over the head of a person arrested for an armed crime will deter him from committing other crimes while he is out on bail, or will, in fact, contribute to his committing additional crimes. It is the opinion of this Panel, that in the absence of speedy trials or pretrial detention, mandatory minimum sentences actually contribute to the commission of additional crimes since suspects who have been arrested for one offense, and who feel they are certain to go to prison for a long time anyway, frequently are disposed to "live it up" during the months of pretrial freedom. This reckless attitude results in additional crimes of violence. This tendency is reinforced by the belief that any additional crimes of violence committed will result in concurrent sentences. This Panel feels that a better system would be one that first, produces speedy trials, and second, places a premium on a suspect's keeping his record clean while awaiting trial.

Recommendations

To reduce armed violence in the National Capital, this Panel recommends the following steps be taken concerning firearms controls and mandatory minimum sentences:

1. Immediate steps must be taken to take cheap, unsafe, undependable hand guns out of circulation. Standards must be developed immediately to isolate these guns. The manufacture and sale of such guns should be made illegal. After a grace period—perhaps six months—during which owners of such guns shall be compensated for voluntarily turning them in, all outstanding cheap hand guns should be confiscated. Thereafter, their possession should be illegal.

2. The D.C. City Council should re-evaluate the gun regulation it passed last year in order to determine that it protects the public safety and that it is not unfair to those who have a legitimate need and use for guns. After that re-evaluation, that ordinance should be revised if necessary.

3. In order to provide adequate sanctions in the District of Columbia for violation of gun controls, Congress as the legislative body for the National Capital should enact a law requiring the registration of all firearms and the licensing of all firearms owners. Only in this way can adequate penalties be imposed to punish those who fail to comply with firearms regulations. At the same time, consistent with sound law enforcement practices, this law should not preclude the enumeration of a "bill of rights" for sportsmen.

4. The mandatory minimum sentences for second and subsequent offenders now on the books were written into law in 1967 and should be tested further before they are changed. The flexibility of the court should not be impaired by new legislation requiring mandatory minimum sentences on the first offense, especially since the felony court in the District has continually imposed sentences stronger than the mandatory minimums required by law. As a result, mandatory minimums are seldom imposed and will, in effect, hamstring the court in its sentencing procedures.

Panel members Herbert J. Miller, Jr., Thomas A. Flannery and Luke Moore agreed with the recommendations of this section, but submitted additional views concerning these firearms recommendations. In addition, Panel members James C. Slaughter and William E. Rollow dissented from the recommendations concerning firearms. The separate views of Panel members Miller, Flannery, Moore, and Rollow appear in the appendix to this report.

APPENDIX A. SEPARATE VIEWS ON PRETRIAL DETENTION

(Dean Paul E. Miller dissented with the Panel's recommendation concerning preventive detention. He submitted the following dissenting opinion:)

The concept of pre-trial detention embodied in this report is unconstitutional for a number of reasons. Many of which are obvious even to the non-practicing lawyer with no particular expertise in criminal procedure. To attorneys, such as myself, who have practiced, taught and written about criminal procedure and the constitution, it is clear that the subtler aspects of this section are equally unconstitutional.

In partial explanation of my objection to this proposed legislation, let me state for your consideration the following:

(1) I believe that the presumption of innocence which attaches to the defendant in all criminal prosecutions is more than a mere evidentiary rule protecting the defendant in a criminal trial. It is my view, together with a great many others, that the presumption of innocence is not so much an evidentiary rule as one protected by the due process clauses of the 5th and 14th Amendments. It is inconceivable that this could be otherwise in light of our national heritage of fairness, our concepts of "ordered liberty," and our traditional refusal to jail persons because of anticipated but as yet uncommitted crimes.

The Statute of Westminster of 1275, the Bill of Rights in 1688, the Judiciary Act of 1789 and the 8th Amendment are a historical line clearly demonstrating that a defendant has a pre-trial right to bail. The great body of law treating of due process from Palko v. Connecticut through Griswold v. Connecticut indicate that pre-trial detention without bail violates our traditional concepts of due process advanced by such noteworthy justices as Cardozo, Frankfurter and Harlan and this great body of law, likewise, makes it clear that this particular section of legislation proposed is infected with unconstitutionality;

(2) I further believe that the proposed section violates an accused's 6th Amendment right to counsel which not only guarantees that he will have counsel present during the critical stages of the criminal proceedings but also consistent with Powell v. Alabama, that he shall have effective assistance of counsel, meaning that a defendant should have access to his attorney in the preparation of his case as well as the opportunity to participate in preparing his defense;

(3) Under the 5th Amendment "No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, . . ." It appears to me that the effect of this "pre-trial detention of certain defendants who pose a danger to the community" would violate a defendant's right to have these matters resolved by a finding of probable cause by a duly constituted Grand Jury;

(4) It is true, that there is no definitive case law holding that the 8th Amendment precludes pre-trial detention but there is very strong language in Stack v. Boyle and Williamson v. United States, which indicate that the 8th Amendment would make this proposed section on pre-trial detention unconstitutional.

In Stack v. Boyle the Court stated, "From the passage of the Judiciary Act of 1789, 1 Stat. 73, 91, to the present Federal Rule of Criminal Procedure, Rule 46(a)(1), Federal Law has unequivocally provided that a person arrested for a non-capital offense shall be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction . . . Unless this right to bail before trial is preserved the presumption of innocence, secured only after centuries of struggle, would lose its meaning."

Further, in Williamson v. United States the Court stated, "If I assume that defendants are disposed to commit every opportune disloyal act helpful to communist countries, it is still difficult to reconcile with traditional American Law the jailing of persons by the Courts because of anticipated but as yet uncommitted crimes." Finally, in Carbo v. United States the Court stated ". . . the *imperatives of the Constitution* . . . require that the right to preconviction bail be honored."

Therefore, I submit that the proposed section is incurably unconstitutional. But, even if it were constitutional, I still could not support it for practical, humane and policy reasons. In my judgment, the punitive aspects of detention are a high price in a free society to pay for false security. Our jails are unspeakably bad, pleas of guilty are, as we all know, easily induced under such conditions, inmates are more easily compelled to "cooperate" against other felons and with the

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government, and defendants have already, in this jurisdiction, been illegally sent to jail by judges who for punitive reasons wish to give a defendant "a taste of jail." The cost of detention as it relates to the defendant and his family is unspeakably high in a community where the defendants are already the poorest, and on this issue, I see preventive detention as another factor producing more crime that it can ever eliminate.

These are practical reasons. On the issue of justice, I see two dangers pointed up by statistics compiled by the Vera Foundation in New York and "Bail in the United States: 1964—Report of the National Conference on Bail and Criminal Justice":

(1) It was revealed that persons who are detained pre-trial are more likely to be convicted than persons released on bail;

(2) It was shown that persons who are released on pre-trial bail are more likely to receive probation, lesser sentence, and parole than those who are detained pre-trial; and

(3) cost to the government.

For these reasons and others which I will not put in writing, I cannot in good conscience recommend this approach to solving the violence problem that exists in these United States, and I predict with certainty that the adoption of such legislation will lead to further violence and an alienation of an important section of this community.

APPENDIX B. SEPARATE VIEWS ON FIREARMS CONTROL

(Panel members Thomas A. Flannery and Luke Moore submitted these supplemental views concerning regulation of firearms:)

Registration of guns seems to be of limited law enforcement value. Any criminal who wishes to obtain a gun can easily do so on the black market, despite any registration law. However, we support legislation requiring registration of guns so long as such legislation would take proper cognizance of the right of law abiding, responsible citizens to possess guns for sporting use and their self protection in their homes.

(Panel Member Herbert J. Miller, Jr., submitted additional views concerning the Panel's recommendation on firearms control. His views were joined by Panel Members Frederick H. Evans, William T. Finley, Jr., Dean Paul Miller, and Quinn Tamm. Mr. Miller's views follow:)

I endorse all of the provisions of the majority report regarding firearms control.

In addition to the majority recommendations, however, I believe the Panel should endorse the recommendations of the President's D.C. Crime Commission and the National Commission on the Causes and Prevention of Violence (the Eisenhower Commission) regarding handguns. Both of these commissions recommended that a person be required to show an affirmative and legitimate need before being issued a license to possess a handgun. The implementation of this recommendation, in my view, would materially strengthen the efforts of law enforcement authorities to reduce armed crimes of violence.

Dissenting views of William E. Rollow

I respectfully dissent from the views of the majority on Firearms Control and Mandatory Minimum Sentences.

At the outset I should like to make crystal clear one point: virtually, every law-abiding citizen owning a firearm, including those in the District, shares an overriding desire to try to find some way to put an end to or to reduce armed and violent crime and the senseless death from dangerous instruments. No dollar cost is too high; human suffering and lives cannot be measured in dollars. Those who ligitimately own and use firearms are outraged over their misuse by the criminal element, and it is unfair to represent them as interested only in saving money or callous to crime. If I believed the majority's proposals in this regard were a reasonable and effective crime deterrent, I would support them. I do not.

The majority urges, in essence, a comprehensive federal criminal (felony) law calling for:

1. Registration of all firearms;[23]
2. Licensing of all firearms owners;[24] and
3. A legislative ban on the manufacture, sale, possession; and confiscation of all hand guns, deemed to be "cheap, unsafe" ones.

It is just plain foolishness to expect that criminals, felons, assassins, paranoids and other social misfits who should not own guns are going to step forward to turn in their weapons or incriminate themselves. If this class believed in law and order, we would not have a crime problem. Indeed, the Supreme Court has ruled that such undesirables cannot be compelled to so come forward.[25]

The Metropolitan Police Department statistics reveal beyond peradventure that the rifle and long shotgun are not crime weapons (See Exhibit A). They were used in less than 1% of murders, were involved in no manslaughters, were used in less than 1% of armed assaults, and less than 1% of robbery, respectively. Knives, blunt instruments, and the human hands were used far more often in crime (Exhibit A).

The discretionary firearms registration and licensing law passed by the City Government has been a failure.[26] About 26,500 firearms have been registered under the compulsion of the new law (which calls for licenses requiring proof of "need", and lawfulness of "intended use"), wheras about 75,000 originally had been registered at time of purchase voluntarily. Armed crime has skyrocketed.[27] In short, the law-abiding complied or moved either himself or his guns elsewhere; the criminals ignored it.

The majority points to the Reports of three Presidential Commissions, and particularly the Eisenhower Commission Report, as supporting their views as to registration and licensing of firearms.[28] This is not wholly accurate. The Eisenhower Report did not adopt a philosophy antagonistic to rifles, shotguns and their owners. It concluded that long guns were overwhelmingly used for legitimate purposes, and that their owners were decent people. It repudiated the concept of registration of long guns (sought by the majority); it urged instead a system of owner Identification Cards for owners of long guns.

As anti-crime legislation, the proposed Federal licensing-registration law of the majority will, I fear, prove just as much of a failure as has the City Council's law. As anti-gun legislation,[29] the proposed federal registration and licensing programs may prove successful in harassing and oppressing the overwhelming majority of decent law-abiding folk who own and use their firearms safely.

I disagree, also, in part with the views of the majority on minimum mandatory sentences. I concur that as to a first conviction there should be judicial discretion. But as to criminals who habitually misuse firearms or other dangerous weapons, I favor severe minimum mandatory sentences. The law-abiding should not be oppressed, while the habitual criminals are sheltered.

I concur, also, with the concept of restricting the further manufacture, sale and possession of the dangerous imported or cheaply made domestic hand gun (as distinguished from safe hand guns which are purely inexpensive in price). Consideration should be given to the adoption of a firearms "proofing standard" or imposition of excise taxes on the manufactures of these unsafe weapons. I disagree, however, with the program of confiscation of such implements from the law-abiding, urged by the majority. The law-abiding should be encouraged to get rid of their unsafe hand guns or, indeed, to sell them to the government; not because these good people constitute a danger to society, but rather because their firearms may be inherently unsafe.

I have set forth my views for proposed legislation as Exhibit B.

EXHIBIT A. PROPOSED REVISIONS TO THE DISTRICT'S GUN LAWS

1. Section 22–3203 *D.C. Code, as amended,* should be expanded by bar possession or ownership or sale of either a pistol, *or rifle or shotgun* to:

a. drug addicts;
b. convicted felons;
c. adjudicated mental incompetents;
d. minors (18 for a hand gun; 16 for a long gun);
e. aliens illegally in the United States; and
f. known agents of foreign powers.

There should be a Review Board, composed of one member of the Police force, a member of an accredited rifle, pistol or shotgun organization and a third private citizen, which should be empowered to waive the restrictions against ownership for cured addicts, reformed felons and cured mental incompetents. This Panel should have the right to impose conditions upon the waiver, such as waiving the restrictions to a reformed felon only to possess, say, a sporting shotgun.

There should also be a savings clause permitting minors to have weapons in their possession if they are in the custody of a qualified adult or if they are engaged in a supervised *bona fide* target or hunting activity (this type of clause is needed to protect the Boy Scouts, NRA, Skeet Shooting, Trap Shooting, and similar instructional programs) as well as to allow a parent to take his son hunting or to target shooting.

2. The hand gun which is inherently dangerous to the user is demonstratably the favorite (70%) weapon used in armed crime. Its further sale should be restricted as is the machine gun and sawed-off shotgun. Because of the difficulties in defining the class of weapon (either by proofing, tensile strength of metal, etc.), the problem might be best resolved by a nationwide statute which imposes a federal excise tax of $60 on all non-target, non-sporting and non-premium defensive hand guns. (The domestic manufacturers and makes of premium hand guns are relatively well known, and include the Colt, the Smith & Wessen, the Luger, and Hight Standard, and others; foreign cheap hand gun imports are already controlled by the *Gun Control Act of 1968.*) Owners of these defective and dangerous hand guns should be encouraged to voluntarily sell them to the government for their fair value. I oppose confiscatory remedies as to the law-abiding.

3. Section 22–3204 which covers the carrying of concealed pistols or other weapons capable of being concealed should be enlarged to cover the following: the possession, carrying, or transportation in any public place or public street in the District of Columbia of long guns (rifles and shotguns) should be prohibited *unless* the long gun is unloaded and either broken down and encased in a suitable gun case; or if in a vehicle, then unloaded and locked in an appropriate baggage compartment thereof; or if no such compartment exists, then unloaded and securely locked in an automobile in a truck type rack.

4. An optional voluntary firearms travel permit should be authorized issuable by the Treasury Department, at no cost to any person so desiring, and who is not disqualified (as earlier set forth). The holder of such card should be entitled to:

a. purchase of a long gun in an adjoining state to the District upon displaying such card and complying with the laws of both the state and the District.

b. the protection of the full faith and credit clause of the Constitution, or federal pre-emption should apply while the holder is travelling through or temporarily visiting

foreign jurisdictions, except for foreign jurisdictional provisions relating to:

i. the carrying of firearms,

ii. the place of discharge and manner of discharge of firearms and,

iii. hunting regulations.

In other words, the possessor of such cards would not be subject to local requirements relating to possession or ownership. Further, the possessor of such a card would be exempt from foreign jurisdictional requirements as to transporting firearms providing the firearm was unloaded and encased or broken down, and either locked in the baggage compartment or locked securely in an appropriate gun rack.

I believe a strong program could then be made to have sportsmen of the District voluntarily obtain that license.

5. Authorization should be given for free but confidential and voluntary registration of firearms (the heretofore compulsory registration would be transferred to this list). Registration might help in the recovery of stolen weapons, although the help would not be great. The lists should be available only to police groups. Again, this should be purely optional.

6. We should amend Section 22–3202 of the *D.C. Code* to provide that upon a second conviction of a crime of violence with a firearm there would be a minimum sentence of not less than ten years nor more than 25 years, and for a third conviction a minimum sentence of not less than 20 years. This amendment, however, would be conditioned upon a reformed correctional system, which would allow a broad spectrum of correctional treatment as the case suited, and not necessarily, say, 20 years in a small jail cell.

FOOTNOTES

[1] Department officials explained that this acceleration at the end of the second year is contrary to the usual trends, and was probably caused by the 1968 riots following the death of Dr. Martin Luther King.

[2] Speedy trials of offenders would alleviate part of the problem.

[3] See D.C. Crime Commission Report.

[4] Responsibility for correctional treatment of juveniles at pre-trial and post conviction stage should be placed under the Department of Corrections, but in a separate facility.

[5] The current population of the Women's Detention Center is 91.

[6] The Children's Center at Laurel with renovations may continue to be utilized for these offenders.

[7] Only 387 inmates are currently engaged in academic training; 242 in vocational training.

[8] Such an incentive may be in the form of release points that are convertible to good time days.

[9] Twenty-five inmates are presently enrolled in Federal City College courses.

[10] Half-way houses currently exist for persons who have served their minimum sentence and are eligible for parole. Statutory authority to seek reduction of minimum sentence to qualify other offenders for parole will be discussed below.

[11] It should be noted that some offenders confined in this unit as misdemeanants were originally charged with felonies that were subsequently reduced to lesser offenses for pleas of guilty. This information should be available to correctional officials to enable them to prescribe the proper treatment for these offenders. This factor should also be considered in determining the risk these offenders would present if based in community settings.

[12] We are informed that the physical layout of this Center is the model for the youth center recently constructed by the Bureau of Prisons at Morgantown, West Virginia.

[13] Currently approximately 37 young offenders are in the Center with approximately 70 felony charges pending.

[14] Presently juvenile rehabilitation is the responsibility of the Department of Public Welfare; the Mayor's Task Force on Corrections recommended that juvenile corrections be integrated with youth and adult corrections.

[15] The Department of Corrections with an integrated structure embracing all offender careers and with adequate skilled corrections personnel could devote some of its efforts to preventive correction among high risk youth who exhibit anti-social tendencies. The planning and research unit is conducting studies to determine the effectiveness of such an undertaking.

[16] See Project Crossroads, a first offender counseling program for persons charged with misdemeanor offenses but not pursued to conviction.

[17] See offender rehabilitation program funded by OEO providing counseling service for persons charged with various offenses.

[18] Probation supervision is presently the responsibility of the Probation Department, an adjunct of the court. If probation supervision is transferred to the Department of Corrections, as recommended by the D.C. Crime Commission, the Probation Department could function as a pre-sentence reporting unit for the court.

[19] Pursuant to Title 24 Sec. 201 C the Board of Parole, in its discretion may apply to the Court for this relief.

[20] The number of persons murdered with firearms in the District of Columbia during 1968.

[21] During the 60-day period between September 1 and Novmber 1, 1969, D.C. police reported that they took 545 hand guns into custody. Of those, police categorized 395 as being of the cheap, unsafe variety. Of course, these statistics cannot in themselves present a total picture of the types of hand guns used in the commission of crimes since they do not reflect the type of weapon used in crimes that are not cleared. Nevertheless, the Panel believes the data is sufficient to warrant the conclusion that the overwhelming majority of hand guns used in crimes in the Nation's Capital are of the cheap, unsafe variety.

[22] It should be made clear that a mandatory minimum sentence is a sentence that has to be served. It can not be suspended, and probation or parole cannot be granted until after the minimum is served. It is possible to have a minimum penalty prescribed by law that is not a mandatory minimum. Under D.C. law, the first robbery offense, for example, is punishable by imprisonment of two to 15 years. That is not a mandatory minimum, however, because the sentence can be suspended, or a defendant can be put on probation for the length of his sentence. For the second or subsequent offense of an armed crime, however, the court is precluded from suspending sentence or granting probation.

[23] The registration and licensing program urged by the majority, stresses the right of judicial review for the aggrieved. As a practical matter, the average citizen cannot afford to spend hundreds or thousands of dollars in legal wrangles in order to try to get a license, register a firearm, or prevent a forfeiture. He will simply be forced to bend to the government's will.

[24] Self-defense in the home was stated in the Eisenhower Commission Report to be an insufficient reason to own a hand gun. The majority imposes no such limitation on a license.

[25] *Haynes* v. *United States* (1968) 390 U.S. 85.

[26] The basic reason for the request for federal legislation duplicating the concept of the District's registration and licensing law is that the District cannot impose the felony penalties desired.

[27] Similar programs have failed in Chicago and New York City. *See* M. K. Benenson, *A Controlled Look At Gun Controls*, New York Law Forum, Vol. XIV, No. 4.

[28] The three Presidential Commissions have been extensively criticized in the Federal Congress and elsewhere for lack of objectivity and fairness. These Commissions were appointed by an Administration unsympathetic to lawful firearms use and ownership. Suffice it to say that the Federal Congress, which is far more reflective to the moods of the people, overwhelmingly has repudiated the concepts of registration and licensing. Many State legislatures have passed resolutions officially condemning such programs or have rejected them. (See e.g. Oklahoma, Alaska, Arizona, Vermont, Michigan, Texas, Pennsylvania, Kansas, Montana, California and others).

[29] The so-called sportsman's "Bill of Rights" referred to by the majority has not yet been evolved. The majority's proposal is really a limited privilege to continue to own or buy guns providing the weapons are registered and the owner is licensed. The majority's program, as thus far expounded, would set objective standards of legal classes of ownership with right of appeal (which as before noted is of little value to the poor or oppressed). Nevertheless, just as the program of licensing and registration has failed to deter crime in the District, so I also fear the now urged federal program of licensing and registration will fail. Undoubtedly then there will be pressure for more and more "reasonable" controls until the extremity of total abolition of firearms from the law-abiding is reached. (I do not mean to imply that the majority of the Panel would accede to such extreme views.)

EXHIBIT B.—WEAPONS USED IN HOMICIDE AND AGGRAVATED ASSAULTS

Weapon	Murder	Manslaughter	A. Assaults	Robbery
Air rifle	1	0	--------	0
Automobile	0	0	--------	0
Ax	0	0	--------	0
Blackjack	0	0	--------	5
Blunt instrument	0	0	--------	0
Bottle	0	0	17	38
Brass knuckles	0	0	--------	3
Brick	0	0	31	14
Can opener	0	0	0	0
Chair	0	0	6	3
Cleaver	2	0	32	6
Club	0	0	0	0
Dish	0	0	1	0
Fists	2	0	11	1,697
Flat iron	0	0	1	0
Fork	0	0	4	0
Hammer	0	0	28	1
Hands	0	0	4	1,257
Hatchet	0	0	5	1
Hot water	0	0	2	3
Ice pick	0	0	6	3
Iron pipe	0	0	41	26
Kicked	0	0	62	62
Knife	24	0	802	478
Knife, switch blade	0	0	1	3
Lamp	0	0	0	0
Lye	0	0	15	0
Razor	0	0	39	28
Revolver or pistol	130	0	886	3,781
Rifle	2	0	24	20
Rubber hose	0	0	0	0
Sharp instrument	5	0	87	23
Shotgun	3	0	60	[2] 156
Shovel	0	0	2	0
Stick	0	0	41	30
Stone	0	0	13	5
Teeth	0	0	3	1
Water glass	0	0	4	0
Other—specified and not above	21	2	205	665
Unknown	2	1	7	60
Total	192	3	2,627	8,372

[1] Reflects figures of January 9, 1969 to September 30, 1969.
[2] These figures include the sawed-off shotgun. It is estimated that very few long shotguns are so used.

KENNETH C. FOSTER, MEMBER OF PUBLIC ADVISORY COUNCIL, GENERAL SERVICES ADMINISTRATION

Mr. CASE. Mr. President, the Administrator of General Services, Robert L. Kunzig, has created a General Services

Public Advisory Council because the variety and scope of GSA activities makes it desirable to establish a special advisory committee as a formal channel of communication with the public. This enables the views of the public to reach the highest levels of policymaking officials at GSA.

I am delighted that Mr. Kenneth C. Foster, a New Jersey insurance executive, has been named to the council. He is currently executive vice president of the Prudential Insurance Co. of America.

Mr. Foster graduated from the University of Maine in 1934, and received his master's degree from Columbia in 1936, and his LL.B. degree from Newark University in 1940. His civic activities have been largely concentrated in education, mental health, and boys club work.

Mr. Foster is presently a member of the board of directors of the New Jersey Mental Health Association and chairman of the New Jersey Community Mental Health Board.

ALASKA NATIVE CLAIMS: UNFINISHED BUSINESS OF AMERICA

Mr. KENNEDY. Mr. President, the Congress has an ancient and solemn promise to keep to the native peoples of Alaska. Unless we act to honor this promise, the Alaska natives will lose their rights to the millions of acres of land they have occupied for centuries—land which is rightfully theirs.

One year from now, the Department of the Interior will undertake the systematic and wholesale dispossession of Alaska's 60,000 Indians, Eskimos, and Aleuts—unless Congress acts first. Secretary Hickel made this clear at the hearings on his nomination early this year.

The Interior Department, despite its statutory obligation to protect the property rights of the Alaska natives, has already divested them of extremely valuable lands. In September, the State of Alaska received nearly $1 billion from the sale of oil exploration rights on less than half a million acres of lands on Alaska's North Slope. These oil lands were conveyed to the State by Interior without the consent of the Eskimos, to whom the land belongs, and without compensation to them. This $1 billion is five times the annual budget of the State of Alaska.

The Interior Committee has begun its executive sessions to consider legislation to straighten out what is an emotional, difficult situation regarding the title to these millions of acres of land in Alaska. Because of the significance of the matter, I would like to present to the Members of the Senate a short analysis of the situation, as I see it now standing.

When the United States acquired Alaska from Russia in 1867, it did not purchase the land itself. Rather, it purchased only the right to tax and the right to govern. Our Government recognized, as an inherent part of well-established Federal policies as well as Supreme Court precedents, that the land belonged to its original occupants, the Indians, Eskimos, and Aleuts who then lived on the land.

Seventeen years later, the Congress established a territorial government in Alaska when it adopted the Organic Act of 1884. This act acknowledged the natives' right to an interest in the land, stating:

> The Indian . . . shall not be disturbed in the possession of any lands actually in their use or occupancy or now claimed by them.

But it specifically left for later congressional action the issue of title to the land. It is only this year that the Congress has begun to act on this century-old problem of actual title to the land.

Alaska was made a State by the Statehood Act of 1958. That act provided:

> The State and its people do agree and declare that they forever disclaim all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts.

The act also provided that the State of Alaska had the right to select 103 million acres of land from the public domain, but that this right was subject to the prior aboriginal claims of the natives.

Despite this very clear expression of intent by the Congress, the State shortly after the Statehood Act of 1958 was adopted began selecting acreage out of the public domain, without regard to the aboriginal claims of the natives. This was done with the explicit cooperation of the Department of the Interior. Millions of acres of land were transferred to the State, including lands on which native villages were situated and to which the natives had actually filed aboriginal claims.

This was not stopped until 1966. By that time the Bureau of Land Management had granted title of 6 million acres of native land to the State of Alaska, and had tentatively approved the transfer of another 12 million acres. Secretary Stewart L. Udall, who had the statutory responsibility for protecting the interests of the natives, halted the transfer of this 12 million acres, and suspended the issuance of new Federal oil and gas leases on native lands pending a settlement by Congress of the issue of title to the lands.

The present Secretary of the Interior, Walter J. Hickel, was Governor of Alaska when Secretary Udall halted these further transfers in 1966. The State of Alaska, acting at Governor Hickel's direction, filed a law suit against Secretary Udall in the Federal District Court for Alaska, seeking to compel Secretary Udall to complete the transfer of certain of the native lands which he had blocked. It is not without some irony that Mr. Hickel, then the plaintiff, is now the defendant. The suit is now before the Court of Appeals for the Ninth Circuit.

In January 1969 Secretary Udall issued Public Land Order 4582. This land order made formal the informal freeze he had established in 1966. It was to last until Congress acted on the question of title to the native lands. When he appeared before the Senate Interior Committee's hearings on his nomination, Secretary Hickel indicated that he would honor Public Land Order 4582 for the duration of the 91st Congress, but that if the Congress did not act before its close, then he would continue the transfer of public domain land in Alaska to the State.

A number of bills intended to provide a framework for resolving this situation were introduced earlier this year, the most important of which were filed on behalf of the Alaska Federation of Natives. These have had the support of Alaska's two Senators. They also have the support of former Supreme Court Justice Arthur J. Goldberg, former Attorney General Ramsey Clark, and former U.S. Senator Thomas Kuchel, who have agreed to represent the federation before the Congress as a public service.

The bill introduced on behalf of the Federation of Natives has these major provisions:

First. Conveyance to the native villages of fee simple title to 40 million acres of land, with mineral rights to be held by native regional development corporations;

Second. Cash compensation in the amount of $500 million—roughly $1.50 per acre—payable over a 9-year period with interest at 4 percent; and a 2-percent residual royalty on gross revenues from Federal lands to which native title is extinguished.

Secretary Hickel, on behalf of the administration, has proposed legislation with these major provisions:

First. Conveyance to the native villages of restricted title to approximately 12 million acres of land, stripped of oil and gas rights, to be selected from the public domain at the same time as the State has an opportunity to pick its 103 million acres;

Second. Cash compensation in the amount of $500 million, payable over a 20-year period without interest.

The Federal Field Committee for Development Planning in Alaska, an independent agency of the Executive Office, recommends legislation with these major provisions:

First. Conveyance to the village of fee simple title to approximately 5 million acres of land, with full mineral rights, and protection of hunting and fishing rights over larger areas;

Second. Cash compensation ranging from a minimum of $100 million to $1 billion, the exact amount being contingent on the size of Federal oil and gas royalties in Alaska, to be paid over a 10-year period without interest.

The Interior Committee is now considering these various proposals, attempting to reach a final settlement of Alaska native land rights. I am hopeful that the Senate can complete action at an early date to honor the commitment we made so long ago. The decision the Senate makes will shape the lives and the hopes of Alaska natives for generations to come.

What I would like to focus on today are what I regard as the central features in any fair settlement—the amount of land which will be confirmed in native ownership, prior selection, development income from other assets in order to prevent the natives from becoming a class of "land poor" Indians as is the case with so many Indians in the "lower 48," and

the degree to which the natives will be permitted to control their own property.

In approaching the question of what constitutes an honorable settlement, I think we should give first consideration to what the native people themselves consider fair and reasonable.

On my visits to the villages of Alaska in connection with my work with the Senate Subcommittee on Indian Education, I learned something about the special meaning of the land to the native people. Young and old, they are of one mind: the land is their life. The land and its waters sustain the moose and caribou they hunt, the wild berries they gather, and the fish they catch. It is the foundation of their rich and varied cultures. It is a powerful source of their pride as a people. Ready to meet the challenge of the future in their rapidly changing world, they see the land as their best hope to participate in the economic growth of the State through rational commercial development.

Alaska natives seek justice, not charity. They do not ask to be given lands, but they ask for the right to retain a portion of that which belongs to them. They do not ask to be given money or compensation. But they ask, as a matter of justice, that compensation be paid to them in return for their agreement to extinguish their aboriginal claims to vast portions of this State.

The natives have valid claims to approximately 350 million acres of land in Alaska. 40 million acres represent approximately 10 percent of the land, and the natives comprise 20 percent of Alaska's population. The natives depend upon the land for their subsistence. Nonnatives use only a small fraction of Alaska's vast land mass, and that which they use is chiefly for recreation.

It has been suggested that the apportionment of 40 million acres of land among the 178 native villages would isolate the natives from the mainstream of American life. On the contrary, the natives view the land as their chief resource for sharing in the growth and development of the State and Nation. Moreover, stripping them of their land is certain to create a wall of bitterness and distrust that will stand between them and their fellow citizens for many years to come.

Many natives wish to continue a rural way of life. In a nation where individual freedom and self-reliance are highly valued, this preference should be given great weight in determining the amount of acreage to be retained.

More over, no matter what weight may be given to this preference, or what the ultimate settlement may be, the fact is that the majority of natives will be in the villages for very many years. Many natives—particularly the elderly and those with very little education—would be destitute if, because of insufficient land, they were forced to move from their homes.

On the other hand, if adequate lands are retained, the natives will be able to make a meaningful choice between village life and urban life. Those who voluntarily choose urban life—primarily the young and more educated—will do so without bitterness, and should be able to make a satisfactory transition. They will view their move as a positive choice, and not as an expulsion from their land by white men.

The second major concern I have involves the nature of the administrative practices which will be followed and the institutions which must be created under any land claims settlement legislation. In this regard, one point seems clear: The Department of the Interior and, in particular, the Bureau of Indian Affairs, should not be permitted to continue the dominant role in the conduct of native development programs. Insofar as the natives are concerned—and our subcommittee hearings confirmed that conclusion—the record of these executive agencies in Alaska is marked by inertia, lack of imagination, paternalism, the frustration of native aspirations and, in general, a complete lack of identification with, or sympathy for, native rights and needs. If we are not to repeat in Alaska the mistakes made in the rest of the United States, which seem destined to plague us yet for years to come, the Department and the Bureau must be removed from control over native lands and funds.

I am pleased to see that all the bills now before Congress call for the creation of an Alaska Native Commission and an Alaska Native Development Corporation. What we must make certain is that the legislation not only creates these new institutions, but also given the natives themselves a meaningful role in the decisionmaking process. In other words, we will not have made a true settlement with the natives if, as the administration proposes, the corporation which is to administer their assets is managed in its formative years by Presidentially appointed nonnatives. The intent of Congress should be, in the words of the bill proposed by the Alaska Federation of Natives, "to carry out the terms of this settlement promptly, with certainty, and in conformity to the real economic and social needs of Alaska natives by maximizing the participation by natives in decisions affecting their rights and property and by vesting in them as rapidly as prudent and feasible control over the lands set aside and corporations organized pursuant to this act . . ."

Time is running out for the Alaska natives and for Congress. The Senate has an opportunity to make a fair settlement in accordance with our nation's high ideals. It is perhaps the Nation's last, best chance to close with dignity and justice one of the sordid chapters in our history—our shocking treatment of America's first inhabitants in disputes over land.

WILLIAM J. DORGAN, MEMBER OF PUBLIC ADVISORY COUNCIL, GENERAL SERVICES ADMINISTRATION

Mr. CASE. Mr. President, General Services Administrator Robert L. Kunzig has recently named a Public Advisory Council at GSA for the purpose of creating public involvement in GSA operations.

The State of New Jersey is ably represented on the Council by Mr. William J. Dorgan, a New Jersey businessman and member of the Bergen County Board of Freeholders. Mr. Dorgan is a partner in Torway Warehouse, Inc., of Edgewater, N.J.

Mr. Dorgan's career of public service has spanned 20 years during which he has been mayor of Palisades Park and freeholder of Bergen County, N.J. Also, he has served in the U.S. Coast Guard.

GSA is fortunate to have obtained the services of such an outstanding citizen. Mr. Dorgan's background will prove valuable in aiding Administrator Kunzig as a member of the GSA Public Advisory Council.

U.S. COMMITMENTS IN SOUTHEAST ASIA

Mr. FULBRIGHT. Mr. President, I am concerned and baffled as to the administration's objectives in Southeast Asia. On the one hand, it supported an amendment in the Defense Appropriations Act which prohibited the introduction of U.S. ground combat troops into Laos and Thailand; on the other hand, it sent us a letter opposing the repeal of the Gulf of Tonkin joint resolution on the ground that even if not needed with regard to Vietnam, the Tonkin resolution may be needed in order to perform on other U.S. commitments in that area.

It was on last Monday, December 15, that the Senator from Idaho (Mr. CHURCH) was successful in sponsoring an amendment to the Defense Appropriations Act which stated:

> None of the funds appropriated . . . shall be used to finance the introduction of American ground combat troops into Laos or Thailand without the prior consent of Congress.

On the next day, December 16, it was stated that such was the policy of the administration all the time—although I must note the cessation of air combat activity in Laos was not included in this policy.

But now I have discovered that the administration opposes a resolution (S. Con. Res. 40) submitted by the senior Senator from New York (Mr. JAVITS), which calls for the termination of the Gulf of Tonkin joint resolution as of December 31, 1970.

The administration opposes repeal of that resolution because we have other "international obligations in the area." Are these obligations that go beyond SEATO?

Here is what the administration wrote in part on December 4 in stating its unqualified opposition to the Javits-Pell resolution:

> In addition, the existence of the Tonkin Gulf Resolution has consequences for Southeast Asia which go beyond the war in Viet-Nam. The question of its termination must be considered carefully in terms of our other international obligations in the area, particularly the Southeast Asia Collective Defense Treaty which the Tonkin Gulf Resolution specifically cites.

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

There being no objection, the letter

was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE,
Washington, D.C., December 4, 1969.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: The Secretary has asked that I reply to your letter of October 17 enclosing copies of Senate Concurrent Resolution 40 and requesting the views of the Executive Branch on this resolution.

We would oppose passage of this resolution, which seeks to establish the end of 1970 as the date both for a fixed deadline for withdrawal of all United States combat troops and for repeal of the Tonkin Gulf Resolution.

We believe that the establishment of a firm date for withdrawal of United States troops will not bring us closer to our goals in South Viet-Nam. The Administration hopes to withdraw United States combat troops from Viet-Nam as quickly as possible and has a plan for accomplishing this objective. Public revelation of a fixed timetable, however, would not contribute to the attainment of this objective. It would jeopardize our chances of obtaining a political settlement through negotiations and could interfere with the continuing orderly transfer of the United States share of combat to the South Vietnamese.

Further, we oppose the repeal of the Tonkin Gulf Resolution at this time. Certainly the Congress has the right to terminate this resolution if it chooses to do so. However, we do not believe that its termination would bring us any closer to peace. The Administration's commitment to terminate participation of American combat forces in the war is clear, and the basic objective of the proposed resolution, namely the disengagement of United States forces from the war, is already on the way to being achieved.

In addition, the existence of the Tonkin Gulf Resolution has consequences for Southeast Asia which go beyond the war in Viet-Nam. The question of its termination must be considered carefully in terms of our other international obligations in the area, particularly the Southeast Asia Collective Defense Treaty which the Tonkin Gulf Resolution specifically cites.

Sincerely yours,

H. G. TORBERT, JR.,
Acting Assistant Secretary for Congressional Relations.

Mr. FULBRIGHT. Mr. President, Laos, in 1962, specifically and in a formal act renounced any future protection under the SEATO treaty. Thailand, of course, did not.

I repeat my question: Are there "other international obligations in the area" of Southeast Asia that go beyond SEATO? What are they? Who made them? Is this a case in which the administration has a blank check for action in Asia that it wants to keep handy for some future contingency?

THE PAST DECADE'S EXPERIENCE IN WHEAT PRODUCTION

Mr. DOLE. Mr. President, I invite the attention of the Senate to an article written by Roderick Turnbull. Turnbull analyzing the past decade's experience in wheat production and world wheat markets. His observations and insights are highly informative, 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:

INTERESTING WHEAT DECADE CLOSING

(By Roderick Turnbull)

At the beginning of the 1960s, the United States had a record wheat surplus. Actually, the peak carryover was on June 30, 1961 when the total was 1.4 billion bushels, including a billion bushels of the hard red winter variety.

Ten years later, the nation again has a huge carryover—the projection for next June 30 is around 900 million bushels. Obviously, the wheat problem hasn't been solved although many things have happened in the last decade.

One of the major developments is that while in 1960 the United States owned 62 per cent of the wheat stocks held by the Big Five Exporters, this year our percentage is only 39. The surplus has been spread around.

With the decade of the 1960s coming to a close, the Foreign Agricultural service of the Department of Agriculture has reviewed world trade in wheat over the last 10 years. Its report helps revive memories of some rather dramatic developments.

In 1960, the report relates, world wheat production was 8.2 billion bushels and 1.6 billion bushels moved in world trade. In 1968–69, production had reached 10.3 billion bushels, up 25 percent, while world trade was at 1.7 billion bushels, a little more than in 1960. But it wasn't as high as it was in the mid 1960s when world trade in wheat reached a peak of 2.3 billion bushels. These figures include flour.

Also, in 1960, four nations, the United States, Canada, Australia and Argentina, overshadowed all others in exports. They were the Big Four, possessing a large part of the world's exportable stocks. The U.S. alone accounted for nearly 70 percent of their holdings.

Now, 10 years later, we have an addition, with rising production in the European Economic Community—mainly France. Thus now the USDA speaks of the Big Five.

Among the most dramatic developments in the 1960s was the emergence of the Soviet Union and mainland China as importers. China has continued to be a steady buyer, while the Soviet Union is in and out of the market. The United States sold 65 million bushels of wheat to the Soviets for cash in 1964. Canada and Australia sold much more to the Russians.

About the same time, severe shortages of food grains were developing in India and Pakistan. In 1965–66, India imported 262.7 million bushels of which 93 percent came from the United States on concessional terms. The next year, India imported 238 million bushels with 72 percent coming from the United States.

Japan also had entered the market in a big way and was buying large quantities of wheat and other grains.

As most farmers and grainmen will recall, in the middle 1960s, world stocks of grain were regarded as dangerously low. At the same time, talk was rampant about a pending world food shortage. Books began to appear on the subject from all over. U.S. exports of wheat reached an all-time high of 867 million bushels in 1965–66, and on July 1, 1966, our carryover had dropped to 425 million bushels, the lowest level since 1952. It looked as if our wheat problems were over.

The world was fairly well convinced a food shortage really was upon us and nearly every country tried to do something to avert it. The United States increased its acreage allotment for the 1967 crop 32 percent, bringing the total up to 68.2 million acres. The 1967 harvest was 1.5 billion bushels. In Canada, wheat acreage in the middle 1960s reached 29.7 million, up 20 percent from 1960. Both Australia and Argentina increased their acreages.

Then along came the Green Revolution, the development of the high yielding wheat varieties from Mexico and the rices in the Philippines. The new varieties were greeted with good growing weather in India and Pakistan. Both countries cut down on their imports. At the same time, on occasion, the Soviet Union joined the ranks of the exporters. Some smaller countries which never had exported wheat before got into the business.

West Europe which was importing about 450 million bushels a year at the beginning of this decade has cut this down to around 300 million.

The United States closes the decade with the lowest wheat acreage allotment in history—45.5 million acres, 50 percent below the 1966–67 peak of 68.2 million acres. Total exports are down, but actually commercial sales for dollars still are above those of the first half of the 1960s. The commercial volume last year was 276 million bushels.

All the things that have happened in the 1960s, most of which were nonpredictable, suggest that no one really knows what is coming in the 1970s. Obviously, things could happen elsewhere in the world that would improve the U.S. wheat farmer's position.

That position right now isn't very good in the opinion of Glen Hofer, Washington, executive vice-president of the National Association of Wheat Growers. He has just returned to Washington after attending a series of state conventions of wheat organizations and reports that in general each group wants to keep the present wheat program, with price improvements. What the wheat farmers want, of course, is more money.

"I am increasingly convinced," Hofer says in his latest report from Washington, "that our dryland wheat producers are going broke."

Some people might question whether that statement is a good endorsement of the wheat program which has been in effect now for five years, but the grower groups contend they would be worse off without it.

OIL SPILLS ON NATIONAL AND COASTAL WATERS—DANGERS ASSOCIATED WITH THE USE OF CHEMICALS IN THE TREATMENT OF ACCIDENTAL OIL SPILLS

Mr. KENNEDY. Mr. President all of us are aware of the tragic and costly effect of accidental oil spills on our national and coastal waters. This year, the Senate has responded to this situation in a meaningful way. Section 12 of S. 7 the Federal Water Pollution Control Act of 1969 is devoted to this matter.

The Subcommittee on Air and Water Pollution of the Public Works Committee—after extensive hearings—prepared this section which incorporates most of the provisions recommended by those who testified in favor of Federal guidelines and programs in this area of growing concern.

During the Senate debate on this section, I offered only one amendment which I felt was required in addition to the committee recommendations. My amendment, which was accepted by the Senate, requires the Secretary of the Interior, under the authority of section 104 of this bill, to develop and publish standardized specifications and other technical information on the chemicals used in oil spill cleanup efforts by June 30, 1970.

S. 7 is now in conference. It is my firm hope that the conferees will retain my amendment. To further inform those

Senators and Members of the House charged with the responsibility for the conference report, I ask unanimous consent that an article published in yesterday's New York Times be printed in the RECORD.

The article effectively points out the fears of scientists and engineers regarding the inappropriate use of chemicals in oil spill cleanup operations.

I hope that all who share a concern in this matter will realize the need for the publication of Federal guidelines as soon as possible so that we need not fear the catastrophic damage to fish and wildlife and to the ecological balance of our waters as a result of the application of unsuitable chemicals to disperse oil formed as the result of similarly destructive oil spills.

It is also appropriate to include in the RECORD an article written by Tom Wicker which appeared in the New York Times today reminding us to seriously consider the effect of our growing technological capabilities on our environment—and, today, on the environments of other planets—before we apply it to shape the world and the universe in which we live. I ask unanimous consent that it also be printed in the RECORD.

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

[From The New York Times, Dec. 17, 1969]

SCIENTISTS TERM THE CHEMICAL TREATMENT OF OIL SPILLAGE MORE HARMFUL THAN THE "DISEASE"

(By David Bird)

Scientists and engineers have expressed concern here that attempts to control oil spills with chemical dispersants are causing more harm than the oil itself and may be creating long-term ecologic damages, such as is now being attributed to DDT and other pesticides.

The concern is expressed in reports and discussions at a three-day Joint Conference on Prevention and Control of Oil Spills, ending today at the Americana Hotel. The meeting is sponsored by the Federal Water Pollution Control Administration and the American Petroleum Institute, an industry group.

TORREY CANYON DISASTER

When the conference was planned last summer, the sponsors expected about 300 persons to attend. More than 1,000 have registered.

Their interest reflects increased public concern after two disastrous oil spills.

The first occurred in March, 1967, when the supertanker Torrey Canyon struck a reef off the southern coast of England and sent 30 million gallons of crude oil oozing toward the Cornish coast and across the English Channel to the shores of Brittany.

The second oil spill occurred early this year, when 18 million gallons leaked to the surface of the Santa Barbara Channel in California during offshore drilling operations.

At least one million tons of oil are spilled every year from tankers, manufacturing plants and refineries. Much of the effort to control the spills has centered on chemical dispersants that dissolve the oil, spreading it out so thin that it is not noticeable.

Some scientists say that the dispersants are merely an attempt to hide the visible effect of the spills and that the chemicals pose an additional danger.

A. Oda, a researcher with the Ontario Water Resources Commission, told the conference yesterday that studies of dispersants since the Torrey Canyon disaster have led to the conclusion that some of them "were far more deadly and far more damaging to marine life and ecology than the oil itself."

BEACH DAMAGE, TOO

Howard J. Lamp'l of the Federal Water Pollution Control Administration said, "We firmly believe that the use of dispersants, emulsifiers and other chemicals is entirely unjusted in the cleanup of oil polluted beaches."

He said Federal studies had shown that the oil, when "mixed with chemicals, caused penetration of the mixture into the sand at least three times the depth of the untreated oil. In oil-polluted water, Federal officials have recommended that the chemicals be used only as a last resort when it is impossible to soak up the oil with straw or similar material or to suck it up by mechanical means.

Perhaps the strongest attack on the present methods of controlling oil spills came from a biologist, Dr. Ira N. Gabrielson, who is president of the Wildlife Management Institute. He said: "The usual approach is to try to contain or isolate the floating oil—an attack that works rarely, if at all—or to remove it from the public eye by sweeping it under the ocean's surface by means of dispersants or detergents. More animal life was killed by chemicals in the Torrey Canyon accident than by the oil itself."

"Even if the detergents or dispersants are not toxic in themselves," Dr. Gabrielson continued, their action in breaking up the oil "apparently accelerates the exposure of marine life to the toxic hydrocarbons" in oil.

He noted that "some of the hydrocarbon fractions are suspected of having carcinogenic activity," that is, they are linked to cancer.

"These hydrocarbons are stable," Dr. Gabrielson said, "and they can be retained and concentrated in the marine food cycle as the lesser animals are consumed by those higher up the animal ladder. Some ultimately may end up in man."

Scientists have recently found that it is just such a concentration of DDT that stays in the food chain and has harmful effects on the life cycles of higher animals.

[From the New York Times, Dec. 18, 1969]

IN THE NATION: SEEDING THE CLOUDS

(By Tom Wicker)

It has been suggested at a meeting of the American Geophysical Union in San Francisco that a small nuclear device be detonated on the moon, so that the various quiverings and wobbles that would be set off would tell the instruments that have been planted on the lunar surface what is inside the old ball of cheese. No doubt this is of great importance to know, but can we be sure that the knowledge would be worth the possible cost?

Aside from the obvious questions about the effects of nuclear fallout in the moon's atmosphere and political fallout in the earth's atmosphere, what might be the total environmental consequences of such an explosion—for the moon itself, for those who will be visiting it from earth, for other objects in the solar system? Based on past performance, it is a good bet that there would be some unexpected and probably unwelcome result.

DUBIOUS BENEFITS

In Paris, for instance, a group of hydrologists and other scientists have been finding out a lot this week about what man has wrought in the name of progress. The new Indus and Ganges River irrigation systems, they were told, have raised the water table in the flat plains of India, and in the process have contaminated much topsoil with salt that rose from the earth with the water. The net result is a loss of arable land. The Aswan Dam is spreading disease with its irrigation waters and damaging the fertile Nile delta by interfering with the ancient silting process.

PERILS OF TECHNOLOGY

These are rather spectacular examples of the unforeseen consequences of great technological feats, but they are by no means isolated. Here in the United States, a horrid recent example is the virtual ruin of the Santa Barbara Channel off the California coast because of oil leaks from the ocean floor, set off by the latest scientific drilling techniques.

Just sixty years ago today the Wright brothers got their strange-looking crate into the air above Kill Devil Hill for the few seconds it took to introduce a whole new epoch of technology. Whatever the Wrights thought powered flight might do for man, it is a reasonably safe bet that neither they nor anyone else thought it might choke him to death. Yet, between the automobile, which at about the same time was getting a good start on creating smog, and the airplane, man may yet expire for lack of unpolluted air to breathe. And the end is by no means in sight. Wait until the Boeing 747 and the Concorde and the C–5A and the American SST with their monstrous engines get into the air, along with all the other burnt-kerosene spouters already spewing their poisons on mankind.

One of the most critical problems of this kind—although it should have been foreseen, and probably was by the kind of people who are dismissed as idealists or crackpots—is the runoff of agricultural chemicals into lake, river and stream waters. This poses the usual dilemma agonizingly; the chemicals increase food production for a starving world, but they also pollute fresh waters and kill off fish, so that the dead seas that result foul the air and earth in their turn.

PRODUCTION OR POLLUTION?

What are the relative values in such a conflict? Must men choose between Malthus and the "silent spring"? Surely, more foresight, caution and sensitivity can prevent the necessity for most such either/or choices. It may not prove literally true, as was suggested at the Paris meeting, that diverting the Yukon and Fraser Rivers south to water the American plains could tilt the earth on its axis by the weight of shifting surface water; yet that is the kind of possibility that man's almost limitless technological ingenuity now forces him to consider. Anyone who thinks, for instance, that paving over the Everglades for a jetport is damaging only to the wildlife it would kill and displace ought to remember the social and economic consequences for humans—the so-called dustbowl—that followed the indiscriminate plowing up of the Great Plains.

THE EVEREST SYNDROME

Yet indefatigable man plunges on, gripped in his tiny genius by the Everest syndrome, climbing every technological summit because it is there. It seems not in his nature to let well enough alone, even in his environment, so that in his impulse to build he plants the seeds of destruction.

Ultimately, can man master anything that really matters? Certainly not nature, and least of all, himself; rather, it is altogether likely that if the Biblical flood someday engulfs the earth, it will flow from seeded clouds. That might even be a fitting end.

FARM PROGRAM

Mr. DOLE. Mr. President, as the date draws nearer for the enactment of a new farm program, there will be much consideration of the pros and cons of the administration's approach to this legislation. I was most interested in an

article published recently by the agricultural editor of the Kansas City Star, Roderick Turnbull, in which he examined the aims and details of the proposals that have been discussed with the House Agriculture Committee. 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:

[From the Kansas City Star, Dec. 14, 1969]

TIME DRAWS CLOSE FOR PROGRAM DECISION

(By Roderick Turnbull)

The time is fast approaching to get down to business on a new farm program. The present farm law, the Food and Agricultural act of 1965, which was to expire in 1969 was extended in 1968 for one year. That means it now will expire in 1970. In effect, it expires with the harvest of each crop involved.

The extension was granted to give the Department of Agriculture and Congress plenty of time to develop a new program. Clifford M. Hardin, secretary of agriculture, has taken full advantage of the time element. He has proceeded with deliberation with the express idea of preparing a new program which will be nonpartisan in scope, accepted by a majority in Congress and one that his department can administer with satisfaction.

The secretary hasn't campaigned for any personal farm plank. He has contended he was open to ideas and he has been emphatic in declaring there would be no such thing as a "Hardin plan" which he would attempt to push through Congress.

So, all year the secretary and his aides have been talking farm program policy with farmers, farm organizations, authorities in land grant universities and, in particular, with the agriculture committees of Congress.

Currently, USDA officials and staffs of the congressional committees are trying to whip together a draft of a farm program bill. They hope they will have as many bugs as possible removed from it before it ever is introduced.

But Secretary Hardin knows right now that the proposals being put into the bill, which he has fairly well outlined in recent appearances before Congress and in talks around the nation, aren't going to be endorsed 100 percent. Far from it.

But the secretary is fairly confident that eventually—meaning some time in the early part of 1970—Congress will adopt the main part of the program as it is now being discussed. Such was the assessment of the situation by J. Phil Campbell, undersecretary of agriculture, when he was in Kansas City recently to speak at the annual meeting of Farmland Industries, Inc.

Campbell was asked where he thought the principal opposition would come for the new farm bill—from the Farm Bureau, which thinks it goes too far in government aid; from the so-called coalition of the Farmers Union, Grange and other farm organizations which are of the opinion the bill doesn't go far enough; or, from urban members of Congress who are reluctant to provide the funds for an expensive farm program?

Campbell said he thought the most difficulty would be with members of Congress; that despite the difference between the farm organizations he expected they would accept compromises.

What should be kept in mind is that it is Congress, not the farm organizations or their leaders who write and pass the laws. Hardin realizes this and it is a main reason he has been working all summer and fall with members of Congress and their staffs hoping that the bill that finally is drafted is one most of the * * * will really to accept.

Some of the farm leaders operate in a different manner. They state what they want and will attempt to convince member's of Congress that is what they should have.

The Grange-Farmers Union coalition wants a continuation of the farm act of 1965 with higher government payments. One of the higher payments would be a direct payment to the farmer on exported wheat. This would result in higher costs to the government or taxpayer.

The program which Secretary Hardin and his aides have been developing with Congressional committees would not have more costly payments. In fact, price support loans would be at a lower level than at present.

The real difference in the Hardin proposals and the current farm program is the emphasis the secretary puts on pricing products so they will go to market rather than into a government bin, and, upon the effect the program can have on efficient farming.

The latter point is difficult to explain. The first is easier. Under the Hardin proposals (which have been developed through months of conferences and on which he doesn't claim personal authorship), the price support loan program would be continued with some modifications. Price support loans, in effect, set floors under market prices. Under the present program, loan values are fixed ahead of the harvest of the crop. The wheat loan, for instance, is at $1.25 a bushel at the farm, on a national average.

Under the proposal being developed for Congress, the loan would be set at near world price levels or perhaps at 85 to 90 percent of the average market price of the last three years. The purpose would be to set the loan at a price below the market so that, in effect, while the farmer could use the loan to choose the time he would market, he would not count on the loan (a government bin) as the place to sell his crop.

A second feature of the new farm program proposal is becoming known as the "set aside" of surplus acres. Under the present farm program, farmers who take advantage of what the government offers, "divert" to soil conserving uses a certain percentage of their wheat acres, feed grain acres or cotton land. In addition, they must maintain a conserving base—land that is in grass and which they can't plow up and put to crops.

In the new program, each participating farmer would be asked to set aside or idle a certain percentage of his total crop acreage. And he would keep his normal conserving base. After he had done this, he could plant anything he pleased on his remaining crop acres. He could put it all to corn, to wheat, or to cotton.

This is where the efficient farming that the secretary talks about comes to the fore. The assumption is that if a farmer can benefit from the government program and plant as he pleases, he'll utilize those crops most adapted to his farm. If he is a livestock feeder in Missouri, for instance, he won't plant wheat just to keep his wheat base and the wheat payments.

Presumably, the tendency would be to plant wheat where wheat should be grown, cotton where cotton grows best and so on. The result would be the lowest production costs possible.

The U.S. farm programs of long years past have put floors under export prices for all other countries, and we have had the only acreage controls. Other countries have had only to price their products just under U.S. quotations.

The new programs would seek an end to this system by making U.S. prices competitive. But "competitive" often means a lower price and this doesn't appeal to a lot of farmers. Some wheat organizations are insisting that the government has an obligation to see that they get a good price for their grain, all they sell in this country and all they export.

Under the new program, they would get a direct payment from the government on that part of their grain consumed as food domestically. But they'd take the world price for the remainder. This is about the same as it is now, except that the price support loan might be lower.

By being competitive on world markets, farmers might be able to sell more. Also more wheat might be fed to livestock. This is the argument behind the new program proposals.

Campbell, here in Kansas City, said the objective of the new farm legislation will be to provide programs that will, on the one hand, regulate production and result in satisfactory income, and on the other, not inhibit the growth of markets or place needless obstacles in the way of efficient farm production.

"We must avoid," he said, "giving our overseas competition the idea they can expand their production without limit, while the United States carries, by itself, the whole burden of acreage limitation. We must not concede the total market growth to our competition.

"Our objective is to compete more effectively in world markets. Therefore, we must make sure that our farm programs assist farmers in meeting their competition."

At the present time, market prices to a large extent are being set by the government's loan program on some grains. Farmers have put enough wheat, corn and soybeans into the loan so that it takes a price higher than the loan to get quantities of each commodity onto the market. What isn't sold, eventually becomes government property. It is the surplus in government bins.

In an aside comment, Campbell said here that there just never is a good time for the government to get rid of its surpluses. Obviously, when market prices are low, the government can't dispose of its wares because it would tend to make them lower. If prices are strengthening and the government tries to take advantage of this fact, then farmers complain that the first opportunity they have to get better prices the government ruins it by selling its stocks. Also, the elevators which are earning money storing government grains are unhappy when the commodities are moved into market channels.

Campbell's comments no doubt were spurred by the government's recent actions on milo in which it attempted to get some more of the grain exported at competitive prices.

These actions lowered prices and there were screams from Texas to Washington.

Clarence D. Palmby, speaking at Amarillo a few days ago, politely chided Texas milo growers for holding their grain in the loan program rather than sending it to market, especially when the market was higher than the loan.

In his comments, Palmby said that every dollar paid to milo growers by overseas customers adds to gross income. Milo sold to the Commodity Credit corporation (the government) does not because the CCC cannot utilize the grain.

"It must eventually be sold to someone who does use it," Palmby said. He added that the opportunity looks pretty good this year to export feed grains, corn and milo.

"How much of that market will milo producers supply?" Palmby asked. "The answer is that the share of the market that goes to milo will depend on the market price of milo in relation to corn and to competing feed supplies around the world. It is that simple.

"The Japanese like to include milo in their mixed feeds, particularly in poultry rations," Palmby continued. "This is a market well worth protecting and developing when you consider how rapidly the use of grain for feed is expanding in Japan. We estimate the utilization of grain for feed in that country should increase by from 25 to 30 million bushels a year. But if U.S. milo is going to share fully in that growth, the price relationship between milo and corn must be reason-

able and stable throughout the year. Stocks must be available every day in the year.

"For a number of weeks, there has been little movement of milo to Japan, Israel and other markets because of price in relation to corn and because of a lack of availability. Free stocks of milo have been extremely tight. Stocks under price support loan were not being released by farmers."

Later Palmby commented that it is becoming increasingly difficult to get government appropriated funds for agricultural programs in the United States. City masses, he said, are and will make successful appeals for more assistance from the public sector.

"I mention this," Palmby explained, "because I think you as producers or marketers are well advised to wring every dime you can from the market place—the highest possible price for the maximum volume you are able to peddle. . . . The commodity loan, coupled with the direct government payment available to program co-operators, should help to insure a fair level of income. But in the end, farm income has to come from the market place—either domestic or foreign. In other words, milo produces income when someone acquires it for use."

Thus Palmby largely stated the issue that must be settled before we'll know just what the new farm law is to contain—whether farm income is, in fact, to come mostly from the market place or whether the government will play a bigger role with payment.

Campbell said they hoped to have a draft of a bill ready for Congress either late this month or very early in January.

SENATOR BAYH CALLS FOR CORRECTIONS REFORM

Mr. GOODELL. Mr. President, the subject of corrections reform is rapidly becoming a major concern of citizens throughout the Nation. That concern focuses upon a beleaguered and virtually impotent corrections system which must be rebuilt and reformed if we are to reduce the shocking rate of recidivism among offenders of all ages leaving correctional and penal institutions.

The distinguished junior Senator from Indiana (Mr. BAYH), a cosponsor of S. 2919, my comprehensive corrections reform bill, recently delivered an important and incisive address on this subject.

Speaking before the annual conference of the public action in correctional effort—PACE—at Indianapolis on December 6, Senator BAYH recounts several appalling examples of conditions within corrections institutions, which brutalize and humiliate inmates to such an extent that genuine rehabilitation is not only impossible, but is a joke.

The Senator rightly suggests that the long range answer to the disgraceful condition of our Nation's prisons and its wholly inadequate rehabilitation capability is a broad, long term financial commitment to rebuild our corrections system from the ground up.

I support him in this view and urge every Member of Congress to give his attention to this urgent problem, and to endorse a realistic and comprehensive course of action for corrections reform now.

Mr. President, I ask unanimous consent that Senator BAYH's address be printed in the RECORD.

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

REMARKS BY SENATOR BIRCH BAYH

More than 100 years ago Charles Dickens characterized the revolutionary times of the 18th century with these words:

"It was the best of times; it was the worst of times. It was the age of wisdom; it was the age of foolishness. It was the epoch of belief; it was the epoch of incredulity . . . It was the spring of hope; it was the winter of despair. We had everything before us; we had nothing before us."

It was, indeed, the worst of times. To the mind of civilized man it was a horifying time.

But if the blood in the city streets, the vigilantes in the countryside, the lack of respect for individual rights "that struck away all security for liberty or life" made it the worst of times, so was it also in many ways, the best of times.

Old institutions were crumbling, centuries old fetters were falling away and men in Massachusetts and Paris were shouting new words of "freedom and liberty."

In 1969 men have set foot on the moon and an explosion of knowledge has made this truly an age of wisdom. In some ways this is the best of times in America. But in some ways it is also the worst of times.

Americans are justifiably alarmed today with the immense and ever increasing rate of crime in America. Some idea of the magnitude of the problem can be gained from the FBI's Uniform Crime Reports of 1968. Last year there was a serious crime committed in the United States eight times every minute. A crime of violence was committed once every 54 seconds. There was a murder every 39 minutes, a forcible rape every 17 minutes, an aggravated assault every two minutes, a robbery every two minutes, a burglary every 17 seconds, a larceny every 25 seconds and an auto theft every 41 seconds.

A statement I made during my campaign last year brought thousands of letters in agreement from concerned Hoosiers. It was, "While I am concerned about getting a man safely to the moon, I am more concerned about people being able to get safely to the corner drugstore."

We have set a priority for crime prevention in this country, a priority for making streets safe, homes secure. Rightfully so. But at this point, we are attacking it in a piecemeal manner—patching here and darning there when we should be launching a comprehensive attack.

I firmly believe we need a more comprehensive overall battle plan for the fight against crime. Yet, I also know that there are many who tend to think of stopping crime only in terms of apprehension, arraignment, trial, and appeal. Too little thought is directed at how society can prevent a youth from embarking on a criminal career. It seems to me to be rather inconsistent for people to paste "Support Your Local Police" bumper stickers on their cars and then vote down a bond issue to provide local playgrounds or to provide funds to improve police training.

Certainly a more comprehensive approach is needed to solve our crime problem and there is much that needs to be done. But today I want to talk about just one area—penal reform.

Little is ever said or done about that aspect of our system which comes after those consitutional stages of arraignment, trial, and appeal. A person who is sentenced in the courts passes into a nebulous never never land and is swallowed by institutional concealment.

Prosecutors and defense counsel tend to view their responsibilities as ended following trial. Harassed, already over-burdened judges tend to feel they have no further jurisdiction and the public generally is pleased to learn from their morning newspapers that another "criminal" has been caged.

It is as if a surgeon or hospital staff had no further interest in a patient following surgery. Without adequate post operative care the incidence of relapse and even death following the shock of surgery would soar.

This is precisely what has happened in the case of those convicted of crimes and sentenced to correctional institutions which despite their names are more often storage bins for society's misfits than effective instruments of correction and rehabilitation. According to the FBI's Uniform Crime Reports, 70 percent of all crimes committed in this country last year were committed by people who had been previously convicted of crimes. Arrest, court and prison records all testify to the fact that repeated offenders constitute the hard core of the criminal problem.

There is very little data on the effectiveness of our correctional institutions, but what evidence that is available indicates our efforts in the area of rehabilitation are dramatic failures.

One indicator is the fact that of the approximately 100,000 persons released from confinement each year and returned to society, 75 percent again commit serious crimes and return to confinement. This makes it clear that for most offenders our correctional institutions do not correct. It is equally clear that this failure is directly and crucially related to the high incidence of crime in the nation today. Let's look at the facts. Last year 74.8 percent of those arrested for murder, 68.8 percent of those arrested for forcible rape, 77.1 percent of those arrested for assault, 73.2 percent of those arrested for robbery and 81.6 percent of those arrested for burglary were people with previous convictions.

It seems to me that it is imperative that the public and their legislators understand that there can be no solution to the problem of increasing rates of crime until we deal effectively with the problem of the repeat offender. And we cannot deal with this problem of recidivism effectively so long as we tolerate huge isolated prisons, token program resources, and discriminatory practices which deprive offenders of education, employment and other opportunities.

Unfortunately the field of corrections is an area of the criminal justice system which is the least visible and the most neglected. Except when there are prison riots, jail breaks, or scandals, little thought, attention or concern is given to our correctional institutions or their inhabitants.

All too often prison inmates, men, women, juveniles, young adults and old adults alike, rather than being corrected and rehabilitated are beaten, brutalized, exploited, sexually abused and even killed by fellow inmates or by prison staff. The mere storage of more and more convicted criminals under such barbaric conditions is not the way to solve the problem of the repeat offender and it is not the way to solve our increasing crime problem.

Less than five percent of the people employed in correctional institutions have special training or professional preparation for dealing with young people, yet 62 percent of America's prison population is under 25 years of age and 28 percent is under 18 years of age. It is a well-established fact that the younger the age group, the higher the rate of recidivism. Again, according to the FBI Uniform Crime Reports, no fewer than 72 percent of the offenders under 20 released in 1963 were rearrested by 1968.

This should make it absolutely clear that greater rehabilitation efforts must be directed at the young offender if hardened criminal careers are to be aborted.

But it is painfully evident that rather than reforming or correcting prisoners, our institutions are releasing more dangerous,

more hostile and more embittered people than were admitted to these institutions. More than 90 percent of our offenders are released from prison within two to three years of their original imprisonment. But it doesn't take long for the "system" to instill hostility and bitterness. I would like to cite you these examples from a report issued on the conditions existing in correctional institutions in Philadelphia:

"George DiAngelo, a slender 21-year-old committed merely for a presentence evaluation, was sexually assaulted within minutes of his admission to the Philadelphia Detention Center."

A 17-year-old charged only with being a runaway from home, describes his ride in the Sheriff's van on the way to a court appearance in the following words:

"All of a sudden a coat was thrown over my face and when I tried to pull it off I was viciously punched in the face for around ten minutes. I fell to the floor and they (fellow prisoners) kicked me all over my body including my head, and my privates. They ripped my pants from me and while five or six of them held me down, they took turns on me. My insides feel sore and my body hurts, and I feel sick in the stomach. Each time they stopped I tried to call for help but they put their hands over my mouth so I couldn't make a sound. They threatened my life and said they would get me in DI if I told what happened. At first, I told the guard I tripped and fell but thought I better tell the truth. I pointed out those who beat me up so bad. The doctor looked at me and said I'd have to go to the hospital."

These are not isolated instances. A projection of the sampling which investigators in Philadelphia were able to take indicates that conservatively, some 2,000 sexual assaults involving 1,500 individual victims and 3,500 individual aggressors took place within a single 26-month period.

The American public is confused and indecisive about whether they want offenders punished or corrected. This is understandable in these times when in some communities our very homes are unsafe. But too many people feel that punishment in itself is correction and because of this delusion we have allowed these conditions to prevail in our correctional institutions. We must understand that punishment alone is not correction. We must understand that through punishment without correction our prisons are spewing forth into the streets growing legions of bitter and hateful individuals, and the crime rate is going up.

Now there are a good many people who would say, "Mr. Bayh, that is precisely the problem with this country; we need more people in prison." That is a natural enough reaction, but if you will follow me in a line of thought for a moment I believe I can demonstrate why it is wrong.

Let's get right down to what some people call the "nitty-gritty"—economics. Let's turn our attention for a moment from the moral, human and spiritual aspects of the problem. Let's just talk about economics.

It is costing you, me and Mr. and Mrs. American $9.85 per day to maintain each prisoner in the federal prison system. That $9.85 per day adds up to about $3,600 per year.

We are also told that sixty-five to seventy of each one hundred prisoners released by the average prison will return within a very short period of time. Why? We all know why; no jobs, no training for jobs, same deplorable environment, same bad associates and so on. It is all documented in Glaser's 1964 study of released federal offenders. As most of you know that study showed that during the first month after release from prison, only about one-fourth of the offenders were able to obtain anything approaching full-time employment; and by the end of three months, the figure went up to only 40 percent. The same study also brought out another vital fact, the fact that post release success was directly related to employment. Of those who were returned to the correctional system as repeaters, a significant proportion were those who had experienced difficulty in getting and holding jobs. Even those who were employed were, in most cases, employed in low status, low paying menial jobs.

It is interesting to compare the $3,600 cost of keeping a man in prison with what it costs to produce a first rate army mechanic. The cost of feeding, clothing, housing, and training an Army recruit until he qualifies as a first rate mechanic is $4,452. On his release from military duty this recruit is equipped with a skill that qualifies him for a well paid job in civilian life.

When you consider the $4,452 it costs to turn out a qualified mechanic and the astounding returns from the Federal venture with work release programs it becomes obvious that tremendous amounts of money can be saved if men and women are trained and guided back into society. Consider for a moment the experience of the Federal Bureau of Prisons with work release programs.

A study of offenders participating in the Federal work release program shows that 1½ to 2½ years after release the recidivism rate for even the poorest risk group was only 20 percent. This compares with a recidivism rate of more than 70 percent for released offenders in general.

Some 6,500 offenders participating in the Federal work release program between October 1965 and July 1967 earned $5,748,364, paid $902,484 in Federal, State and local taxes, reimbursed the Federal government for room and board in the amount of $638,829, contributed $843,156 to the support of their dependents, and accumulated saving in the amount of $1,623,387.

The simple economics of the situation seem plain enough. Spend just enough to develop and incorporate a good, meaningful rehabilitation program and you will save untold millions over the years. Not only will you save the cost of maintaining repeated offenders in prison, you will also save on the cost of insurance premiums and on the cost of stolen property, which last year amounted to $1.7 billion. Even more important, you will be attacking the crime problem at its very core by reducing the number of repeated offenders. The end result is fewer criminals and less crime.

We in America spend somewhere in the neighborhood of one billion dollars a year on corrections. That sounds like a lot of money and it is. But we spend 36.6 billion dollars on automobiles and parts each year, 14.5 billion dollars on alcoholic beverages, and 9.2 billion on tobacco. We even spend 2 billion dollars a year on our pets. Surely we can find the necessary funds to support a meaningful program of rehabilitation in our prison system.

The question that may legitimately be raised is this: Can we guide offenders back to useful roles in our society even if the money is forthcoming?

For the offender the experience of violating the law, being incarcerated, cut off from friends, family and acquaintences is a sobering and awesome happening in itself. But the factor that, perhaps more than anything else, mitigates against the offender's successful re-entry into society upon his release is the degradation and brutalization to which he is frequently subjected during confinement.

Let me read to you a few excerpts from a report by Mr. Arlen Specter, District Attorney of Philadelphia, regarding the Philadelphia Prison System and the Sheriff's vans used to transport prisoners.

"The vans," Specter says, "are an unmitigated disgrace." Investigators are in complete accord with the following descriptive essay written by one articulate inmate who travelled on the van some fifty times:

"Prisoners confined in Philadelphia's three prisons commute from their institutions to the courts by way of a Prison Van. The van is a truck externally resembling the sort of refrigerated delivery truck that delivers meats to foodstores. The body of the truck has no windows. At the very top of the truck there is a tiny row of slots purportedly for ventilating purposes.

"Winter—The van is parked overnight in the House of Correction. At eight o'clock in the morning the van driver picks it up and drives it to the Detention Center. There, some forty prisoners who have been waiting since six o'clock (packed like sardines in a steel barred can) are loaded into the van. It has only seating capacity for fifteen people. There are no handholds. There is no heat in the van. It is freezing . . . unendurable. The trip from Northeast Philadelphia is an hour of grinding stops and bumping halts. The standing men are tossed about inside the van. There is no light in the vehicle and the darkness is punctured by the grunts and groans.

"Summer—The prison van is a sweltering cauldrin of red hot cast iron. The packed bodies of men stink. The sun winks occasionally through the narrow slits on top, but the outside air remains aloof, not wishing to contaminate itself with this Dante's Inferno on wheels.

"If anyone is homosexually inclined, and it is summer, a stinking sex orgy may take place in the dim confines of the van. Sometimes this is with mutual consent, sometimes by coercion. All the time it is done with utter disregard for the feelings of the other men in the van . . . Threats and even violence breaks out. The van drivers roll merrily on their way blissfully unaware of what is taking place.

'The prisoners are alone in their walled up cage, alone with their dry bologna sandwiches which must serve as sustenance for the next 24 hours. No cooked meal at night awaits them at the detention center when they return from Court, only the same bologna sandwich.' "

This is absolutely shocking. We treat animals better than the prisoners described in this excerpt from the Specter report. Federal regulations on transportation of dogs and cats require vehicles of transportation to:

1. Have sufficient air for normal breathing;
2. Have easily accessible openings at all times for emergency rmoval; and
3. Afford adequate protection from the elements.

The regulations state that enclosures shall be large enough to insure that each animal contained therein has sufficient space to turn about freely, to stand erect and to lie in a natural position.

I do not single out Philadelphia except that it is there that someone has been honest enough to expose the wretched facts so long known, but hidden. Few have cared even to think about it, let alone reveal it. But Philadelphia is not alone!

In Arkansas, they did and may still, transport women and men prisoners in the back of a closed van several miles from detention center to court appearances. Last year, during hearings before the Senate Judiciary Subcommittee on Juvenile Delinquency, someone observed that this must make it difficult for the guards. The Arkansas witness assured members of the committee that prison officials were sane enough not to put a guard back there.

You can imagine what transpired in that "hell on wheels." Of course, I should point out that medical services were available for the women who requested it—provided by male inmate nurses.

Federal regulations on transportation of animals provide for the classification and separation of animals. Females in season are not housed with males. Animals with vicious dispositions are separated. Puppies and kit-

tens are not housed with adults. Animals under quarantine or with communicable disease are separated.

Let's take another look at Mr. Specter's report. He cites the experience of the young, mentally disturbed inmate who was sexually assaulted by eight fellow inmates in one evening. And he quotes from the testimony of a sexually assaulted 20-year-old who told investigators:

"I was embarrassed and didn't want nobody to know about this and didn't say anything to anybody. About two days later on a Thursday, I started hurting inside and bleeding from the rectum. I asked Guard Williams to see the doctor. It was an emergency."

Or consider this bit of testimony taken from an Arkansas police report:

"He stated that they stripped all the clothes off of LL-33 and the rider stuck needles under his fingernails and toenails. They pulled his genitals with pliers and kicked him in the groin. Two riders ground out cigarettes on his stomach and legs."

Mr. Specter's report and others read like horror stories. They are horror stories. The fact of the matter is that across this country we are imprisoning thousands of people daily because they have violated the rules of society. It is our hope and plan that while they are in prison they will be rehabilitated and will return to society as law abiding citizens, producing in society rather than preying on society.

This was certainly the intent and hope of those who framed the Indiana constitution and included in that document, Article 1, section 18, which states:

"The penal code shall be founded on the principles of reformation, and not of vindictive justice."

But how, I ask you, can we really expect offenders to be reformed by their prison experience when we do little to improve the living "hell" to which each imprisoned man and woman is subjected. People are in prison because something is wrong with them, yet we continue to let exist in our prisons the "snake-pit" conditions to which we once subjected our mentally ill. In the case of the mentally ill at least some were unable to comprehend their environment—which would be the only good we could possibly find in such an atrocious situation—but here we are subjecting, for the most part, knowledgeable people to those same or worse conditions.

So far we have been talking about correctional institutions throughout the country.

Let's take a look at Indiana.

Indiana's prisons may not be among the worst in the country, but it is little consolation that they are only a step or two away from that category.

Just as most Americans have been shocked and horrified by the Pinkville Massacre in Vietnam, Hoosiers have been, or certainly should have been, shocked and horrified by the recent events at Pendleton Reformatory in Indiana. You are all familiar enough with the basic facts as reported by the press. Apparently, members of the prison staff opened fire on a group of inmates, killing one and wounding 46.

Even before this incident Pendleton was hardly an institution to which we in Indiana could point with pride. Built in 1923 to accommodate 1,600 inmates, its current population is some 2,273. Five inmates have been victims of homicide at Pendleton during the past five years.

Why should anyone be surprised if inmates in such overcrowded facilities, subjected to arbitrary and harsh disciplinary measures, are finally driven to protest? And we should not overlook the fact that the infamous affair at Pendleton was rife with racial overtones. All of the dead and wounded were black.

Let's also take a look at just how well Indiana correctional institutions are doing in terms of rehabilitating offenders.

As of today only 900 out of nearly 7,000 prisoners are participating in educational programs. Yet, we know from Census data that 55 percent of adult felony inmates have not gone beyond elementary school. We know that increasingly high levels of formal education are required in today's job market and we know, from Glaser's study and others, that employment and appropriate training for relevant job opportunities are significant factors in reducing the rate of repeated offenders.

Of the approximately seven thousand inmates in Indiana correctional institutions, fewer than 100 are participating in outside pre-release guidance programs. At the State Farm in Greencastle there is only one counselor for every 200 inmates, and at the State Reformatory there is only one resident psychologist for 2,273 inmates. Only 28 inmates out of 1,930 at the Indaina State Prison and 40 out of 2,280 at Indiana State Reformatory are participating in work release programs. Only 80 inmates out of 7,000 in the entire Indiana correctional system are participating in work release programs.

During the past year the state correctional system has been riddled with scandal, including the disclosure that some prison staff members were conducting a traffic in drugs within the walls of what we rather inaccurately refer to as our correctional institutions. On the other hand, only 10 officers in the entire correctional system are receiving additional training under the Manpower Development Training Act.

I could go on, but I think this gives a fair indication of just what the situation is in Indiana.

Now let's talk about what can be done about it.

In the Senate I have co-sponsored with Senator Goodell of New York, S. 2919. This is a bill that would assist State and local criminal justice systems in the development of programs to rehabilitate offenders and prevent recidivism by providing for vocational training, job placement, counseling, education services, manpower acquisition, establishment of regional crime and delinquency centers, a national criminal justice recruitment program and other purposes. But we in the national Congress cannot solve the problem alone.

Organization such as P.A.C.E. can perform an invaluable service by educating the public to the need for reform and, even more important, arousing them to action. Simply being concerned about the incidence of crime is not enough. And we will accomplish very little simply by increasing budgets and staffs without simultaneously providing the means for changing community attitudes toward offenders. The entire community and its social institutions must become involved in reshaping correctional rehabilitative methods.

Certainly there are many good and dedicated men employed in our correctional institutions in Indiana. But to recruit and retain the best possible people we need a merit system that will take the Department of Corrections out of politics.

I recognize, you recognize, and Commissioner Robert P. Heyne recognizes the need for a merit system for employees of the Indiana Department of Correction. But we are not going to get this and other reforms until enough informed and aroused Hoosiers demand them.

Someone once said: "Prisons, mental hospitals and other institutions are a thermometer indicating the sickness or health of the larger society. The treatment society affords its outcasts reveals the way its members view one another and themselves."

What is revealed by the way we in America and in Indiana treat our outcasts is not pleasant to contemplate.

You in P.A.C.E. have already done a great deal, to awaken the people in this state to the need for reform. But we need as never before to shake America's conscience by seizing the initiative for reform. We must take up the challenge, hear the pleas, the cries, the groans.

Mr. Bob Dylan once wrote a song that became a standard in the camps of the great civil rights movements of the 1960's. The words of that song also apply here.

"How many times," Dylan wrote, "can a man turn his head and pretend that he just doesn't see; how many times must a man look up before he can see the sky; how many ears must one man have before he can hear people cry; the answer my friends is blowing in the wind, the answer is blowing in the wind."

The wind is blowing for us now in Indiana and in America. It can be a stagnant, foreboding wind, or a fresh and new wind.

As Oliver Wendell Holmes once said:

"I find the great thing in this world is not so much where we stand, as in what direction we are moving. We must sail sometimes with the wind and sometimes against it. But we must sail and not drift nor lie at anchor."

In the area of Prison reform, we in Indiana and America have been at anchor for too long and we can no longer afford to drift. We cannot afford it morally, spiritually nor economically.

AIRLINE PILOT QUALIFICATIONS AND TRAINING

Mr. DOLE. Mr. President, an article published in Airways magazine was recently brought to my attention by a constitutent, Mr. Allen Knouft. It concerned the skills possessed by today's airline pilots and their effects on the overall safety factor for airline transportation.

Because some highly important issues were raised in the article, I sent copies to the presidents of several major airlines and solicited their reactions. Regrettably, most of these letters were unanswered or were given only cursory replies. However, the letter I received from George E. Keck, president of United Air Lines, was most comprehensive and informative. On United's part, Mr. Keck took direct issue with the article's inference that some airline pilots do not possess the optimum skills or experience which the responsibilities their positions demand. In addition to his letter, Mr. Keck provided detailed information of United's flight training programs and facilities, including an article from the fall 1969 issue of Jet Profiles magazine.

Mr. President, one reason why I initiated these inquiries was a personal concern for air safety, and I believe that Senators, who also log a good number of hours in commercial aircraft each year, will find the Airways article, as well as Mr. Keck's letter and the materials he furnished, worthy of their consideration.

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

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

[From Airways magazine, December 1969]

AIRLINE PILOTS, HOW GOOD ARE THEY?

NOTE.—You settle into your airline seat. In a few moments you will be whisked across the nation as fast as the proverbial speeding bullet. The airline captain, copilot and second officer will close themselves into their

office up front and your life will be in their hands. How qualified are they? Airways asked a veteran airline captain. His name was withheld so he could answer with total honesty. The captain has been flying the scheduled airlines for 16 years, has logged 12,000 hours of flight time and has 6,000 hours in the Boeing 707 he now commands. His answers indicate that the system is not 100 percent perfect—but could you travel in any manner completely without risk?

Q. How experienced and competent are airline crews?

A. In the past, the captain flew for years as command pilot in the same type of equipment. The copilots were in the same position because the airlines were not hiring. In hours, copilots were as competent as captains. Today, you might have a copilot who joins the airlines from the military service or civilian life. The civilian pilot's experience may be in airplanes no larger than a twin-engine Cessna or a twin-engine Beechcraft. The military pilot may have been flying KC–135 tankers (a military version of the 707). After a year, the copilot may become a captain, regardless of his previous experience. Of course, he has to fly his acceptance flight. . . .

Q. A pilot can be hired as a copilot with only light-twin time?

A. Yes. In fact, pilots have been hired with just the bare minimums, say several hundred hours. After a very short time, they become captains. These are major airlines I am talking about. The new captains generally fly smaller equipment such as DC–6's or Viscounts. However, as the situation is going, you might find a pilot who has been with an airline for only two years who has become a Boeing captain. As far as safety is concerned, the man will meet a minimum requirement. He will be trained. Experience is good only up to a point. A 500-hour pilot with a lot on the ball can be just as qualified as a 3,000-hour pilot. He will get the experience flying copilot. It doesn't take that long to learn to fly the airplane. He is already a pilot because he has a commercial license.

Q. Can a pilot with only a few hundred hours in a certain type of airplane cope with an emergency as well as the pilot with 2,000 hours in the same airplane?

A. It all depends on the pilot. You can have an individual who has flown as a copilot for two years and has learned more than a guy who has flown four or five years.

Q. You talk about minimums in hours and experience. What does this actually mean?

A. The airlines would like to have an Adonis type with 3,000 hours of four-engine jet time, a college education and a degree in aeronautical engineering. However, they have been forced to hire people with 300 or 400 hours. Naturally, some of these people haven't panned out, but surprisingly, more of these have than the military pilots with several thousand hours. The military pilot feels he already has the experience and that he can bypass a lot of the knowledge that is required of him, and he usually does a slipshod job. I'm not saying they *all* do this—but they have that tendency more than the relatively inexperienced pilot who is always learning and trying.

Q. Are the airlines genuinely concerned with the caliber of pilots they produce?

A. The airlines have built up a reputation for the pilot they produce at the end of their training period. Some airlines have the reputation of just going through the motions and giving the person the time. They throw him in front of the lions when it's time to be qualified. If he makes it, fine, if not, he gets another shot or he's eliminated. Some airlines enjoy such fine reputations that when the FAA man rides on board it is just a formality. There are two different approaches to training—one is the gin-mill type, the other is thorough training. But there is a minimum that has to be met.

Q. Isn't it true that a captain has have at least 1,200 hours of flying time to earn his Air Transport Rating?

A. Yes, and the airline pilot has to pass a Class I physical every six months. The copilot does not have to have the 1,200 hours. The second officer, or flight engineer, must be a pilot. He usually has a checkride in a light twin-engine jet. A crew consists of a captain, a copilot and a second officer. The captain is qualified in the airplane. The copilot has shown his flight proficiency in the airplane. The flight engineer must be a pilot.

Q. What if something happens to the pilot? A heart attack, for example. How qualified is the copilot to cope with the emergency?

A. This is a situation that always poses a problem. It is not brought up too much in the airline industry, or made public. In one case you might have a copilot who is almost as qualified as a captain. Or he might be just out of school. He just naturally can't cope with an emergency as well as a copilot who has been flying with one type of equipment for a longer period. Take a brand new crew that has just moved in from another base . . . say that the captain and copilot were just qualified on a four-engine jet, and you also have a brand new second officer. You have what you might call a barely qualified crew. This happens quite frequently. A junior man usually draws a junior man for a crew. So you are flying with the least experienced people together at one time, and this is quite common in the entire airline industry. . . .

Q. How do the pilots feel about this?

A. They are all qualified, of course. Each can perform his function. When it comes to emergencies, you are talking about the number of problems a crew can deal with at one time. A pilot who is experienced in both general flying time and in the equipment can deal with more than one emergency at once. His burden can be heavier. A newly qualified crew focuses its attention on one problem at a time. A new crew knows what to do, but it takes a little longer.

Q. What if something happens to the captain? A heart attack, for example. Is there any indication that heart attacks occur more frequently during stress or emergency situations?

A. No. I think the concern over heart attacks is a bit ridiculous. The only time that a heart attack is critical is during takeoff or landing, and these are only moments during an entire flight. It is more dangerous to be in a car while the driver is having a heart attack. A copilot is there in case a pilot acts peculiar or keels over. A copilot ought to have his hands and feet on the controls during every takeoff and landing. I can only think of one case when a carrier had an accident because of a seizure. (Ed. A non-scheduled airliner smashed into an Oklahoma mountain when the pilot, according to the FAA, suffered a seizure during an approach to landing.) I've had bigger men than I freeze on the controls during training flights and I have always managed to wrest the controls away—simply because I had a job to do and it was a matter of doing it.

Q. How do you train yourself to cope with emergencies?

A. This is a problem. You ride along complacently for such long periods that you have to train yourself for emergencies that might arise. An engine failure on takeoff is really not a problem. But you should mentally go through the procedures so your reactions will be instinctive if it happens. You should be able to go through your emergency procedures and go about your merry way. Problems like this cause no difficulty. It is the compound problem—you have an engine failure, then something else happens, then something else piles up on you—that leads to catastrophe.

Q. How often do you have to prove your proficiency?

A. The captain must demonstrate his proficiency every six months. This is a company function and an FAA man may be along. This is a two-hour ride. You demonstrate one and two engines out, control systems failures and so forth. Then you have a route check which shows you are familiar with the route you fly. The FAA goes with you on surprise rides. You go out to the airport one day, check the jump seat list and find an FAA man is slated to ride with you.

Q. It has been said that an airline pilot does nothing for hour after hour, despite his high pay, but that in the face of an emergency he can earn his salary in two minutes. Is this a true picture?

A. Not really. The average captain's wage is a minimum of $25,000 to $35,000 a year. If you are flying a Boeing 707 that holds 125 people and you have to hold over an area in turbulence, thunderstorms or ice for two or three hours, and you have to make the decision whether or not to land on an icy runway with these people and get them and the airplane down safely—this one decision earns your salary for a year. It is amazing how often these decisions come up. It may not sound like much, but we make these decisions every day. Not only do we try to give the people better and safer rides, but we must perform efficiently for the company. Sure, you can go along for a long time and fly in clear weather, but you get one day—even a routine day—you earn your money. In Kansas City, for example, you have a maximum 25 knot crosswind. The runway is short. You can't come in too high because you are going to be too fast and you can't come in too low because of obstructions. It's gusty. You must have a little excess airspeed to cope with the crosswind and downdrafts. That one landing makes up the salary. You have to consider the lives at stake—not only the passengers, but the rest of the crew.

Q. Do you—or other captains—ever land where you really shouldn't land? Is there a tendency to try to shoot a landing because the schedule says you should be at a certain place at a certain time?

A. It is too bad we have to have minimums. But some pilots feel they just have to get down. People are only human. If Joe Blow has landed safely under certain conditions, it is only natural to think you can do just as well. This isn't necessarily the case. I would like to see honest minimums that apply to individuals. We could then shoot zero-zero landings. We've done this in training—right down to touchdown, and we have rolled out without any difficulty. But there are times when the ceiling is 200 feet and you weren't quite squared away, or when Air Traffic Control brought you in 90 degrees to the Instrument Landing System Approach, and you just can't make it—but you almost have to make it, because it is a tradition. Some people go out of their way to make it just so they can say they have made it. It is like a good pitcher who goes out and pitches a no-hit ball game—but the next time out, he beans a batter. You have your good days and your off days and there's nobody who ought to know better than you when you can make a close approach and when you cannot.

Q. There has been a rash of accidents during landing approaches in bad weather. How dangerous are instrument approaches?

A. It depends on your equipment. If everything is functioning, you can come in when the ceiling is perhaps 300 feet. If all your equipment is not working, then you can shoot an approach when the ceiling is 400 or 500 feet. You keep backing off until you find your minimums. You can only do so much with what you've got.

Q. But occasionally, someone hits a mountain that wasn't supposed to be there. What goes wrong?

A. I think a lot of the problems stem from the fact that when you reach a minimum you feel you have to get down. This is when it's tough. You look out and you want to get down, and you just can't see in poor visibility when you are moving at 150 miles per hour. If you start drifting off the localizer course, for example, you don't know whether you are one mile off or five miles off once you are a needle's width off. If there is an obstruction there and you are busy looking for the field and you have lost track of time, it is very possible that you could hit it.

Q. Isn't it standard procedure for the pilot to fly his instruments all the way down through an instrument approach while the copilot looks for the runway?

A. No. It's not standard.

Q. Isn't it recommended?

A. Actually, it is recommended, but it's not really standard. You might have a brand-new copilot. In the stress of the moment he might pick out something that looks like a runway, when it really isn't. To make you happy he might call out "runway in sight" when it actually isn't—just to reassure you that you had it made.

Q. There have been scare books out on aviation accidents which go into great detail on lightning and thunderstorms. How dangerous are they?

A. Lightning is more spectacular than dangerous—and it is *very* spectacular. But I only know of two commercial airliners that have been downed by lightning and I haven't seen any records of light planes being downed. It can be frightening to passengers, who can see to the side, but not to the front. In an airliner, you are usually on top of everything. The only problem is when you are coming down. The thunderstorms give you the problem.

Q. How much can you depend on radar to guide you around turbulence?

A. You can never tell about turbulence. What looks vicious might be gentle. What looks gentle might almost tear your head off. You should expect anything—we don't fly into thunderstorms. On an approach we might find thunderstorms in the area, but we dodge the cells, and the radar is very effective. This depends on the radar operator. He must know how to set the radar up.

Q. Should there be a rule that an airliner won't approach an airport if there are thunderstorms in the area?

A. You shouldn't really operate in the proximity of thunderstorms because you do have shifting winds, wet runways—and these will create problems.

Q. But you do operate into these conditions, do you not?

A. We do to a certain extent. There is no doubt that we do takeoff and we do land during a thunderstorm. However, you have to be quite explicit as to when you do this and when you do not. You do not take off into the teeth of a thunderstorm when you see it at the end of the runway. This would be foolhardy. There have been people who have done it—no doubt about it—but it just isn't good practice and it's something you don't do.

Q. Who makes the final decision?

A. The captain decides, absolutely. Same thing with the landing. You're not going to land an airplane when the runway is obscured by solid rain, unless you almost have no choice or you feel you can get it before the situation gets dangerous. Of course, if you get the airplane on the ground and rolling at a fairly low speed you don't care about running into a solid wall of rain, which you'd hate to do about the time you're flaring out. It *has* been done. Sometimes you might have been holding for hours and this is it—you've made your commitment, and down you come. However, it is a gamble, a calculated risk, and it isn't done as a normal practice.

Q. How does general aviation—the light airplanes—fit into aviation? Do they create problems for you around the major terminals?

A. That is a good question. Pilots are pilots. If they are good, they are not going to be a problem. If they are student pilots, they are problems to anybody.

Q. Should there be restrictions on private pilots operating into major airports?

A. Yes. But the restrictions should be based only on the experience of the pilot. An experienced pilot in a little airplane should be able to operate into major fields. A student pilot in a little airplane should be restricted.

Q. Would a special rating or a course in operating out of major terminals help?

A. This would be a great help, but experience is still the factor. Even an experienced pilot trying to get into a congested radio frequency can't get a word in edgewise. He has to use tact and cunning. The inexperienced pilot could become so frustrated that he would be bordering on panic, really.

Q. As an airline pilot on a fixed run you fly into the same airport over and over again. Would you have problems flying into an unfamiliar airport?

A. Not really. I flew into many airports when I was flying the non-scheduled airlines. The beauty of flying into familiar airports—at least it *used* to be the beauty of it—was having familiar landmarks. You could look out the window and tell where you were, how high you were and what speed you were flying. You could be very efficient in your arrival. Now Air Traffic Control tells you to reduce your speed 50 or 100 miles out and no matter what you do, you have to conform to their wishes.

Q. Should the controllers have absolute control?

A. I believe the controllers may be taking on a job that is a little bigger than they should tackle. Here we are, flying on a perfectly clear day without a cloud in the sky, yet we are forced to fly under the control of men on the ground. They vector us into a field behind traffic, which is fine, since they are controlling the traffic. However, when we tell them we have the traffic in sight, we are more qualified to position ourselves in relationship to the traffic than they are. Yet they follow their radar and put us through all sorts of wild antics. This happened before any talks of slowdowns—it has been going on for a long time. The controllers are controlling us when they don't have to and they are costing us several minutes. We can see what we have to do to keep from overtaking another airplane.

Q. How about the cases of airlines overtaking light aircraft and colliding with them? How does this happen?

A. We had an example on an ILS (Instrument Landing System) approach to Los Angeles International. We were coming down the glide slope (sort of an electronic slide to the runway) and we were at 14,000 feet and indicating perhaps 250 or 260 knots. There was no traffic reported. I saw an airplane at 12 o'clock and I couldn't tell which way it was headed. There was at least one pair of eyes looking outside at all times. Usually ATC will give you a clue that you have traffic—although, ironically, they will usually tell you about traffic that is not a factor. That is all right, of course, but it is unnecessary. We were overtaking an Air Force Cessna 310 that was making an approach down the localizer—Lord knows why! He hadn't told anyone he was in the area and he should know how busy the Los Angeles area is. Had we not taken evasive action, we would have hit him. We asked Air Traffic Control if they had him on the radar, and they said they did not. Making a simulated instrument approach is legal but the military pilot should have told ATC he was in the area.

Q. How dangerous is the mid-air collision threat?

A. It is quite a threat. Why we don't have more mid-air collisions is beyond my comprehension. We've been awfully lucky.

Q. What is the answer?

A. That is really a question, and there isn't any answer in my mind. At best, it is see-and-be-seen at low altitudes and positive control at high altitudes. The reduced airspeed at low altitudes has been a definite help. Anything beyond the rules now in effect would be too restrictive.

Q. There are plans to make airliners safe eventally to land when ceiling and visibility is zero-zero. Is this safe?

A. Today it would be dangerous. With the instruments they have in mind, it will be safe.

Q. As a summation, how safe is flying?

A. How do I answer that one? Perfectly safe? Very safe? Nothing is guaranteed safe. Some pilots are better than others. Some crews are better than others. But there are rules that make it as safe as possible. It's safe enough for me to put my family on and if you still have any doubts—I'd follow them.

UNITED AIR LINES,
Chicago, Ill., December 12, 1969.

HON. ROBERT DOLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOLE: I have reviewed the article enclosed in your letter of November 20; and in response to your request for my reaction to this article, I have the following comments.

I do not feel an objective and searching article can be written upon the opinions of one man, particularly when the subject being interviewed is placed in the awkward position of evaluating his own proficiency. Then too, there is always the temptation for the interviewer to stray into areas in which the subject might not necessarily have first hand and expert knowledge.

This article covers a broad subject. It is not so much a matter of opinion as a matter of research of facts. The facts and statistics are available. Since the title, "Airline Pilots—How Good Are They?," should confine the scope of the article to the proficiency and training of airline pilots only, the obvious area of research, at least primary, would seem to be in the huge and highly developed training schools of the airlines. Some research in government agencies and records seems indicated also. However, the article wanders, gets into the area of general aviation, airways controllers and is based on the opinions of one man.

In recent months the Training Committee of the Air Transport Association (ATA) conducted a comprehensive presentation for the FAA, NTSB, other government and industry officials. Those in attendance included John H. Shaffer, FAA Administrator, Charles O. Miller, Director of Aviation Safety NTSB, and Congressman John H. Clausen, Representative from California.

The purpose of the presentation was to inform the various government agencies and other concerned people of the progress and programs the various airlines were undertaking to improve flight training activities for the industry as a whole. United Air Lines has been an active participant in this program.

I am sure that the author of the referenced article, yourself and other concerned people, would be most interested in reviewing, first hand, exactly what the scheduled air carriers are doing to assure that their Flight Officers are properly trained and proficient in performing their daily tasks.

We would be most pleased to arrange a similar presentation to you and your associates, constituents or any other interested people at our Flight Training Center in Denver, Colorado. In the meantime, we are attaching an information packet which will give some insight into the thoroughness and

magnitude of the training activities of United Air Lines.

Thank you for your interest.

Sincerely,

G. E. KECK.

CONTRACT TRAINING

The products of the United Air Lines Flight Training Center in Denver are well trained pilots. As is the case with most production operations there is a by-product—contract training.

This consists of special training courses for corporation, military, other airlines and Federal Aviation Administration pilots. Instructors, course material and training equipment used in this contract training are identical to those given United pilots.

All or part of training received by United pilots can be taken by other airmen, from a one-day session on weather radar to a seven-week DC-8 training course.

United started its contract training business in the mid-1950's when Scandinavian Airline System (SAS) sent pilots for training in the Convair 340. The U.S. Air Force became one of the first customers for the same training.

Contract training has greatly expanded, due largely to the wide use of jets that have pushed military, commercial and corporate aircraft speed capabilities past the 400 knots mark. Also, completion of United's multi-million dollar flight training center at Denver gives the airline greatly expanded facilities allowing a considerable amount of training over and above that required to refine the skills of its own flight crews.

Size of commitments made to corporations and other airlines in 1968 reflected this expansion. By the end of the year total contracts exceeded $2 million.

A special program, consisting of several basic courses, has been set up for corporation pilots to familiarize or refresh them with the latest techniques and developments in jet operations.

"We want to share the tremendous amount of experience we have gained in jet operations with general aviation aircrews," says Glenn A. Allred, assistant to the director for United's flight training facilities.

The basic courses consist of a five-day ground school in corporate jet operations; a two-day recurrent training course which includes one day ground school and one day in a simulator and, the third, a one-day airborne weather radar course.

The five-day course covers such subjects as jet engine performance, high-speed flight characteristics, jet airplane performance, high-altitude meteorology, jet operational procedures and physiology which involves physical problems encountered at high altitudes.

Recurrent training covers jet operation procedures, including flight planning and enroute navigation; and four hours in a twin-jet procedural trainer. This consists of training in all manuevers and procedures applicable to swept-wing jet transport aircraft.

The airborne weather radar course, offered since 1957 when United introduced weather radar to commercial aviation, has attracted about 5,000 trainees since its inception. The course covers the use of equipment and interpretation of radar scope images. Experts provide detailed analysis of 70 radar scope images covering a wide range of weather situations.

All courses are scheduled at least once a month and jet simulator training also may be arranged for other times.

Maneuvers and procedures in the jet simulators are conducted according to general jet transportation requirements. Normal operating speeds, approach cruise and climb are programmed for various business aircraft.

Many airlines have taken advantage of United's facilities for the training of their own flight officers. These include Alaska Airlines, Delta, Flying Tiger, Frontier, Japan Air Lines, Air Canada, TWA, Yugoslav Air Transport and Universal Airlines.

Captain James E. Cross, director of training, points out that the training center is of value to air transportation in general, rather than to United exclusively.

"Our door is always open to those who face training problems. We have the equipment and the specialists to solve problems," Cross said.

Occasionally United's airborne educators are sent to distant lands to teach "off campus" when their skills are in demand.

United personnel aided in the reorganization of Philippine Air Lines in 1946 and later aided Japan Air Lines in training its jet crews for Transpacific operations.

In 1962 United dispatched personnel to Pakistan International Airlines to train pilots for newly delivered jet transports. When the Australian Department of Civil Aviation wanted training for pilots who would fly jets in that country United supplied ground school, simulator and aircraft instruction.

FLIGHT TRAINING

Pilots winning their wings at United Air Lines Flight Training Center in Denver today will be flying jumbo jet transports and supersonic planes of tomorrow.

With this in mind, the new $30 million center was designed to meet present training demands and be flexible to prepare for future needs.

Innovation was the keynote in building the new center and this has provided the impetus for a fresh look at pilot training methods.

Captain James E. Cross, director of the training center, said that in the past training philosophy was largely intuitive. Courses, he recalled, were packed with "nice to know" information.

"We can no longer afford the luxury of training a pilot to know how many rivets there are in the bottom piece of skin on the horizontal stabilizer," he said. "Today, we must concentrate on the tasks which must be taught to insure satisfactory job performance."

New training methods have been developed. Using a systems approach, training requirements are analyzed, and objectives for crew members described. The process is then tested and necessary revisions are made.

United's new Boeing 737 twin-jet presented the airline with an opportunity to test this training philosophy. A flight manual and syllabus were created to train pilots for the new aircraft. Eliminated was the "nuts and bolts" instructional approach.

Normal training time for pilots advancing to another type of aircraft is 41 days. The new approach shortened this period to 28 days.

Total estimated cost of training at the center during 1968 was $25 million. An average of 400 United pilots are in Denver on any given day, ranging from the new trainee to the senior captain reporting back for a refresher course.

Instruction at the center is not limited to United flight personnel. In addition, training is conducted for personnel of the Federal Aviation Administration, the Air Force, many of the European and Pacific area airlines flight crews and numerous private and business pilots.

United pilot training dates from 1929 when the Boeing School of Aeronautics was formed at Oakland, Calif. Mechanics, private and commercial pilots were trained at the school which became a division of United in 1934 when Boeing Air Transport and three other pioneer airlines were merged into one company.

Late in 1940, the school was expanded under government contract to train thousands of servicemen. In 1942 the activity was moved to Cheyenne, Wyoming and in 1943 a permanent move was made to Denver. Since then, thousands of pilots have won their wings, been checked and rechecked at the training center.

The industry's largest concentration of electronic flight simulators is at the Denver facility. This equipment duplicates the flying characteristics of various aircraft in the United States.

The airline has 16 simulators, including four procedures trainers, valued at more than $12 million. Three additional flight simulators are scheduled for installation this year, and one is scheduled for delivery in 1970.

The flight simulator is the most outstanding example of innovation in training techniques. It is the closest possible approximation that can be construed with present technology of an aircraft accomplishing take-off, in-flight and landing maneuvers.

Other training tools, though less sophisticated, also are helping to turn out a better trained pilot. Cockpit procedures trainers, introduced in the 737 program, bridge a gap between aircraft systems training learned in the classroom and both sophisticated simulators and actual flight experience.

The success of the device in acclimating the trainee to the cockpit environment prior to work in the simulator has prompted a decision to provide a similar trainer for each of the other aircraft programs.

Up to 10 aircraft are assigned to the training center and scores of operational type training aids are utilized in its ground school classes.

The permanent staff of more than 600, headed by Cross, includes flight instructors, ground school instructors, simulator instructors and operators, technicians and clerical workers.

In addition to the training of new pilots, there is transition training for flight crews advancing from one type of aircraft to another, upgrading training for flight officers advancing in rank and responsibility, plus requalification training and recurrent training on a semi-annual basis for all flight personnel.

Cross said that it costs about $10,000 to train a new pilot, including costs for recruiting, pretraining testing, his salary while in training and actual training costs.

During the flying career of a pilot, United will spend nearly $100,000 for his training.

The basic flight officer program for new-hire pilots takes nine weeks consisting of five weeks of ground school classes followed by two weeks of simulator training and two weeks of actual flying. The trainees then take the company and Federal Aviation Administration exams and are then assigned to the line as second officers.

Pilots return to Denver every six months for additional training and checking with the crews they usually fly with. This new crew concept program is unique because the proficiency training and checking programs are required only for captains. But United requires all crew members to participate in the six-month proficiency training.

The second officer of each crew may remain an additional day each session to participate in pilot training. This is designed to assist him in retaining his pilot skills and knowledge during a period of non-piloting duties.

As the pilot gains seniority he is promoted to first officer. He then returns to Denver for a program evaluating his career potential and upgrading in pilot skills required of a first officer. Following this training period, and another extensive check on the line, he continues his periodic six-month training as a first officer.

After five to 10 years as a first officer, the pilot gains the seniority required to become a captain. As in all cases of promotion in

equipment, there is a thorough check on the line plus the continuous six-month program of recurrent training at Denver as a captain in command of a full crew.

Frequently the move up in rank means a move down in equipment, thus recycling the chain of training.

Training does not end for a United pilot until the day he retires from flying.

[From Jet Profiles, Fall 1969]

SCHOOL FOR THOSE WHO FLY THE MAIN

Airline pilots take training almost as a way of life. They're trained when hired, retrained when upgraded to first officer or captain, and trained again when they move to a different aircraft. Even if they don't change jobs, airline pilots periodically go back to school, just to keep in top form on their present assignment.

For United Air Lines pilots, going back to school has become a pleasure, thanks to United's new Flight Training Center at Stapleton International Airport in Denver, Colorado. Situated in the "mile-high city," where the sun shines an average of 300 days a year, the $30 million UAL Center is recognized as one of the most complete and carefully designed flight training facilities in the airline industry. Approximately 5500 pilots, including those from other airlines and major corporations as well as United's own roster, are trained annually at the United installation.

The more than 550 United employees who staff the Flight Training Center moved into their new complex only a little over a year ago in August 1968. However, United's management began planning a new central training complex some four years earlier in 1964, just after United had announced an order for 144 jets, the largest new aircraft order ever placed by an airline. The rapidly expanding UAL operations (United had merged with Capital Airlines some three years before) and the increasing size of the airline's fleet caused the company to take a good look at their training needs for the years forward into the 1970's. After investigating at a number of cities, the decision was reached in 1965 to construct the new facility at Denver.

According to Captain J. E. Cross, who heads up at the Flight Training Center, the architects selected to design the new structure were given one basic charge: to make the building as flexible as they could design it.

The result at Denver is a complex as modern as today, yet readily adaptable to meet the needs of tomorrow. Classrooms, for instance, were designed around a "multiple module" concept. The size of the smallest room needed at the center was determined, then other, larger classrooms were sized in multiples of these basic dimensions. The added use of special moveable walls and adjustable partitions makes it possible, almost within the span of a weekend, to transform the center into a completely different arrangement of classrooms, offices and utility areas. The entire installation has been designed with an eye toward United's future needs and the expansions which inevitably will occur.

The teaching tools and techniques at Denver are just as modern as the facilities. Extensive use is made of the latest types of audio-visual equipment, including videotape and elaborate "system displays" specially constructed by United for use at the center. Classrooms are fully equipped with electronic student "responders," which enable students to answer an instructor's multiple choice question simply by pushing a button. The system also displays the answers of the entire class simultaneously on a master panel in front of the instructor, thus giving him an instant measure of how well his material is being received.

In both the way the classes are taught and the content of the courses themselves, there is a single objective—complete mastery of the material by the student. Captain Cross says, "The airline business does not allow us to use a lock-step method, where students grasp material in varying degrees. Everything taught here is essential to a pilot, and we must—and do—teach to proficiency."

At the UAL Flight Training Center, the "teaching to proficiency" philosophy is given real meaning. Continuous work is underway to refine more precisely just what "proficiency" for the airline pilot really is—to clearly delineate just what tasks each member of a flight crew must perform and the knowledge he needs to perform them. Out of this work, then, come established specific "behavioral objectives" towards which the courses are structured. Basically, this means giving a pilot the information and training he needs to adequately do his job, rather than building coursework around everything an instructor intuitively feels should be included.

United first applied the "behavioral objective" approach in developing the training program for pilots transitioning to the Boeing 737. Besides shortening the entire training cycle (by eliminating unnecessary material and using improved methods of presentation), the new techniques were applauded by instructors and students alike. So successful were the results that the same procedure was adopted by the Air Transport Association as an industry effort in developing the training for the Boeing 747. Now, these same developmental methods are being applied for the McDonnell Douglas DC–10.

Another United innovation at the Flight Training Center is the "crew concept"—the idea of training a flight crew as a unit rather than as individuals or members of larger classes. UAL officials feel the crew concept of training better duplicates the actual environment in which the pilots will function once they return to the line. Also, it places the responsibility of a particular job on the individual who will perform that job on a day to day basis.

Although a number of training aircraft—composed of the same jets that make up the UAL line fleet—are assigned to the Flight Training Center, United students, especially those in transition training, today are spending more and more of their "flight" time in aircraft flight simulators (the center has 16 simulators valued at over $12 million). There are several reasons for this. The airline doesn't have to take any chances with a $10 million passenger jet, regardless of the flight maneuvers to be carried out, when the "flying" is done in a simulator. Also, using line jets for training purposes is getting to be an extremely expensive proposition for all airlines, a situation which will be further aggravated by the arrival of the superjets.

By combining simulators (which are so meticulously copied after the respective aircraft that even the same fabric is used on the crew seats) with other modern training aids, such as simulated visual approach displays and cockpit procedures trainers, United's experts feel that the need for line aircraft in transition training may be eliminated. This goal, in fact, is a target for the DC–10 training program. New line captains transitioned via simulator, however, would probably still fly their first few trips with an instructor or veteran pilot sitting in the co-pilot's seat. During successive flights, the new captain would gradually assume command responsibility for the aircraft.

Asked why he felt that pilots could be trained to fly an aircraft without the use of the actual airplane, one UAL instructor remarked half-seriously, "Well, not long ago, a couple of fellows 'flew' a ship from outer space down to the moon and back without ever having flown in it before."

United's training experts look with pride at the manner in which the total range of flight training at Denver has been made more efficient, in most cases shortening the duration of the various training cycles. Captains arriving in Denver today, for instance, to take transition training for the DC–8 jet will only spend 28 days at the center, compared to the 55 days required for DC–8 training a few years ago.

Enthusiasm runs high at the United Flight Training Center, both for the job that has been done and for the challenge of the future. At every level there seems to be a genuine understanding for the business at hand and a zeal for contributing to its success. With the excellent facilities and far sighted techniques, the Flight Training Center should keep pilots flying the United Main Line at the top of their profession for a long time to come.

The number of aircraft in the Air France training fleet has varied, depending on the airline's needs at a particular time. As many as five aircraft have been in service at one time. During normal training periods, each Falcon is flown an average of six hours each day. However, during peak training efforts, each aircraft may be in service as much as 12-hour each day.

The Air France Falcons are credited with significantly lowering the costs of normal flight training and cutting by 10 to 15 percent the expense of giving pilots type-conversion hours. The aircraft have also reduced by up to one year the time between hiring a pilot trainee and having him operational on jets (previous to the Falcons, trainees flew a number of different propeller aircraft before transitioning to jets).

KLM Royal Dutch Airlines is another flag carrier whose pilots are trained in business jets. The Royal Dutch Flying School in Eelde. The Netherlands, uses three Hansa Jet 320's in training pilots for KLM. The aircraft are used in conjunction with the school's two year course in aviation, from which students graduate with an instrument rating and preliminary requirmeents towards an airline transport license.

The Hansa Jets have cockpits specially equipped to simulate the flying environment of KLM's intercontinental DC–8's. Each trainer aircraft is configured to accommodate three flying students—one in the cockpit for flying instruction and two others in the front of the cabin for navigation and communication instruction. Five additional students and an instructor can also be carried in the rear of the cabin.

Other airlines using the business jet for pilot training include Continental, Qantas, and TWA. Continental has had a sabreliner in use in its jet training program for almost a year, while, "down under" in Australia, Qantas employs De Haviland DH–125's for the same purpose.

TWA has carried the idea of using the business jet for pilot training to its fullest extent. Having purchased two Lockheed jetstars in May and June of 1968, the airline spent the next six months in converting the airplanes into two in-flight simulators for the Boeing 707 and 727. Modifications to the Jetstars were extensive, amounting to some $600,000 per airplane and necessitating complete re-certification by the FAA. Included was just about anything and everything TWA could do to make the Jetstars look (in the cockpit) and fly like the full sized Boeings. Cockpit layouts were completely reworked to Boeing/TWA standards. Transponders, radar altimeters, DME and other equipment were installed. Even the Lockheed-supplied rocker switches in the panels were replaced with the toggle-type used by Boeing.

TWA feels that direct operating costs for

the Jetstars will be some $300 per hour less than the line aircraft which they replace. In service since January of this year, both Jetstars have been flying an average of about 10 hours a day and roughly 250 hours per month.

With the introduction of the new superjets, the cost of using line aircraft for non-revenue purposes will become even greater. Already, the cost is more than just the operating expense for the aircraft; there is the loss of the revenue that the airliner could be bringing in by doing the job for which it was designed and built. It may well be that the business jet will become an even more important tool for the airlines, which, in the end, will bring benefit to the airlines and passengers alike.

SURVEY SHOWS 2.5 MILLION QUIT SMOKING IN 2 YEARS

Mr. MOSS. Mr. President, a heartening news article was published in the Washington Post of December 17, 1969. Its headline reads "Survey Shows 2.5 Million Quit Smoking in 2 Years." It is hard for me to imagine better news than that. The article indicates that there has been a decline of about 5 percent of those who smoke cigarettes from the years 1966 to 1968. But best of all, it indicates that the number of young people aged 17 to 24 have an increasing number who have never smoked at all. This represents a giant step forward in our efforts to improve and safeguard public health in the United States. It is most timely because the Senate has just passed the Public Health Cigarette Smoking Act of 1969, to remove from television and radio advertising of cigarettes and to permit the Federal Trade Commission to act in due time to control advertising in printed media. I ask unanimous consent that the news story in the Washington Post be carried in the RECORD at this point.

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

SURVEY SHOWS 2.5 MILLION QUIT SMOKING IN 2 YEARS

(United Press International)

About 2.5 million cigarette smokers kicked the habit between 1966 and 1968, according to a government survey.

Cigarette smokers of every age and both sexes are quitting, it said. And the number of young people aged 17 to 24 who have never smoked is increasing.

The survey was released by the National Center for Health Statistics, which used Census Bureau reports to reach its conclusions.

Nearly 38 per cent of the population smoked cigarettes in 1968, a decline of 5 percent from 1966, it said.

A larger proportion of men than women are former smokers, according to the study. One reason given by some experts is that smoking once represented a symbol of rebellion for women, and those who took the rebellious step may find it more difficult to quit than men.

THE AMERICAN BILL OF RIGHTS AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, the question of how national convention can be converted into international commitment is a difficult one to answer. Owing to the nationalistic impulses of every sovereign state to protect itself from intrusion into its internal affairs by other nations, the world has yet to see any meaningful degree of international cooperation.

Tragically, this has also been the case in relation to international commitments to human rights. A few nations have felt that to commit themselves to an international accord on human rights would be to be left open for foreign intervention into domestic affairs. I regret to say that the United States has taken this view.

President Nixon, in his proclamation declaring this past week to be Human Rights Week, stated succinctly the legal obligation we have to our Nation's Bill of Rights and the moral obligation we have to the Universal Declaration of Human Rights as adopted by the United Nations General Assembly in 1948:

The two documents—the Bill of Rights and the Universal Declaration of Human Rights—are close in spirit although widely separated in time. The Bill of Rights is the law of the land. The Universal Declaration is a statement of principles, of common standards of achievement for all peoples and all nations. We in the United States are engaged in unremitting efforts to give real meaning to these standards for every American, to assure to every person the full enjoyment of his basic rights.

I agree with the President in the nature of the two documents. If we take these documents in this perspective, why, then, can we not take a stronger role, a role of greater leadership, in affirming human rights throughout the world? I ask the Senate to evaluate our present role in supporting human rights through international accord and convention in the light of the President's statement.

STAMP OUT SMUT FOR EV

Mr. PERCY. Mr. President, I invite the attention of the Senate to a campaign that is being conducted in Illinois to "Stamp Out Smut for Ev." It is an effort which, I am sure, the late Senator Dirksen would have led were he still alive; in his honor after his death, it is a worthy memorial.

I doubt whether there is a single Senator who has not received and been deeply impressed by pleas from his constituents to halt the threat of pornography, particularly as it concerns their children. As a father, myself, I identfy with their concern. The rampancy with which pornographic materials are being distributed carries a potential threat into every home.

We see far too often the results of this recent widespread appearance of pornography. There has occurred a general lowering of moral and artistic standards. Our books, movies and drama exploit the most primitive, sometimes perverted, instincts in man. And to a great extent we are all inundated by magazines that have little social value.

By our silence and patronage we condone the mass acceptance of pornography. The question is, what can be done?

Those who promote pornography do so for selfish economic gain. If there were no market for pornographic materials, we would not today have to address ourselves to this problem here on the floor of the U.S. Senate.

Thus part of the answer, if we are ever to effect adequate controls, must come from the homes of America. There is a limit to the amount the Government can do in controlling certain problems, and the traffic of pornographic materials is one such problem. When grassroot campaigns, like the one now being conducted in Illinois, address themselves to these issues, they carry the greatest promise of success since they strike at the source of the market. They have and will continue to receive my wholehearted endorsement and support.

Unquestionably, the Government also bears responsibility for controlling pornography. The people have a right to request this assistance from their government, and they have a right to receive it. For this reason, I joined Senator Dirksen in cosponsoring two bills which would aid in protecting the public from this unwanted intrusion of pornographic materials.

I do not believe that profiteers, who seize upon prurient interests, ought to be able to utilize the public mails to spread their wares to unwarying recipients. One of the bills I cosponsored would prohibit such access to the postal services.

I cosponsored a second bill which would prohibit the spreading of pornography via interstate commerce because, in my judgment, no Federal license should be granted to carriers of pornography.

In closing, I want to commend my fellow citizens in Illinois who have seen the devasting effects pornography can have and who have resolved to apply their energies to the fight to control it. I would hope that their efforts would provide the rallying point for other such movements across the Nation. It is my strong belief that the first amendment permits enough flexibility that we can move forthrightly to control the abuse and threat of pornographic materials without wrongfully infringing on the freedom of speech.

ADJOURNMENT UNTIL 11 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 o'clock a.m. tomorrow.

The motion was agreed to; and (at 11 o'clock and 45 minutes p.m.) the Senate adjourned until tomorrow, Friday, December 19, 1969, at 11 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 18 (legislative day of December 16), 1969:

FEDERAL RESERVE SYSTEM

Arthur F. Burns, of New York, to be a member of the Board of Governors of the

Federal Reserve System for a term of 14 years from February 1, 1970.

OFFICE OF ECONOMIC OPPORTUNITY

Wesley L. Hjornevik, of Texas, to be Deputy Director of the Office of Economic Opportunity.

Donald S. Lowitz, of Illinois, to be an Assistant Director of the Office of Economic Opportunity.

Frank Charles Carlucci III, of Pennsylvania, to be an Assistant Director of the Office of Economic Opportunity.

PUBLIC HEALTH SERVICE

Dr. Jesse Leonard Steinfeld, of California, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by laws and regulations, and to be Surgeon General of the Public Health Service, for a term of 4 years.

U.S. DISTRICT JUDGE

Barrington D. Parker, of the District of Columbia, to be U.S. district judge for the District of Columbia.

U.S. ATTORNEYS

William J. Schloth, of Georgia, to be U.S. attorney for the middle district of Georgia for the terms of 4 years.

Gerald J. Gallinghouse, of Louisiana, to be U.S. attorney for the eastern district of Louisiana for the term of 4 years.

U.S. MARSHAL

William M. Johnson, of Georgia, to be U.S. marshal for the southern district of Georgia for the term of 4 years.