position, join the angry poor and reject the values of their past and their parents.

There are the children of the more precarious middle class who want to be the technicians and executives of modern society. They ask of the schools, as of society itself, everything that young people wanted before them.

This dilemma of how to teach, educate and bind together these diverse elements is compounded by the awesome problem of how to cope with huge masses of persons displaced in their own country—the pre-industrial poor in a post-industrial society.

Nothing is easily answered because nothing is certain.

A FEW ANOMALIES

The Supreme Court has ruled that desegregation is an affront to human rights and a violation of the Constitution. Yet, a key official in the Department of Justice expressed a lawyer's doubts whether the Court's opinion could be enforced.

On the other hand, black students are studying at the University of Mississippi Law School to become lawyers in support of their brothers' demands against the laws and mores of Mississippi.

Patriotism, it used to be assumed, is one of the schools' basic, noncontroversial lessons. But clearly today both those who pledge their lives to fight for their country and those who risk jail to help protest what they consider their country's unjust war see themselves as patriots.

Where salvation used to be sought primarily through religion, it is now pursued by many young people with equal certainty—often fanatacism—through communal psychiatric experiences or drugs. And those who believe the trend dangerous are, to its followers, the new inquisitors or heretics—the "pigs."

VOICES OF THE 1930'S

For the public schools these are difficult times. Even if they believed some of the more advanced, let alone revolutionary, values to be correct, it is virtually impossible for them to depart too far from the middle-of-the-road demands of established society. Those educational spokesmen in the 1930's who daringly urged the schools to help establish a new social order were haunted for decades and blacklisted as radical subverters of youth.

Yet, in the long run, they proved more right than wrong. The new social order did come—through the New Deal, a socially conscious Supreme Court that upheld civil liberties and a host of laws to extend civil rights, and the welfare state.

The answer is probably that the schools, though clearly not the agents of revolution, can best serve the country if they support and advance evolutionary change. Where they fail to do so—as they have in some communities and regions—they have reinforced those values that subsequently became responsible for social, cultural and economic backwardness and suffering .

The colleges and universities, too, have always been torn between the conflicting mission to conserve and to pioneer. In the first half of this century, they struggled hard to revive the concept of the Renaissance and to pull together the fragmented backgrounds and values of a frontier civilization that was running out of frontier.

But what was liberal education then seems to many illiberal and restrictive today. The villain now is "the system," even the system of liberal studies; the new Sturm und Drang is pushing back to the romantic individualism of doing One's Own Thing, and that allows for few required studies of ideas and values. It is not a rugged individualism but an emotional one, confined by the peer group and the commune.

The university today is torn between concern for its traditional academic mission of training the intellect, both in the abstract and as a pre-professional exercise, and another, more sentimental, therapeutic role.

THE PITILESS PENDULUM

The radicals consider the theoretical and detached scholars as "irrelevant" to the social and political crises; the scholars warn that the radicals are sowing seeds of an anti-intellectual activism that will destroy the university by politicizing it and ruin society by trying to cure its ills without skills, competence and workable philosophies.

Actually, the conflict is not new. The therapeutic, activist concept of education was deeply imbedded in John Dewey's stricture to teach "the whole child" and in his prescription of "learning by doing." Humane and effective education undoubtedly requires both the intellectual and the practical-sentimental approach.

The pity over the years has been the swinging of the pendulum from one extreme to the other.

Educational neglect and inefficiency have made the psychological as well as the academic remedial task the responsibility of higher education. The need is to put it back where it belongs.

Present conflicts—between hopes and fears—appear dominated by the drive for power and the demand for accountability, whether the scene is the black community's fight for school control in Ocean Hill-Brownsville or the students' demand for participation in the decisionmaking at Harvard or Berkeley. The trick is to make those accountable who also exercise the power, and not simply to parcel out power to the many different groups clamoring for it.

The greatest risk today is in polarization, on campus and off. Concern for humanity thrives best in a society that is not polarized. Human values become brutalized when people live under the pressure either of survival of the fittest or of confrontation.

The radical idiom's four-letter words are the dialectic of the barracks—a special irony when it is affected by those who claim to hate war. It is a device of dehumanization that ought to be eliminated in the 1970's.

Everywhere men are confronted by terrifying contrasts. Science has released undreamed-of energies and awesome power, and even the scientists themselves disagree whether this means greater security or fatal risk. In other ways, too, science and technology have imposed their own ambivalence—promise of liberation and fear of enslavement.

The contraceptive pill might free mankind of the horror of population out of control; but it also raises new questions of dehumanizing personal relations. Used mindlessly or selfishly, science and technology have already contaminated man's environment; but with proper support, they can also lift the present threat.

In the final analysis, the issue remains whether man can use and control his tools and institutions to prevent them from becoming instruments of dehumanization. This is the issue that restless youth has put to the present systems.

One basic question is why so many of the young rebels turn to the romantic failure of a Che Guevara or the repressive totalitarianism of Mao Tse-tung rather than to the values—social, moral, educational and political—of Thomas Jefferson, Abraham Lincoln, or Franklin D. Roosevelt.

This, in the end, is the question the schools and universities, the scientists and philosophers, must try to answer.

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# SENATE—*Tuesday, January 27, 1970*

The Senate met at 10:30 o'clock a.m. and was called to order by the President pro tempore (Mr. RUSSELL).

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

Let us pray in the words of St. Francis of Assisi.

Lord, make us instruments of Thy peace; where there is hatred, let us sow love; where there is injury, pardon; where there is discord, union; where there is doubt, faith; where there is despair, hope; where there is darkness, light; where there is sadness, joy; for Thy mercy and for Thy truth's sake. Amen.

## ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Chair now recognizes the distinguished Senator from Louisiana (Mr. ELLENDER) for a period not to exceed an hour and a half.

The senior Senator from Louisiana.

Mr. ELLENDER. Mr. President, I yield to the distinguished Senator from Montana.

The PRESIDENT pro tempore. The Senator from Montana.

## THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, January 26, 1970, be dispensed with.

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

## ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I understand that a unanimous-consent request has been granted to limit statements to 3 minutes with relation to routine morning business and that the period for the transaction of routine morning business is not to exceed 30 minutes.

The PRESIDENT pro tempore. The Chair advises the Senator from Montana that that is correct. At the conclusion of the remarks of the Senator from Louisiana, morning business will be in order.

## COMMITTEE MEETINGS DURING SENATE SESSION

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

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

## ATTENDANCE OF A SENATOR

Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina,

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

attended the session of the Senate Monday, January 26, 1970.

## ADDITIONAL COSPONSOR OF A BILL

S. 3238

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

Mr. ELLENDER. I yield to the Senator from Pennsylvania.

Mr. SCOTT. Mr. President, on behalf of the Senator from New York (Mr. JAVITS) I ask unanimous consent that, at the next printing, the name of the junior Senator from Arizona (Mr. GOLDWATER) be added as a cosponsor of S. 3238, to amend the National Foundation on the Arts and Humanities Act of 1965, as amended, which the principal sponsor, the senior Senator from New York (Mr. JAVITS), introduced on September 11, 1969. The senior Senator from New York is absent on official business.

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

The Senator from Louisiana.

## FARM PROGRAMS AND THE ECONOMY

I. INTRODUCTION

Mr. ELLENDER. Mr. President, I expect to discuss today a subject which is most important to the American people. I am fearful of what would happen to our economy if this Congress were to adjourn without reenacting the present farm program or putting another effective measure on the statute books. Legislative action this year is very, very important. No matter how much gold one owns, or diamonds, or what have you, the most important thing needed to maintain our national wealth and power is an abundance of food and fiber. It is essential that we provide ways and means of having available all of the food, as well as the fiber, necessary for our people.

We have had farm programs now for almost 40 years. In fact, we had some kind of program during World War I, or at the end of it. We asked our farmers to produce in order to feed not only the American people but our allies. It turned out that the farmers of our Nation were most patriotic in responding to the request of their Government.

The same thing occurred during World War II. Except for the fact that the farmer patriotically responded to the request of his Government to produce food necessary for our own use and consumption and for our allies—in fact, other peoples all over the world—the Nation would not have constructed such a huge food factory over the past 25 years. Our national production of farm commodities has far exceeded the expectations of men who were engaged during those times in promoting the production of food and fiber.

Today, and during the past few years, there has been a stepped-up clamor that farm programs be abandoned. On the one hand it is the consumer reacting to higher prices for beef steaks, not realizing that demand for beef is higher than ever before or that the family is now spending only 16.5 percent of its take-home pay for food, a smaller percentage than ever before. I may interpolate, no price supports are provided for beef. Or it is the taxpayer, accepting without adequate examination the oft repeated statement that farm programs are bad because of the cost. Those attitudes are extremely unfortunate. They are not based on careful examination and analysis of the real problems which exist. At the very least, we can do no less than look at the record for whatever it may reveal.

Nor does the widespread claim take adequate recognition of the serious problems which such proposed abolition of farm programs would create in our economy. I refer not only to the farm economy but to our broader general economy as well.

During my 33 years in the Senate there has been submitted an abundance of interesting testimony on the farm program, and many statements and documents. I have met most of the experts, great and small. We sit at their feet, as you are well aware, hoping for guidance and wisdom. I have listened diligently for hours and have read most of what has come before me. I have pondered and asked questions about the usual and unusual events in our agricultural economy and in the Nation and the world. What has happened does seem to show that the answers we get are right only part of the time. We are grateful for such help and guidance as has come our way. Probably what one hears and understands and decides is in considerable part related to his own background and earlier experience, to his intuition and his biases. It could be that to have experienced the great farm depression personally and to have pondered a variety of farm problems creates its own sort of understanding.

II. THE PROBLEMS ARE VERY COMPLEX

Agriculturalists generally agree that there are great difficulties in evaluating the impact of agricultural policies and programs, past, present, or future.

Personally, I would be skeptical of an agricultural specialist who thought the problems of farm programs in relation to the economy are simple. I would be skeptical for several reasons. The agricultural economy itself is very diverse and complex, consisting as it does of about 3 million largely independent producing units scattered over a continental area. Even within the local community, types of farming and its characteristics may present a wide range of diversity. There is the part-time farm, the small commercial and the larger commercial farm, the highly specialized farm and the generally self-sufficient farm. You may find in the same community a farmer who confines his work to planting and harvesting hundreds of acres of corn or small grains, almost by himself, using very modern and expensive machinery. A neighbor may be rather strictly specialized in cattle feeding or perhaps in hog production, utilizing small acreage but achieving a large gross income. A few or many of these diverse units may produce one or more principal products. There are at least 59 crops considered to be "principal crops." Within such "principal" classification there are types and varieties, groups and grades, some of them genetic, some seasonal, some geographic, some long established, some experimental. Combinations and permutations of the crop and livestock "mix" are almost endless.

I mention all of this to show the complexity and diversity of American agriculture, and to point out that there are many difficulties in evaluating the impact of agricultural policies and programs on our economy.

Beyond being aware of such probable pitfalls, my purpose today is to provide an insight for this very important congressional session, utilizing the experience of the present and the past. All is not darkness and chaos, hopefully. We can learn much which will be highly useful if not absolutely essential in the weeks ahead as we consider proposed legislation which will, if approved, replace farm programs which expire at the end of this crop year, 1970.

III. PROBABLE ECONOMIC EFFECTS ON THE U.S. AGRICULTURAL ECONOMY

The programs I intend to discuss today are not the totality of USDA activities. Few if any persons have proposed abolishing all of the activities of the Department. In brief, we are talking about what are generally referred to as price and income support policies, expressed in such programs as price supports, stock accumulation, compensatory payments, acreage restrictions, and perhaps multiple pricing, both at home and abroad. Other types of Government activity, particularly those relating to agricultural research, education, credit and general economic policies are not included. Thus, it is the interrelated complex of price-support programs, allotment and land-retirement programs and direct payment programs to which I shall be referring. And these in turn will largely relate to the feed grain complex, plus wheat and cotton. Soybeans, dairy products and several other items are of considerable importance also.

One of the very first thoughts which must occur to any of us who consider the problems involved in abandoning farm programs is the question of what such action will do to farm incomes. Naturally, we must ask that question and hope to arrive at useful answers. Perhaps the place to start is with government farm program payments. The following item from a recent Legislative Reference Service statement appears approximately correct:

> Government payments to farmers under the price support and adjustment programs totaled $3.5 billion in 1968 and will total about $3.7 billion in 1969. These payments are made for two basic purposes: (1) to effect desirable resource adjustments (Supply Management), and (2) to supplement farm income while permitting price support loan levels to reflect world price levels.

Even in this rather good year of 1969, to eliminate government support and thus reduce the realized net farm income by $3.7 billion from its approximate level of $16 billion would be a cut of fully 20 percent. Such a cut must be regarded as total loss. It is extremely doubtful if

such a reduction would be offset, at least in the short run, even in a small way by reduced production expenses. High and increasingly higher taxes are now a built-in factor of life in most rural communities. The mortgage load at $28.7 billion is at record levels, both as to principal and interest. It is doubtful if other expenses could be reduced very much except by neglect of repair and upkeep, and by an even greater downward pressure on our standard of living.

Experience tells me that, if one does not receive the income or expect to get it, one does not continue to spend at the usual rate very long. It then becomes a matter of "priorities," of which we have heard so much in recent months.

I shudder to recall the severe dislocations, the dire distress which occurred not only in my farming areas but all over the country after World War I. Realized net income of U.S. farm operators declined from about $9.5 billion in 1919 to about $3.9 billion in 1921. I ask unanimous consent to have printed in the RECORD at this point a table of economic data relating to farm prices and income from 1910 to 1969, designated as "Table 1."

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

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

TABLE 1.—ECONOMIC DATA RELATING TO FARM PRICES AND INCOME, UNITED STATES, 1910–69

| Year | Prices paid by farmers, total, including interest, taxes, and wage rates—(index numbers, 1957–59=100) | Prices received by farmers—(index numbers, 1957–59=100) | Parity ratio (percent) | Farm income: Realized gross farm income (including Government payments) (million dollars) | Farm income: Production expenses (million dollars) | Farm income: Realized net income of farm operators (million dollars) |
|---|---|---|---|---|---|---|
| 1910 | 33 | 43 | 107 | 7,477 | 3,531 | 3,946 |
| 1911 | 34 | 39 | 96 | 7,183 | 3,581 | 3,602 |
| 1912 | 35 | 41 | 98 | 7,663 | 3,833 | 3,830 |
| 1913 | 35 | 42 | 101 | 7,919 | 3,973 | 3,946 |
| 1914 | 35 | 42 | 98 | 7,718 | 4,029 | 3,689 |
| 1915 | 36 | 41 | 94 | 8,060 | 4,167 | 3,893 |
| 1916 | 40 | 49 | 103 | 9,643 | 4,836 | 4,807 |
| 1917 | 51 | 74 | 120 | 13,310 | 6,092 | 7,218 |
| 1918 | 59 | 85 | 119 | 16,447 | 7,507 | 8,940 |
| 1919 | 67 | 90 | 110 | 17,825 | 8,331 | 9,494 |
| 1920 | 73 | 87 | 99 | 15,907 | 8,837 | 7,070 |
| 1921 | 53 | 51 | 80 | 10,521 | 6,634 | 3,887 |
| 1922 | 52 | 54 | 87 | 11,009 | 6,608 | 4,401 |
| 1923 | 54 | 59 | 89 | 12,119 | 7,046 | 5,073 |
| 1924 | 55 | 59 | 89 | 12,736 | 7,436 | 5,300 |
| 1925 | 56 | 65 | 95 | 13,667 | 7,334 | 6,333 |
| 1926 | 55 | 60 | 91 | 13,256 | 7,356 | 5,900 |
| 1927 | 54 | 58 | 88 | 13,295 | 7,441 | 5,854 |
| 1928 | 55 | 61 | 91 | 13,553 | 7,727 | 5,826 |
| 1929 | 55 | 61 | 92 | 13,895 | 7,631 | 6,264 |
| 1930 | 52 | 52 | 83 | 11,432 | 6,909 | 4,523 |
| 1931 | 44 | 36 | 67 | 8,385 | 5,499 | 2,886 |
| 1932 | 38 | 27 | 58 | 6,371 | 5,443 | 1,928 |
| 1933 | 37 | 29 | 64 | 7,081 | 4,314 | 2,767 |
| 1934 | 41 | 37 | 75 | 8,541 | 4,670 | 3,871 |
| 1935 | 42 | 45 | 88 | 9,666 | 5,061 | 4,605 |
| 1936 | 42 | 47 | 92 | 10,712 | 5,574 | 5,138 |
| 1937 | 45 | 51 | 93 | 11,329 | 6,097 | 5,232 |
| 1938 | 42 | 40 | 78 | 10,101 | 5,828 | 4,273 |
| 1939 | 42 | 39 | 77 | 10,556 | 6,162 | 4,934 |
| 1940 | 42 | 42 | 81 | 11,038 | 6,749 | 4,289 |
| 1941 | 45 | 51 | 93 | 13,828 | 7,675 | 6,153 |
| 1942 | 52 | 66 | 105 | 18,767 | 9,942 | 8,825 |
| 1943 | 58 | 80 | 113 | 23,362 | 11,487 | 11,875 |
| 1944 | 62 | 82 | 108 | 24,412 | 12,195 | 12,217 |
| 1945 | 65 | 86 | 109 | 25,772 | 12,922 | 12,850 |
| 1946 | 71 | 98 | 113 | 29,706 | 14,483 | 15,223 |
| 1947 | 82 | 114 | 115 | 34,146 | 17,032 | 17,114 |
| 1948 | 89 | 119 | 110 | 34,722 | 18,790 | 15,932 |
| 1949 | 86 | 103 | 100 | 31,628 | 17,982 | 13,646 |
| 1950 | 88 | 107 | 101 | 32,271 | 19,410 | 12,861 |
| 1951 | 97 | 125 | 107 | 37,055 | 22,252 | 14,803 |
| 1952 | 98 | 119 | 100 | 36,759 | 22,630 | 14,129 |
| 1953 | 95 | 105 | 92 | 34,985 | 21,275 | 13,711 |
| 1954 | 95 | 102 | 89 | 33,589 | 21,577 | 12,012 |
| 1955 | 94 | 96 | 84 | 33,138 | 21,889 | 11,249 |
| 1956 | 95 | 95 | 83 | 34,274 | 22,374 | 11,900 |
| 1957 | 98 | 97 | 82 | 34,001 | 23,294 | 10,707 |
| 1958 | 100 | 104 | 85 | 37,911 | 25,236 | 12,675 |
| 1959 | 102 | 99 | 80 | 37,468 | 26,106 | 11,362 |
| 1960 | 102 | 98 | 80 | 38,088 | 26,352 | 11,736 |
| 1961 | 103 | 99 | 80 | 39,771 | 27,125 | 12,646 |
| 1962 | 105 | 101 | 80 | 41,268 | 28,639 | 12,619 |
| 1963 | 107 | 100 | 78 | 42,271 | 29,688 | 12,583 |
| 1964 | 107 | 98 | 76 | 42,567 | 29,481 | 13,086 |
| 1965 | 110 | 103 | 77 | 44,926 | 30,933 | 13,993 |
| 1966 | 114 | 110 | 80 | 49,597 | 33,404 | 16,193 |
| 1967 | 116 | 104 | 74 | 49,061 | 34,820 | 14,241 |
| 1968 | 121 | 108 | 73 | 50,752 | 35,900 | 14,852 |
| 1969 [1] | | | | 54,000 | 38,000 | 16,000 |

[1] Preliminary estimate.

Source: U.S. Department of Agriculture, except for 1969.

Mr. ELLENDER. Those are the bare figures—they only suggest the distress of one's neighbors and one's community, of local merchants and country bankers. Farmers' income recovered somewhat during the 1920's, especially in 1925, but such revival did not restore agricultural health; it only maintained a little life and hope before the final debacle of $2.9 billion of realized farm income in 1931 and only $1.9 billion in 1932. Recovery was slow in the 1930's and it would be fair to say that full revival did not come until the large demands of World War II cleared out the surpluses.

Meanwhile, the general economy continued to expand and inflate during much of the 1920's. To be sure, there were "minor contractions" in 1923–24 and 1926–27, as will appear from the table I have just placed in the RECORD, but those were minor interruptions of a great onrush of economic activity which culminated only with the traumatic experience which began in the last quarter of 1929. The decline continued with little interruption until the spring of 1933. The stock market crash, as measured by the Dow Jones industrial index, carried that market from an average of 364.9 down to 62.7.

At the bottom, five-sixths of the September 1929 value of stocks had disappeared. Wholesale prices declined from a 1929 average of 95.3—1926 equals 100—to 65.9 in 1933. With a total labor force of something like 48 million at the end of World War I, unemployment in October 1930 reached 4,639,000; by early 1933 it was over 13 million persons. Payrolls declined; in 1933 they averaged only 44 percent of their average in 1929. U.S. exports in 1929 were $5,241,000,000; by 1932 they had declined to $1,611,000,000. Imports were hit nearly as hard; they declined from $4,399,000,000 in 1920 to $1,323,000,000 in 1932. It was indeed a fearful crash; a period of suicides, of breadlines and apple sales; of widespread distress and blasted hopes.

I assure Senators that no farmer, no farm community, and no one in the country has the least desire again to go through the wringer as we did in the 1920's and the 1930's. Yet, in all frankness, I have that strange unease, the feeling one sometimes has that he has been there before. Again, in our forgetfulness, or in our unwillingness to learn from the past, we are courting farm depression and rural disaster if and when we scuttle a program which has been very useful.

There is another point I wish to make today about the probable effects on the agricultural economy of abandoning or drastically changing farm programs. Not only would there be great loss of income as Government payments to farmers are cut out, but there would be adverse effects on income which would result from the increased production occurring in the absence of farm programs.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD, table 2, captioned "Harvested Acreage of Crops, United States."

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

TABLE 2.—HARVESTED ACREAGE OF CROPS, UNITED STATES, 1,000 ACRES

| Year | Corn, grain | Cotton | Wheat, all | 59 crops |
|---|---|---|---|---|
| 1949 | 85,595 | 27,439 | 75,910 | 352,286 |
| 1950 | 81,818 | 17,843 | 61,607 | 336,437 |
| 1951 | 80,729 | 26,949 | 61,873 | 336,079 |
| 1952 | 80,940 | 25,921 | 71,130 | 341,313 |
| 1953 | 80,459 | 24,341 | 67,840 | 340,660 |
| 1954 | 80,186 | 27,349 | 54,356 | 338,184 |
| 1955 | 79,367 | 17,843 | 47,290 | 331,902 |
| 1956 | 75,247 | 26,949 | 49,768 | 316,244 |
| 1957 | 71,864 | 25,921 | 43,754 | 315,564 |
| 1958 | 72,224 | 24,341 | 53,047 | 315,712 |
| 1959 | 72,091 | 15,117 | 51,716 | 316,331 |
| 1960 | 71,422 | 15,309 | 51,879 | 315,818 |
| 1961 | 57,634 | 15,634 | 51,571 | 294,334 |

TABLE 2.—HARVESTED ACREAGE OF CROPS, UNITED STATES, 1,000 ACRES—Continued

| Year | Corn, grain | Cotton | Wheat all | 59 crops |
|---|---|---|---|---|
| 1962 | 55,726 | 15,569 | 43,688 | 285,830 |
| 1963 | 59,227 | 14,212 | 45,506 | 289,928 |
| 1964 | 55,369 | 14,055 | 49,762 | 290,462 |
| 1965 | 55,332 | 15,615 | 49,560 | 290,958 |
| 1966 | 56,933 | 9,552 | 49,867 | 287,725 |
| 1967 | 60,557 | 7,997 | 58,771 | 300,446 |
| 1968 | 55,707 | 10,175 | 55,309 | 293,900 |
| 1969 [1] | 54,573 | 11,094 | 47,555 | 286,124 |

[1] Preliminary.

Source: U.S. Department of Agriculture.

Mr. ELLENDER. It is evident from table 2 that U.S. agriculture is not now using as many acres in total as it has used in some years since World War II. This table is very important, and I invite Senators to read it and compare the acreage that was planted, let us say, 25 years before, in contrast to what is planted now. It will be seen that in most of our major crops, the acreage has been cut as much as a third. Even so, more production has resulted.

The cutback in acreage for certain crops, related in large part to agricultural programs, has been very significant and substantial. Not so long ago, we harvested annually more than 80,000,000 acres of corn; now we are generally well under 60,000,000 acres in any one year, a difference of 20 million acres. Cotton has dropped from considerably more than 20,000,000 acres to about 10,000,000 acres.

As a matter of fact, when I first came to Washington, in 1937, almost 40 million acres of cotton land was required to be planted in order to produce what we can now grow on 16 million acres. That is phenomenal. That, in part, has been the cause of much of our difficulty. We have become so productive that we cannot utilize, either domestically or by export, all we can produce. The Lord only knows what would happen if we turned the farmers loose and let them plant, cultivate, and harvest all of these major crops that they desire. It would be chaotic. Wheat has gone down from more than 70,000,000 acres to less than 50,000,000 acres in most recent years.

The point is that we do have reserve capacity in U.S. agriculture. We are very fortunate to have it—it has been very useful at certain periods. But a surplus production capacity of nearly 10 percent must be controlled if we are not to wallow in overproduction. We have managed to improve and adopt modern technology in agriculture to the point where we produce all we can use domestically, and export on smaller and smaller acreage, as I have just indicated. Feed grain production is more than 20 percent increased over the 1957–59 average; food grains are up 30 percent.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD table 3, which indicates very interesting figures, and I ask Senators to study those figures.

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

TABLE 3.—INDEX NUMBERS OF CROP PRODUCTION, BY GROUPS OF CROPS, UNITED STATES

[1957–59=100]

| Year | Feed grains | Cotton | Food grains | All crops |
|---|---|---|---|---|
| 1949 | 80 | 131 | 92 | 92 |
| 1950 | 81 | 82 | 86 | 89 |
| 1951 | 75 | 124 | 85 | 91 |
| 1952 | 79 | 124 | 109 | 95 |
| 1953 | 77 | 134 | 100 | 94 |
| 1954 | 81 | 111 | 88 | 93 |
| 1955 | 86 | 120 | 83 | 96 |
| 1956 | 85 | 108 | 87 | 95 |
| 1957 | 93 | 89 | 82 | 93 |
| 1958 | 101 | 93 | 121 | 104 |
| 1959 | 106 | 118 | 97 | 103 |
| 1960 | 109 | 116 | 115 | 108 |
| 1961 | 99 | 116 | 106 | 106 |
| 1962 | 100 | 121 | 98 | 107 |
| 1963 | 108 | 125 | 102 | 111 |
| 1964 | 95 | 124 | 114 | 108 |
| 1965 | 111 | 121 | 117 | 115 |
| 1966 | 110 | 78 | 118 | 111 |
| 1967 | 124 | 60 | 134 | 117 |
| 1968 | 118 | 88 | 141 | 119 |
| 1969 [1] | 123 | 82 | 130 | 121 |

[1] Preliminary.

Source: U.S. Department of Agriculture.

Mr. ELLENDER. Only cotton, of the major crops, shows a major decrease and that has its own explanation.

What all this means to me is that if we should be so foolish as to abandon acreage programs, those acres formerly used are in large part still available to grow corn, or wheat, or cotton, or other crops and livestock. We can easily have 70,000,000 acres of corn again and expand wheat, cotton and most other so-called high-value crops. Remember, the acres are still there, generally more fertile and productive than ever. About all that is required to press them again into use is to abandon major control programs and reduce income enough to put the farmer truly against the wall. Then he would have no practical alternative except to plant every acre he possibly could—hoping against hope that somehow he would harvest a larger crop, and that farmers in some other areas would run into weather trouble or something equally dire. The very probable result would be a larger surplus and greatly depressed prices. We know that only a little extra of most of these agricultural items can and does result in a substantial decline in price. And the individual farmer among 3 million, or even among 1 million highly productive commercial farmers, just is not in position to help himself to do anything about the overall adjustment which is needed.

Alvin C. Egbert perhaps summarizes one aspect of the farm dilemma better than most have:

The farm price and income dilemma has been around a long time. Except for unusual periods such as wartime agricultural output tends to race ahead of commercial market outlets. As a result, without special programs, prices of farm products deteriorate over time relative to prices in other sectors of the economy. The farmers' low position on the income ladder does not improve much in spite of and, to a degree, because of great advances in productivity. The nature of this income dilemma, in a qualitative sense, is well known and has been well documented. Its quantitative nature is still quite vague. The disagreements concerning the production consumption gap in agriculture and the magnitudes of supply and demand price elasticities for agricultural products are evidence of this vagueness.[1]

Egbert is an economist with the International Bank of Reconstruction and Development, hence he is not under any shadow of the USDA. In any case some of the better farm economists have attempted to shed light on these problems. I have heard of very few who think that farm production would be reduced if farm programs were abandoned, and then only in the long run, as new technology and other means could not be afforded.

More than a decade ago, an occasional sophisticated technical study and statement touched on what could be expected to happen to farm prices and income if supporting control and programs were abandoned. An example which comes to mind is a joint committee print of the 86th Congress, second session, which included materials prepared for our Joint Economic Committee on "Economic Policies for Agriculture in the 1960's—Implications of Four Selected Alternatives." Several farm economists now recognized as leaders in their field provided materials, among them Hathaway, of Michigan State; Brandow, of Pennsylvania State, Schnittker, of Kansas State; and Walter Wilcox, of our Legislative Reference Service. Working with the authors and the staff on the formulation and development of the study was an advisory panel which included Bishop, of North Carolina State; Heady, of Iowa State; Kelso, of Arizona; and Seaver, of Connecticut. I shall not attempt here to summarize this 82-page document of 1960 in detail but with your indulgence, Mr. President, I should like to quote from the letters of transmittal (IV):

They find farm prices and income would fall sharply if current farm price support, production control, and conservation reserve programs were dropped and not replaced by an alternative program or combination of programs.

* * * * *

According to these projections, net farm income could be expected to drop from $11.3 billion in 1959 to $7.2 billion in 1965 of which $3.1 billion is imputed income from rental of the farm dwellings, and from home produced food and fuel. Allowing for trends in farm consolidation, net income per commercial farm with sales of $2,500 or more in 1965 would be 30 percent lower than in 1959.

PROJECTIONS FOR 1965 WITH PRICE SUPPORTS AND PRODUCTION LIMITATIONS REMOVED INDICATE PRICES FOR THE MORE IMPORTANT FARM PRODUCTS WHICH COMPARE WITH 1959

| | 1959 | Projected 1965, no controls or price supports | Percent decline |
|---|---|---|---|
| Cattle (cwt.) | $22.50 | $17.08 | 24 |
| Hogs (cwt.) | 14.20 | 10.95 | 23 |
| Eggs (doz.) | .31 | .26 | 16 |
| Milk (cwt.) | 4.16 | 3.67 | 12 |
| Corn (bu.) | 1.07 | .77 | 28 |
| Wheat (bu.) | 1.75 | .87 | 50 |
| Cotton (lb.) | .32 | .21 | 34 |
| Rice (cwt.) | 4.79 | 3.49 | 27 |

[1] Alvin C. Egbert, "An Aggregate Model of Agriculture—Impirical Estimates and Some Policy Implications", American Journal of Agricultural Economics, Vol. 51, No. 1, February 1969, pages 71–83.

The details of the commodity price projections made at that time are of some interest even now:

Other studies have followed and some no doubt are continuing. The center for Agricultural and Economic Development at Iowa University in 1969 reported at page 82: [2]

A number of studies made in 1959 and later years by Pennsylvania State University, Iowa State University, and congressional committees indicated that if the price support and production adjustment programs were dropped, even though the P.L. 480, or surplus disposal program were continued at the recent levels, gross farm income would decline 20 percent or more, and net farm income would fall by almost one-half.

It is appropriate that we take note that crop production in 1969 set a new alltime high for the third consecutive year. The "all crop" production index was 21 percent above the 1957–59 average. Crop yields per acre continued the uptrend of recent years. The composite index of yield per acre for 28 major crops for 1969 was 132—(1957–59=100)—3 points above the previous high set in 1968. Thus higher yields per acre more than offset lower acreage for many crops. Harvested acreage for 59 major crops in 1969 was held to 286,124,000 acres, as compared with 295,099,000 acres in 1968 and 300,446,000 acres in 1967. It seems safe to assume that something like 50,000,000 usable acres were being held out of production, due mostly to existing Government programs. Fortunately, we do not now have to face the excessive surpluses, the disastrously low prices for some products and the sharply lower farm income which would be the case if the many individual production units of our unsurpassed agricultural factory had been forced to operate to full throttle by economic and political circumstance.

IV. FARM PROGRAMS AND THE GENERAL ECONOMY

Commonsense tells us that any producing group which buys about $37 billion in production goods per year is an important factor in our general economy. The commercial farmer buys about 5 percent of our total steel production, about $1.6 billion of our petroleum products or 11 percent of the total sold. He buys a lot of rubber for his cars and tractors. It is estimated that his purchases are the basis for about 6 million jobs in machinery, chemical and other supply industries. In turn, his products are the basis for processing and marketing industries which provide an estimated 14 to 16 million jobs.

In our rapidly growing industrial economy, the importance of the farm sector and its contributions to the total economy, unfortunately, have received less and less emphasis. It is true that the farm share of the gross national product is declining, but so is the farm share of total population and many other items.

A problem does arise as to whether the significance of the farm sector in its interrelations to the rest of the economy can be quantified or can otherwise be accurately and adequately described. We know it is important—its products are necessary for our existence. We have to have food and fiber for domestic purposes to live. And we should have enough additional food and fiber to assist with a favorable balance of trade. But what more can we say?

There is an old point of view going way back, that economic depressions are farm led and farm fed. The idea achieved considerable status in the years following World War I.

In its most extreme form that point of view is characterized by what is called the multiplier theory, which, in this instance, says that $1 of gross farm income generates $7 of national income. Basically the theory rests on the fact that from 1929 to 1950 national income was about seven times that of farm income. It is not my purpose here today to promulgate that ratio, nor to examine it, nor to defend it, as some have. But it does stand to reason, deductive and inductive, that there is some sort of multiplier factor involved in the creation of and expenditure of something like $45 billion per year from marketings, to say nothing of living expenses. What merchant, whether located in village, county seat, or larger metropolis, would doubt that those farm-generated dollars do result in a lot of business turnover in the general economy? The problem is that of ascertaining, even roughly, how much of a multiplier factor is involved. As I said before not many farm economists have given this problem major attention. Fortunately a few have become involved.

A significant recent study relates not to national data but to Kansas data for the years 1950 to 1966.[3]

The conclusions reached in this study show:

First, that on the average, $1 of farm income generated $3.33 of total income, whereas $1 of nonfarm income generated only $1.46 of total income;

Second, that the farm sector expended 84.4 percent of its income in the nonfarm sector, whereas the nonfarm sector expended only 10 percent of its income in the farm sector, and;

Third, there was an increasing interdependence between farm and nonfarm sectors between 1950 and 1966.

This last point is explained by the growing complexity of highly mechanized farming which has created greater and stronger linkages between the farm sector and the rest of the economy. In other words, farm production has become more dependent on purchased inputs from off-farm sources.

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

Mr. ELLENDER. I yield.

Mr. MANSFIELD. Mr. President, could the distinguished Senator, the chairman of the Committee on Agriculture and Forestry, who is giving a very worthwhile address on the farm program, tell the Senate at this time what the price of wheat is, roughly?

Mr. ELLENDER. Yes. The average price received in the marketplace in December 1969 was $1.30 per bushel. However, including payments it is an average of about $1.90. I have a little tabulation here indicating the prices of several commodities, not only of wheat, but also of other commodities.

Mr. MANSFIELD. Let us take wheat. It is under $2.

Mr. ELLENDER. Yes. As a matter of fact, in 1947 wheat was selling at $2.29 a bushel. In 1960, it was 75 cents. And in December 1969, including payments, it was about $1.90.

Mr. President, I ask unanimous consent that a table titled "Agricultural prices for selected commodities" be placed in the RECORD at this point.

There being no objection, the table titled "Agricultural prices for selected commodities" was ordered to be printed in the RECORD, as follows:

AGRICULTURAL PRICES FOR SELECTED COMMODITIES, 1947, 1960, AND DECEMBER 1969

| | 1947 | 1960 | 1969 |
|---|---|---|---|
| Wheat (bushel) | $2.29 | $1.75 | [1] $1.30 |
| Corn (bushel) | 2.16 | .998 | 1.09 |
| Oats (bushel) | 1.04 | .60 | .58 |
| Barley (bushel) | 1.73 | .84 | .892 |
| Cotton (pound) | 31.92 | 30.10 | 19.95 |
| Rice (hundredweight) | 5.97 | 4.59 | 4.93 |

[1] With payments $1.90.

Mr. MANSFIELD. Going back 10 years, does the Senator recall what the price of a loaf of bread was in, say, 1959 or 1960? Let us take 1960.

Mr. ELLENDER. It was, I would say, at least 6 cents less than it is now, perhaps as much as 9 cents.

Mr. MANSFIELD. I think the Senator is being conservative. What has happened to the price of wheat over that 10-year period?

Mr. ELLENDER. It has gone on down.

Mr. MANSFIELD. Who has made the profit on the wheat grown by the farmers?

Mr. ELLENDER. Evidently the people in between made it—the manufacturer, the distributor, the retailer. The freight rate has gone up, but the farmer did not get any benefit from any of the added cost.

Mr. MANSFIELD. Who pays for the price increase?

Mr. ELLENDER. The consumer.

Mr. MANSFIELD. And who gets the blame?

Mr. ELLENDER. The farmer.

Mr. MANSFIELD. The Senators from the industrial States seem to think that is it the farmer who is responsible for the increase in food prices.

Mr. ELLENDER. The farmer is not responsible.

Mr. MANSFIELD. Absolutely not. His

[2] Donald J. Hunter (Ed.) "Food Goals, Future Structural Changes, and Agricultural Policy: A National Basebook", Iowa State University Press, Ames, Iowa, 1969, 325 pages.

[3] Abbas Mirakhor and Frank Orazem, "Importance of the Farm Sector to the Economy: A Multiplier Approach." American Journal of Agricultural Economics, Vol. 50. No. 4, November 1968, pp. 913–920.

costs have gone up and his price has gone down. What has happened to the farm population in the meantime?

Mr. ELLENDER. The farm population has decreased considerably. When I first came to Washington, as I recall, 23 percent of the population lived on farms and they produced food for themselves and everyone else in the country. Today, farm population is about 5.2 percent.

Mr. MANSFIELD. Mr. President, I would now like to go on to beef. The Senator in the beginning of his speech mentioned the fact that the consumers had to pay a higher price for beef, not realizing that demand for beef is higher than ever before—and I might say that the beef population has not been able to keep up with the demand—or that the family is now spending only 16.5 percent of its take-home pay for food, a smaller percentage than ever before.

Could the Senator tell us the facts, what the situation is as far as beef is concerned?

Mr. ELLENDER. The price of beef in the last 2 years has increased some. I will have the figures placed in the RECORD at this point. I do not have them now. In December 1968 the average price received by farmers for beef cattle amounted to $23.50 per hundredweight. In December 1969 the price amounted to $25.60.

Mr. MANSFIELD. Are there any price supports for beef?

Mr. ELLENDER. No, there are no price supports, as I stated earlier. In my opinion, what has caused the beef price to go up is that the people have had a little more money to spend, and they are eating more beef. I think also that the producers of beef are spending a lot of money in advertising the sale of beef.

Mr. MANSFIELD. Yes; in Montana, and I assume in Wyoming also, the stock growers are putting on campaigns for the sale of beef. And they are putting in their own money voluntarily to carry on that campaign. They are not being aided by the Government. In relation to the question raised with reference to the wheat ranchers in Montana and the price which they get for their product now and the end product price which the consumer has to pay, does the distinguished chairman of the committee see a parallel between the beef producer and the wheat rancher, even though beef prices are up a little bit, and the fact that as prices increase it is the consumer who pays, and pays, and pays? It is not the beef producer who has the big gain.

Mr. ELLENDER. There is no doubt about that. The farmers and the producers of beef are not the ones who are causing the prices of their products to increase and thereby making a lot of money. It is the in-between, in the distribution and retailing process. For instance, one goes to a supermarket in Washington and as he makes his purchases he hears music. Who does the Senator think pays for that music? The producers and the farmers get nothing more for their products at all. The record shows that the prices of farmers now are much lower than they were in 1947 and 1948, but in the meantime their costs have gone up.

I will demonstrate that fact by a table which I have before me. The table indicates the high cost that the farmer must put into his farm in order to produce. Let us consider corn. In order to get into business with a farm of 228 acres, which is average in the corn belt, in 1954 $80,358 was required as an investment in machines, and so forth. Today $243,880 would be required. In cotton, for a 1,000-acre farm, $147,300 was required for machines and so forth in 1954, while today $440,000 would be required to begin economic production. In winter wheat, $68,590 would have been required for a farm of 690 acres in 1954, while now it is $147,120 for 860 acres.

Mr. President, I ask unanimous consent to place a table in the RECORD at this point titled "Capital investment requirements for selected type farms."

There being no objection, the table titled "Capital investment requirements for selected type farms" was ordered to be printed in the RECORD, as follows:

CAPITAL INVESTMENT REQUIREMENTS FOR SELECTED TYPE FARMS

| | 1954 | 1968 |
|---|---|---|
| Cash grain | $80,358 | $243,$880. |
| (Cornbelt area) | (228 acres) | (324 acres). |
| Cotton | $147,300 | $440,040. |
| (Mississippi Delta) | (1,000 acres) | (1,000 acres). |
| Winter wheat | $68,590 | $147,120. |
| (Southern plains) | (690 acres) | (860 acres). |

Mr. MANSFIELD. And on, and on, and on.

Mr. ELLENDER. The Senator is correct.

Mr. MANSFIELD. The farmer gets the blame, but he does not get the profits.

Mr. ELLENDER. That is right.

Mr. MANSFIELD. The result is that he is often made the butt of ridicule when he should be thanked and given the gratitude of the people for producing as much as he does in spite of the handicaps and difficulties which confront him day in and day out.

Mr. ELLENDER. The Senator is correct.

I wish to cite other figures in addition to the ones I referred to before. In 1947 the realized gross farm income was $34.146 billion. The production expense was $17.032 billion, and the realized net income was $17.114 billion.

In 1968 the realized gross farm income was $51 billion, and the net production expense was $35 billion, so that there was only $14 billion of realized net income.

Here we have farmers who in 1947 had a realized net income of $17 billion with a gross income of $34 billion, and in 1968, out of a gross income of $51 billion, the farmer only netted $14.786 billion.

Those figures demonstrate that the cost of producing has so increased that the farmer of today is simply not making as much money as before because of the price squeeze.

Mr. President, I ask unanimous consent to place in the RECORD at this point a table titled "Farm income in the United States, selected years."

There being no objection, the table titled "Farm income in the United States, selected years" was ordered to be printed in the RECORD, as follows:

FARM INCOME IN THE UNITED STATES, SELECTED YEARS

[In millions of dollars]

| | Realized gross farm income | Production expenses | Realized net income |
|---|---|---|---|
| 1947 | 34,146 | 17,032 | 17,114 |
| 1957 | 34,001 | 23,294 | 10,707 |
| 1960 | 38,088 | 26,352 | 11,736 |
| 1968 | 51,132 | 35,346 | 14,786 |

Mr. MANSFIELD. And inflation would decrease that amount further because if one compares the 2 years, the lesser amount in the latter year is not only less actually, as far as overall figures are concerned, but it is a good deal less as far as the value of the dollar is concerned.

Mr. ELLENDER. There is no doubt about that. That would be another factor.

Mr. MANSFIELD. And the slack is taken up, not by the farmers, but by the consumers in the long run, and the farmers get the blame.

Mr. ELLENDER. The Senator is correct.

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

Mr. ELLENDER. I yield.

Mr. HANSEN. Mr. President, I wish to commend the very distinguished chairman of the Committee on Agriculture and Forestry for the excellent presentation he is making this morning. While doubtless there would be those who do not agree with all the conclusions and recommendations he may make on behalf of that committee, I think all of us owe him a real debt of gratitude for the factual presentation he has made and the way he has traced the history of agriculture in this country over the last 50 years.

The comparisons he makes back in the thirties show what happened in times past in agricultural income and the Senator has brought that record forward and up to date. I think that the research that obviously has preceded this speech on the floor of the Senate today characterizes the distinguished Senator from Louisiana as being the astute student that he is.

I would like also to pay my respects today to my distinguished colleague, the majority leader, for the contribution he makes in calling attention to something that is altogether too often overlooked by people in this country.

Just let the price of steaks rise, as the Senator from Louisiana so well knows, by a few cents a pound and we hear repeated outcries for boycotts. What is

not recognized nor appreciated by most housewives in this country is that when one of these boycotts is instituted it hurts the wrong people. It hurts the producer and it immediately affects the wholesale price of cattle, pork, or whatever it may be. Therefore, it does not get at the cause of the trouble—which actually is a reflection of increased wages for the increased costs of processing the beef from the time it leaves the farms and ranches of Montana and Wyoming—and this extra trimming and the individual packaging, which is significant, as was brought out by the Senator from Louisiana, in the price of a loaf of bread. It is not the farmer who is benefiting from this price rise. Is that correct?

Mr. ELLENDER. The Senator is correct. The price of wheat has gone down to $1.90 and the price of a loaf of bread has gone up 8 or 9 cents a loaf. But the best point to indicate what the farmer is up against is illustrated by this table from which I read. With a $51 billion gross income, the cost of producing that crop was twice as much as the cost to produce it in 1947, and the net income dropped from $17 billion to $14 billion.

Mr. MANSFIELD. In devalued dollars.

Mr. ELLENDER. And that was in devalued dollars. This is $14 billion of net income with gross sales of $51 billion. In 1947, the cost of production was $17 billion against $35 billion in 1968.

Mr. HANSEN. I am happy to have the distinguished chairman of the committee underscore those facts because it is well that every American should be aware and apprised of the situation before he makes a snap judgment. I was pleased that the distinguished chairman of the committee pointed out that in this year of 1970, the average family in America spends a smaller proportion of their take-home pay than they have spent before, for food. In this country, this great America of ours, according to the figures presented by the chairman of the committee, the consumer spends only 16.5 percent of his take-home pay to buy all of the food which makes us the best fed nation in the world. Is that not true?

Mr. ELLENDER. The Senator is correct.

Mr. HANSEN. I think we ought to remember that. I know that when we were talking about grazing fees this last year, there were those who tried to characterize the average stockman, be he a sheepman on the Montana range or a cattleman on the Wyoming range, as being wealthy and who felt that those fees should not be continued but that they should be increased very drastically.

Mr. President, if we were talking about a few wealthy cattlemen, that would be one thing. The fact is that the grazing fees on BLM land accounts for a small number of cattle or sheep. If we could raise the grazing fees and get at the wealthy stockmen, that would be one thing. But we would not be doing that. We would be putting out of business many marginal operators who right now, as my distinguished colleague from Montana knows, are only just about keeping their nose above water.

If those grazing fees were increased, as was proposed, for a period of 10 years, a lot of little stockmen would be put out of business. The tragedy of that is that if it were done, the people who would be hurt first and most seriously would be those who were dependent upon jobs from those operators. It would hurt the schoolchildren, whose support for schools comes largely from taxes, in many of the rural areas of the West, directly because of the presence of sheep and cattle on the tax rolls.

Because of that fact, I am pleased that our colleagues are gaining a better understanding of the agricultural economic facts of life by virtue of the extremely able presentation that has come from the distinguished Senator from Louisiana. I compliment him for the great effort and the great research that have gone into this presentation.

Mr. ELLENDER. I appreciate that very much. I have a good staff on the Committee on Agriculture and Forestry, in the person of Mr. Henry Casso, who is sitting on my left, an economist of note, and of Dr. John Rose and Dr. Walter Wilcox from the Library of Congress. They have obtained all these statistics, at my suggestion. I have used that material in these remarks in order to paint a complete picture.

As I have said, not only now, but in the past, the farmers are not to blame; it is the "in-betweens" who make the money, if there is any to be made, not the farmers. The farmer makes a bare living, on an average. Of course, the large commercial farmers produce well and do very well in some cases.

Mr. HANSEN. If the Senator will yield further, just let me say to the distinguished chairman of the committee that he is a very generous man. I do appreciate the excellence of the staff that surrounds him. But let me note that it is his concern for agriculture and his interest in the very fundamental and basic problems in this country that have prompted him to make the inquiry which has resulted in the presentation he has made this morning. So I salute the Senator from Louisiana and his very able assistants.

Mr. ELLENDER. I appreciate that very much. I must admit that, having been on the Committee on Agriculture and Forestry for 33 years, if I did not know a great deal about agriculture and its problems, I could not head that committee. In fact, I would not want to head it.

I have devoted a lot of time to agriculture. As a matter of fact, in these studies we brought out what I thought were pertinent facts that should be pointed up so as to dramatize the situation. We could produce many more figures, but I do not want to confuse people. If we can make a case of it dramatically, maybe some of our friends in the press will print it and show to the American people who is getting what. I hope that the tables are printed so the American people can learn who gets what and why.

I think it is very important to note that from 1947 to 1968 the gross income of the farmers increased by about $17 billion, but their net income actually decreased by almost $3 billion.

I am just wondering what would happen if we did away with subsidies. If we permitted our farmers to plant all the available acres, they would glut the market so quickly that it would break everybody. There is no doubt in my own mind that in breaking the farmer, the production of food would be drastically reduced, and it would cost the consumer a good deal more than the $3.7 billion in program expense I have just mentioned. They would pay many billions more in higher prices for food.

There is no question in my own mind that if there were a scarcity of food, the "in-betweens" would make more profits. They would ask more for the finished product, and the consumer would be the one to pay it. But by paying through taxation, the cost has been limited to $3.7 billion a year. Actually, the farmer subsidizes the urban areas and the general taxpayer to a much greater extent.

Mr. TALMADGE. Mr. President, will the distinguished chairman of the committee yield at this time,

Mr. ELLENDER. I yield.

Mr. TALMADGE. Mr. President, I desire to commend my distinguished friend, the chairman of the Committee on Agriculture and Forestry, on the outstanding presentation he has made this morning. I have served on the Committee on Agriculture and Forestry, under the distinguished Senator from Louisiana, for beginning my 14th year now. No man in the Senate understands the problems of agriculture as well as does the distinguished Senator from Louisiana. He not only understands those problems, but he has worked diligently and faithfully to solve those problems to the best of his ability.

I am happy to associate myself with everything he has said today. I was born and raised on a farm. I live on a farm by choice at the present time. Of all the things I have done in my life, I have gotten more genuine, bona fide pleasure and satisfaction out of farming, and made the least money, than anything I ever undertook.

I think that is a fair illustration of what is taking place nationwide. It has about gotten to the point now that if one can afford to farm, he does not need to. The capital investment is so great that that person would be better off if he utilized his capital by liquidating his investment, moving to town, and starting a bank. This would return an infinitely better income.

We have seen throughout the Southeast and throughout the Nation little farms being plowed under year after year for more than 30 years. We have seen, unfortunately, those with few skills and with little education flock to the cities, hoping for a better life. There, unfortunately, many of them have become objects of welfare and created greater

burdens and problems for the taxpayers of our country. It is far more expensive to try to subsidize refugee farmers in our metropolitan areas on welfare than to use our subsidies to try to keep farmers in operation.

In speaking of subsidy, I would like to say that the greatest subsidy that takes place in the United States today is the subsidy that rural areas contribute to urban areas.

Why do I say that? First, it is a subsidy of brainpower. Able youth of rural areas seek job opportunities when they finish high school and college. Most of them migrate to the urban centers seeking employment and job opportunities. Think of what the cost is to these rural counties, the rural sections of our States, to educate those children, furnish police protection for them, and furnish health protection and all of the things the government provides our citizens today. Then, when they reach maturity and become productive citizens, they leave the area that has contributed so much to their education, and go to an urban area, there to make their contributions.

So I say the first subsidy is the brain drain, Mr. President; and the second subsidy is this: The American farmers today provide more food and fiber to American citizens at less cost, in proportion to their wage, than in any other area on the face of the earth. Americans today pay less take-home pay for their food than citizens of any other major nation in the world. The cost is far less than it was even during the depths of the depression.

Our distinguished chairman has announced that on February 18, we will start hearings on a farm bill. Time is of the essence, as the distinguished chairman knows, because most of the major farm programs expire this year. It takes advance notice and leadtime for the farmers to make their plans, to begin to finance their needs, to purchase their equipment, and to make arrangements for their leases and their contracts for the next year. So it is imperative that Congress pass a farm bill at the earliest practicable opportunity.

I know from my own experience as a farmer that most of them, at the present time, are losing money. They are living on the capital that they have accumulated heretofore. They are going more heavily in debt; and they are having a drastic time under present circumstances.

Unfortunately, their political force in the Nation is woefully diminished. Only 6 percent of the American people today make their livelihood from agriculture. Ninety-four percent are not engaged in agriculture. That gives them a woefully weak voice in Congress for achieving justice, fair farm programs, fair income, and fair parity, as the chairman so well knows, for that 6 percent of our population that has done a magnificent job in providing the food and fiber for not only the rest of the American citizens, but also vast segments of the people in foreign countries.



I compliment my chairman. I have allied myself with him. The chairman knows I stand shoulder to shoulder with him in this matter, to try to achieve some justice, some parity, some fair income for the American farmer.

Mr. ELLENDER. I thank the Senator.

Mr. President, I have only 19 more minutes to complete this presentation. I shall be happy to yield to anyone else after I complete my presentation.

I was speaking, Mr. President, before I yielded, of a study that was made by several colleges.[1]

The conclusions reached in this study show:

First. That on the average, $1 of farm income generated $3.33 of total income, whereas $1 of nonfarm income generated only $1.46 of total income;

Second. That the farm sector expended 88.4 percent of its income in the nonfarm sector, whereas the nonfarm sector expended only 10 percent of its income in the farm sector; and

Third. There was an increasing interdependence between farm and nonfarm sectors between 1950 and 1966.

This last point is explained by the growing complexity of highly mechanized farming which has created greater and stronger linkages between the farm sector and the rest of the economy. In other words farm production has become more dependent on purchased inputs from off-farm sources.

It would be well to emphasize again that this specific case applies only to Kansas data, and that Kansas is uncommonly agricultural. Hence the conclusions drawn may not be valid for wider areas.

Be that as it may, it would be difficult to persuade the president and board of directors of many major corporations that the farm market is not highly significant. Just before Christmas the New York Times—December 19, 1969, page 107—carried an item illustrating the point. It said in part:

> A decline in farm equipment sales was a major factor in the 15.4 percent drop in earnings of the International Harvester Company in the fiscal year ended October 31, Harry O. Bercher, Chairman, reported today.

That may explain why the common stock of International Harvester is riding near its 1969 low of 24⅛, after having been as high as 38 earlier in the year. Mr. Bercher and the stockholders will know about that.

In this connection I would like to point out that farm investment in farm machinery and equipment including motor vehicles totaled almost $31 billion in 1968 as compared to only about $3 billion in 1940.

I ask unanimous consent to have printed in the RECORD at this point table 4, showing those figures in detail.

[1] Abbas Mirakhor and Frank Orazem, "Importance of the Farm Sector to the Economy: A Multiplier Approach". American Journal of Agricultural Economics, Vol. 50, No. 4, November 1968, pp. 913–920.

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

TABLE 4.—MOTOR VEHICLES AND SPECIFIED MACHINES ON FARMS, VALUE BY CLASSES, UNITED STATES, JAN. 1, SPECIFIED YEARS, 1940 TO 1968 [1]

[In millions of dollars]

| Year | Automobiles | Motortrucks | Tractors | Other farm machinery | Total |
|---|---|---|---|---|---|
| 1940 | 958 | 262 | 503 | 1,337 | 3,060 |
| 1945 | 1,144 | 590 | 1,557 | 3,183 | 6,474 |
| 1950 | 2,313 | 1,446 | 2,905 | 5,502 | 12,166 |
| 1955 | 4,310 | 1,898 | 4,270 | 8,117 | 18,595 |
| 1960 [2] | 4,958 | 2,046 | 5,400 | 9,785 | 22,189 |
| 1964 | 6,174 | 2,034 | 5,376 | 10,491 | 24,075 |
| 1965 | 6,448 | 2,176 | 5,693 | 11,204 | 25,522 |
| 1966 [2] | 6,732 | 2,387 | 6,072 | 11,902 | 27,093 |
| 1967 [2] | 6,683 | 2,613 | 6,680 | 12,928 | 28,904 |
| 1968 [3] | 6,905 | 2,934 | 7,110 | 14,024 | 30,973 |

[1] For 48 States only.
[2] Revised.
[3] Preliminary.

Source: Economic Research Service, U.S. Department of Agriculture.

Mr. ELLENDER. Mr. President, what we might hope for is that the officials and the stockholders of numerous such companies will turn their capabilities toward improving the agricultural situation. There are many honorable precedents from the 1920's and 1930's of giants in industry who did exactly that with helpful results. It could happen again, and I hope it does. Even if such focus of attention does not develop new programs, it could be very worthwhile. It could result in substantial improvement of existing programs. And it could generate enough understanding of the existing situation in agriculture, and the basic need for programs, to make a world of difference to all of us.

Furthermore, there is the problem of rural-urban imbalance, which was just discussed by my good friend the Senator from Georgia (Mr. TALMADGE). For the past decade and longer our countryside has been progressively depopulated, as farms have been consolidated and people, especially small farmers and young people, have departed. At the same time urban areas have been increasingly afflicted with numerous migrants from farms and rural areas, many of them ill equipped by experience or training to live in or to contribute substantially to the urban economy. I do not mean to discuss this complex problem in its multiplicity of ramifications today. But there appears to be substantial evidence, notwithstanding the mirage of opportunity which led them on, that the quality of life has generally not been improved for the migrants, nor for the ghettos to which many of them went, nor even for the areas they departed. In other words, in terms of personal, community, and national improvement, it appears to be a net loss. That being the case, it behooves us to ask whether abandonment of farm programs may not greatly increase, at last for a few years, the existing migration, and result in economic and social problems which will cost our

country much more than the cost of the farm programs now under attack. It is something to ponder seriously.

Another aspect of the larger rural-urban problem is the fact that disposable personal income of the farm population from all sources on a per capita basis is less than three-fourths as much as that of the nonfarm population. That sad state of affairs is summarized in table 5, which I ask unanimous consent to have printed in the RECORD at this point.

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

TABLE 5.—PER CAPITA PERSONAL INCOME OF FARM AND NONFARM POPULATION, 1934-68 [1]—Continued

[In dollars]

| Year | Personal income of farm population: From farm sources [2] | From nonfarm sources [3] | From all sources | Disposable personal income: Of farm population from all sources | Of nonfarm population from all sources | Of total population from all sources | Per capita disposable income all sources, farm as percentage of nonfarm |
|---|---|---|---|---|---|---|---|
| 1934 | 99 | 68 | 167 | 163 | 500 | 414 | 32.6 |
| 1935 | 169 | 72 | 241 | 237 | 535 | 459 | 44.3 |
| 1936 | 145 | 83 | 228 | 224 | 614 | 518 | 36.5 |
| 1937 | 199 | 88 | 287 | 283 | 638 | 552 | 44.4 |
| 1938 | 152 | 80 | 232 | 227 | 590 | 504 | 38.5 |
| 1939 | 154 | 85 | 239 | 235 | 630 | 537 | 37.3 |
| 1940 | 158 | 91 | 249 | 245 | 671 | 573 | 36.5 |
| 1941 | 227 | 108 | 335 | 331 | 801 | 695 | 41.3 |
| 1942 | 351 | 136 | 487 | 480 | 973 | 867 | 49.3 |
| 1943 | 463 | 166 | 629 | 610 | 1,063 | 976 | 57.4 |
| 1944 | 492 | 179 | 671 | 630 | 1,151 | 1,057 | 54.7 |
| 1945 | 524 | 181 | 705 | 655 | 1,162 | 1,074 | 56.4 |
| 1946 | 609 | 179 | 788 | 742 | 1,217 | 1,132 | 61.0 |
| 1947 | 613 | 205 | 818 | 774 | 1,267 | 1,178 | 61.1 |
| 1948 | 737 | 239 | 976 | 913 | 1,365 | 1,290 | 66.9 |
| 1949 | 549 | 256 | 805 | 758 | 1,362 | 1,264 | 55.7 |
| 1950 | 612 | 272 | 884 | 841 | 1,458 | 1,364 | 57.7 |
| 1951 | 740 | 297 | 1,037 | 990 | 1,548 | 1,469 | 64.0 |
| 1952 | 706 | 309 | 1,015 | 952 | 1,609 | 1,518 | 59.2 |
| 1953 | 672 | 324 | 996 | 918 | 1,677 | 1,583 | 54.7 |
| 1954 | 658 | 312 | 970 | 886 | 1,678 | 1,585 | 52.8 |
| 1955 | 597 | 325 | 922 | 854 | 1,772 | 1,666 | 48.2 |
| 1956 | 600 | 352 | 952 | 885 | 1,850 | 1,743 | 47.8 |
| 1957 | 625 | 375 | 1,000 | 927 | 1,902 | 1,801 | 48.7 |
| 1958 | 747 | 390 | 1,137 | 1,062 | 1,915 | 1,831 | 55.5 |
| 1959 | 664 | 425 | 1,089 | 1,001 | 1,998 | 1,905 | 50.1 |
| 1960 | 737 | 458 | 1,195 | 1,100 | 2,017 | 1,937 | 54.5 |
| 1961 | 824 | 509 | 1,333 | 1,226 | 2,050 | 1,983 | 59.8 |
| 1962 | 856 | 573 | 1,429 | 1,308 | 2,127 | 2,064 | 61.5 |
| 1963 | 906 | 637 | 1,543 | 1,410 | 2,191 | 2,136 | 64.4 |
| 1964 | 875 | 718 | 1,593 | 1,462 | 2,340 | 2,280 | 62.5 |
| 1965 | 1,096 | 812 | 1,908 | 1,772 | 2,477 | 2,432 | 71.5 |
| 1966 | 1,243 | 903 | 2,146 | 1,985 | 2,638 | 2,599 | 75.2 |
| 1967 | 1,196 | 1,001 | 2,197 | 2,019 | 2,787 | 2,745 | 72.4 |
| 1968 | 1,248 | 1,121 | 2,369 | 2,163 | 2,976 | 2,933 | 72.7 |

[1] The averages in this table are derived by dividing appropriate totals appearing in tables 5H and 6H by the population estimates in table 6H.

[2] Includes returns from farming operations to resident farm operators for their capital, labor and management, after deduction of farm production expenses (there is no allowance in the item farm production expenses for a return on investment in farm capital). Also includes farm wages and other labor income received by hired farm-resident workers.

[3] Includes all income received by farm residents from nonfarm sources such as wages and salaries from nonfarm employment, nonfarm business and professional income, rents from nonfarm real estate, dividends, interest, royalties, unemployment compensation and Social Security payments.

Source: "Farm Income Situation," Economic Research Service, U.S. Department of Agriculture, FIS-214, July, 1969. p. 50.

Mr. ELLENDER. But money still makes the economy go, and dollars which the farmer doesn't obtain cannot be used for a better standard for himself and his family, nor to improve his community, nor to conserve the farm, that productive plant which is so important to urban America and to future generations.

It is well worth our notice that highly inadequate per capita farm incomes continue in spite of much consolidation of farm units and great reductions in farm population. There has been heavy investment in modern machinery and modern technology. Management is sufficiently good that in recent years agricultural productivity, measured on a man-hour basis, has increased about twice as rapidly as in industry. Therefore, even with the help of Government farm programs, farm incomes have lagged seriously. One might think that the highly commendable job of food and fiber production accomplished by U.S. agriculture would be quite enough. Yet the record shows that many farmers have attempted to work themselves out of this income deficit by energetically pursuing off-the-farm work. Some of it is on a seasonal basis; others take a second or "moonlighting" job. Nevertheless, even when the two sources are added, the farmer's pie, on the average, is less than three-fourths as large as that of the farmer's urban cousins.

V. WHAT IF THE 1965 FOOD AND AGRICULTURAL ACT IS NOT EXTENDED OR REPLACED, AND EXISTING FALLBACK PROGRAMS ARE REACTIVATED?

It will, in my considered opinion, become fully evident as we proceed item by item with the several commodities, that to return to old programs is wholly unacceptable.

For feed grains there would be no diversion, no price-support payments, no corn bases. Price support, through loans or purchases, would continue, available to all producers at not less than 50 percent nor more than 90 percent of parity, as the Secretary determines, and would not result in increasing CCC stock of corn. Other feed grains would be supported at a fair and reasonable level in relation to corn. It seems highly probable that production would rise sharply, for it would have to be anticipated that some considerable part of the 41,000,000 acres diverted under the feed grain program in 1969 would return to grain production. It is estimated that the corn loan would be about 90 cents per bushel. Inevitably, feed gain production would outrun usage and increase CCC stocks.

Wool would again become a nonbasic commodity, and direct price-support payments would end. Loans up to 90 percent of parity could be made by USDA.

There would be no further authority to conduct a cropland adjustment program—CAP.

Another big item is wheat. As Senators know, we already have our full share of trouble with wheat in a greatly oversupplied and price-depressed world market. If we were to revert to the pre-1965 act situation, it appears that the Secretary would be required to determine and announce whether the supply of wheat is likely to be excessive, and if so to proclaim a marketing quota program subject to grower referendum. Based on the national marketing quota, individual farm quotas would be established in terms of acreage allotments with the following possible developments:

First. If marketing quotas are proclaimed and are approved by two-thirds or more of the farmers voting in a referendum, marketing quotas would be in effect and land-use penalty would apply for failure to make mandatory diversion, but there would be no diversion payments. A wheat marketing certificate program would be in effect—domestic certificates plus loan not less than 65 percent or more than 90 percent of parity, with processors required to pay full value of domestic certificates.

Second. If marketing quotas are disapproved in referendum, there would be no marketing quotas, no land-use penalty, no wheat certificates, and no diversion payments. Price support through loans and purchases would be available to producers who comply with their allotment, at 50 percent of parity.

If marketing quotas are not proclaimed, there would be no marketing quotas, no land-use penalty, no wheat certificates, and no diversion payments. Price support through loans or purchases would be available to producers who comply with their allotment at 75 percent to 90 percent of parity, the maximum level depending on the supply percentage.

Under any alternative, there would be no authority for wheat-feed grains substitution as in the present program.

Cotton, too, would become a real headache. The Secretary would be required to determine and announce whether the total supply of cotton would exceed normal, and, if so, to proclaim a marketing quota program subject to grower referendum. Based on the national marketing quota, individual farm quotas would be established in terms of acreage allotments:

First. If marketing quotas are proclaimed and are approved by two-thirds or more of the farmers voting in a referendum, marketing quotas would be in effect, but no diversion or price-support payments would be made. Price-support

loans would be available to producers who comply with their allotments through loans or purchases at not less than 65 percent nor more than 90 percent of parity as determined by the Secretary. There would be no authority to make cotton available to domestic mills at the world price if such price is lower than legal minimum price for unrestricted use. This would be considered highly unfavorable by the trade.

Second. If marketing quotas are disapproved in referendum, there would be no marketing quotas, no diversion or price-support payments. Price support through loans or purchases would be available to producers who comply with their allotments at 50 percent of parity.

Third. If marketing quotas are not proclaimed, there would be no diversion or price-support payments. Price support by loan, and so forth, would be at 65 percent of 90 percent of parity. Compliance with allotments could be required as a condition of eligibility for price support.

Under any alternative, there would be no authority to sell, lease, or transfer cotton allotments.

It is assumed that cotton output would increase; and that cotton producers, thanks to a loan of about 31 cents per pound would have higher incomes in the first year. It is also assumed that the higher price would impede domestic use of the crop and reduce its ability to compete with synthetics. One prospective result would be an increase of about 6,000,000 bales in CCC cotton stocks from the 1971 crop.

Suffice it to say that some experts who have considered the matter, compute that total net farm income in 1971 under "reversion" would not be hit nearly so hard as under the assumption above that farm support programs were abolished. It is indicated that cotton income would rise in 1971, but that gain would be more than offset by lower incomes to producers of wheat and feed grains. The nature of costs to the Government would shift from sizable direct payments to costs involved in loan activity; the cost to the Government in 1971 is estimated as much as $800 million less than in 1969. However, this would be temporary relief, for the old devil of excess surplus stocks in Government hands would rise again, perhaps by as much as 40 million tons of feed grains and 6 million bales of cotton. Hence, costs to the Government, though reduced initially, would mount as stocks increased and disposal became necessary. Moreover, net income loss to farmers in 1971 is computed to exceed savings to the Government, perhaps by as much as 50 percent. In other words, with costs to the Government temporarily reduced by something like $800 million, net farm income would fall back by as much as $1,200 million.

One is forced to conclude that we should all work to improve existing programs, and by all means keep what we have until we are able to discover something better.

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

Mr. ELLENDER. I yield.

Mr. GORE. I listened with great interest, admiration, and approval to the able address of the very distinguished and devoted senior Senator from Louisiana.

Mr. ELLENDER. I thank the Senator from Tennessee very much. I appreciate his remarks.

Mr. MANSFIELD. Mr. President, I already have stated to the distinguished Senator from Louisiana how much I appreciate what he had to say. I only wish now to express the hope that those Members, because of official business and other reasons, who were not in the Chamber today would take the time and the trouble to read this speech in detail; because there is a lot of meat in it for those who come from the urban areas, and it explains very well the situation which confronts those of us and the people whom we represent in the rural areas.

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

Mr. ELLENDER. I yield.

Mr. AIKEN. I simply want to say that I have the Senator's speech in full on my desk. I was detained at a meeting of the Committee on Foreign Relations, so that I did not hear all of the speech.

I know that what the Senator from Louisiana says should be taken very seriously. The public has recently been rather prone to think that agriculture is a decadent and unnecessary industry in this country. The Senator from Louisiana knows better. I know better, too. Agricultural programs are important. Good agricultural programs are much more important than less effective agricultural programs.

I join the Senator in what he has said here and assure him that he will have my full cooperation in trying to work out the best possible agricultural future for America, because it is still far and away the most important industry we have.

Mr. ELLENDER. I wish to thank the Senator from Vermont very much. We not only need his support and his guidance—he has been on the committee for quite some time—but I am also hopeful that we can get assistance from every direction.

I invite the attention of my good friend from Vermont to the fact that in the speech I presented, I have had tables printed in the RECORD, and I emphasize that they are very important because they show what would happen to the economy if we did not come out with a farm bill.

Mr. AIKEN. Let me assure the Senator from Louisiana that not only will his speech be read by me very carefully, but so will the tables.

## ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, are we now in morning business?

The PRESIDING OFFICER. The Chair would inform the Senator from Montana that morning business began just 1 minute ago.

Mr. MANSFIELD. I thank the Chair.

## STATE DEPARTMENT PERSONNEL REORGANIZATION

Mr. AIKEN. Mr. President, on January 14, Deputy Under Secretary of State for Administration, William B. Macomber, Jr., delivered an important talk at the State Department regarding personnel reorganization of the Department.

As many of my colleagues know, there have been many studies concerning reorganization of the State Department. As often happens, studies and special commissions are excuses for inaction.

But Bill, whom many of us remember served very effectively as head of the State Department's congressional liaison, is a man of action.

He has outlined a blueprint for the State Department so that it can regain its rightful job of running the diplomacy of our country and free itself of the 4–F category to which it was assigned over 20 years ago.

The State Department needs to be a right arm of the President in helping him to formulate foreign policy. This function has been lost over the years for a variety of reasons which I will not dwell on here.

I am hopeful that the new State Department personnel policy as outlined by Mr. Macomber will result in a stronger, more useful State Department.

Along this line, I would also like to call attention to a letter President Nixon wrote last December 9 to the Ambassadors of all our overseas missions.

The President told our Ambassadors that they were the captains of their own ships

The Ambassador is the man who should call the shots and direct policy in the overseas missions, as he is the personal representative of the President.

This has been a difficult job when we consider that of the approximately 23,000 American employees attached to our missions overseas, only 5,000 are assigned to State Department functions.

I am pleased that the President and Secretary Macomber are taking steps to control and manage our vast foreign affairs bureaucracies.

I ask unanimous consent that the text of President Nixon's letter to the Ambassadors and the text of Secretary Macomber's address on State Department personnel reorganization be printed in the RECORD.

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

TEXT OF LETTER

The Department of State today released President Nixon's letter to all American Ambassadors describing the responsibilities he expects them to assume.

The President's letter, dated December 9, reiterates for his Administration the take-charge authority of Ambassadors in their countries of assignment.

The text of the President's message follows:

DEAR MR. AMBASSADOR: Your mission as American Ambassador to (country of assignment) is of the utmost significance to our country and to me personally. I wish you every success in this endeavor.

I attach the greatest importance to my Constitutional responsibilities for the conduct of our relations with other countries. As the personal representative of the President of the United States, you share these responsibilities in the country to which you are accredited.

You will, of course, report to me through

and normally receive your instructions from the Secretary of State who has responsibility not only for the activities of the Department of State but also for the overall direction, coordination and supervision of the United States Government activities overseas.

I believe that all possible measures should be taken to improve and tighten the processes of foreign policy implementation abroad. I know I can count on your full support in directing the activities of all elements of the United States Mission to achieve this objective. To assure you and all concerned that you have my full personal backing, I want to make the following comments on your own authority and responsibilities.

As Chief of the United States Diplomatic Mission, you have full responsibility to direct and coordinate the activities and operations of all of its elements. You will exercise this mandate not only by providing policy leadership and guidance, but also by assuring positive program direction to the end that all United States activities in (the host country) are relevant to current realities, are efficiently and economically administered, and are effectively interrelated so that they will make a maximum contribution to United States interests in that country as well as to our regional and international objectives.

I am concerned that the size of our representation abroad be related to a stringent appraisal of policy and program requirements and that the number of personnel of all agencies be kept at the very minimum necessary to meet our objectives. I shall expect you to maintain a continuing personal concern on this matter and to inform the Secretary of State when you believe that the staff of any agency or program is excessive.

I shall expect you to assure the highest standards of personal conduct by all United States personnel, civilian or military; you have authority to take any corrective action which in your judgment is necessary.

You have, of course, the right to be kept informed to the extent you deem necessary, of all the information or recommendations reported by any element of the Mission. The Secretary of State and I have made it clear that we will welcome the opportunity to consider alternative policies and courses of actions before making final decisions. When you or other members of your Mission believe such alternative merit consideration, we encourage your putting them forward along with your own recommendations.

I will reserve for myself, as Commander-in-Chief; direct authority over the military chain of command to United States military forces under the command of a United States area military commander, and over such other military activities as I elect, as Commander-in-Chief, to conduct through military channels.

However, I will expect you and the military commanders concerned to maintain close relations with each other, to keep each other currently informed on matters of mutual interest and in general to cooperate in carrying out our national policy. If differences of view not capable of resolution in the field should arise, I will expect you to keep me informed through the Secretary of State.

I deeply believe, as I said in my Inaugural Address, that forces now are converging that may make possible the realization of many of man's deepest aspirations. If "the times are on the side of peace," I also deeply believe that you, and the dedicated personnel of the Foreign Service and the other departments and agencies who comprise the staff of your Mission, will insure that we take maximum advantage of the opportunities that are so clearly before us.

With my best wishes,

Sincerely,

RICHARD NIXON.

## MANAGEMENT STRATEGY: A PROGRAM FOR THE 1970's

(Remarks by Hon. William B. Macomber, Deputy Under Secretary of State for Administration)

In the decades remaining in this century relations among nations will offer greater opportunity and greater peril to the occupants of this earth than ever before.

What this means to those in our profession is awesome indeed. Never has so much depended on our capacity for leadership and on our professional strengths. And because the world has become so extraordinarily complex, dynamic, and dangerous, never before has our role been so difficult.

I want to talk with you today about a "Program for the Seventies" designed to help prepare the Foreign Service and the Department of State to meet the challenge of these decades, and to fulfill our responsibilities to the President, the Congress and the American people.

This is an effort to which Secretary Rogers and Under Secretary Richardson attach great importance. They have asked me to stress today that what we accomplish in this regard will be of far more lasting significance than the handling of a great many of the more transitory matters which you and they must necessarily deal with on a daily basis.

They know, as you know, that there are those outside the Department and the Foreign Service who, also mindful of the challenges ahead, are anxious to impose reforms and "modernization" upon us. But the Secretary and Under Secretary believe, as I am sure you do, that such efforts will be neither as informed nor effective as those we initiate ourselves.

Some outsiders say that we cannot do the job from within. Implicit in my remarks today is the conviction that this is wrong.

II

We start with a number of assets. First and foremost is the ferment for change within the Department and the Foreign Service. Second is the farsighted and flexible character of our basic legislation, beginning with the 1946 Foreign Service Act and culminating in last year's Hays Bill. Finally, starting with the Hoover Commission and reaching through the Herter Committee and the recent American Foreign Service Association reports, we have on hand the results of a series of very helpful studies on how the Department should gear up to meet the requirements of a modern diplomacy. There has been a great deal of thinking about this problem by my predecessors and others in and out of the Department and the Foreign Service. Under the leadership of my predecessors much preparatory work has been done towards implementing the many recommendations that have grown out of the earlier studies.

Many of the ideas I will present today are distilled from those earlier efforts. Their newness no longer jars. The ground-work for what we seek has been laid. We are asking not for revolution but for the acceleration of an evolution which has already begun.

And let me make another important point. Despite this Administration's marked determination to advance this evolution, we will assume that no matter how sound our ideas may be, it is not wise to attempt to make these changes simply by fiat.

Rather, our success will be more significant and lasting if those most directly affected are involved in the creative and implementing process and are convinced of the wisdom of what is proposed. In the weeks immediately ahead therefore, we will set up task forces to work on almost all the areas I will talk about today. They will be composed of a wide selection of Foreign Service and Civil Service employees of this department—wide in terms of experience, functional specialty and age, and they will be assigned specific tasks and precise deadlines.

And I hope that our sources of ideas will not necessarily be limited to those of you serving as members of task forces. I invite everyone in the State Department to pass their thoughts along to the task forces or to my office. And I also invite employees of our sister foreign affairs agencies to send in suggestions through their representatives on the Board of the Foreign Service.

III

Let us begin today by taking an honest look at ourselves. And we do not have to start by being apologetic. The quality of our personnel—its brain power, integrity and dedication—is, I believe, unexcelled anywhere.

But from a management point of view, our critics have more to go on. They exaggerate of course. But to use a modern phrase, management has not been our bag.

At the conclusion of World War II the State Department and the Foreign Service played a major part in developing acceptance among their fellow citizens of the new role America was necessarily to play in the post-war world. But organizationally and managerially, the State Department and Foreign Service had, and have had ever since, great difficulty in adjusting to the requirements of that new role. This has been true, despite the valiant efforts of a number of our more farsighted colleagues.

As you know, we are an organization which has traditionally been comfortable with policy-making and with negotiating and promoting that policy abroad. We have understood the importance of tact, sensitivity and persuasiveness. But we have tended to be intuitive in nature, weak in planning and unenthusiastic about management. In retrospect, it is clear that these change-resistant instincts have caused a great share of our difficulties.

Our problems started in the years immediately following World War II, years of enormous creativity on the American foreign policy scene, with the development of new instrumentalities such as USIA, Foreign Aid and CIA. Those and many established Departments of Government began legitimately to play an ever-increasing role in U.S. foreign affairs. Unfortunately, when faced with these developments, the instinct of the traditional foreign policy establishment was to protect its exclusiveness and high standards.

There were reasons for that effort—at a time when the new agencies were being staffed rapidly with only occasional adherence to optimum personnel standards. But we—the Department and the Service—lost a good deal too. We did not participate *to the* degree we should have in the important work of developing these new agencies. We were not organized to do so managerially, and we did not have the specialists required. We thus began "to lose control of the action."

Nevertheless, Presidents have continued to look to us as their principal staff arm in forging a national policy out of the spectrum of diverse, specialized and often parochial foreign affairs interests scattered throughout our Government. And Presidents have continued to expect this Department to insure that our complex and wide-ranging governmental activities abroad are coordinated and carried out in a manner consistent with the policies they have determined.

But in the intervening years we have not been as systematic, competent and aggressive as we should have been in meeting these responsibilities.

It is true that during these years the Department has been led by a series of strong Secretaries of State, all of whom have had remarkable ties of friendship and personal influence with their Presidents. But the personal influence of Secretaries of State and the

institutional role played by the Department should not be confused. The key fact is that as an institution, despite many brilliant performances along the way, we have not met the challenge of foreign affairs leadership as successfully as we might have. Our failure to do so has caused frustration. And it has raised a clear prospect: either we produce the improvements necessary to meet this challenge or, as I have suggested, this will be done for us.

To meet this challenge, we do not need more broad-gauged studies for the time being. The ones we have provide us with an excellent base from which to move. The need is not for more studies of this type but rather to implement the ones we have.

This is not to say, of course, that we are done with the need for studies. But the kind we require now are of a more specific nature and targeted on specific problems. Throughout my talk today I will suggest a number of areas where I think, working together, we should carry out these more specific studies.

Let me stress again that the need now is for a joint effort to implement what has already been thought out. As Secretary Rogers says, "let's quit talking about the problem and start solving it."

IV

At this point, let's also put to rest two old arguments which have seriously inhibited our modernizaation process: (1) whether we should be generalists or specialists, and (2) whether we should be strictly policy-makers or operators and managers as well.

Some years back it was often said in this building that the State Department did not run anything well; that that was not its capability; that its capability was to formulate and promote policy.

In the intervening years it has become clear that we can no longer take refuge in that tidy division of talent. For now it represents an abdication of responsibility. We still must take the lead in policy formulation, but if we are really going to lead we must also be prepared to manage and orchestrate the overall spectrum of our nation's activties abroad.

Regarding the issue of generalist versus specialist, clearly the age of the specialist is here. But while the era of the generalist is past, the need for what I call the generalist "core" skills is not. In fact the need for these skills is greater than ever, and no future officer—no matter what his specialty—can afford not to have mastered them. What I am saying therefore is that we need more specialists—but all with a command of the "core" diplomatic skills.

By core skills, I mean, among others, the ability to negotiate a result which is essentially to our advantage but which leaves a situation not so unsound or one-sided that it will fester and ultimately come undone. This is the consummate art of the diplomat, whether he is dealing with small matters or great. Another core skill is the capacity for objective and penetrating analysis. Another is that subtle combination of tact, persuasiveness and character which produces the capacity to win the confidence of others. Another is the discipline of accurate reporting without which any diplomat is a menace. Still another is the mastering of foreign languages.

We have done an increasingly good job with language training. But on the whole we do not pay enough attention to the systematic development and transmission of the other core skills. Take the negotiating skill. As it is now, each generation tends to learn this on a trial and error basis. And when that generation retires and a new one comes along, the process is repeated. No system can produce instant negotiators, but we can I think find more systematic ways to learn this art and to use more effectively the experience of one generation to help in the development of the next.

But I said a moment ago that the age of the specialist is here. Perhaps the most striking thing about modern diplomacy is the diversity of activities it encompasses—both within the State Department and throughout the U.S. foreign affairs community. Equally striking therefore is the diversity of skills and knowledge now required, both to staff the Department's own traditional functions and also to allow it to carry out its external coordinating role. We still need History and Political Science majors, but we need much more. We must therefore adjust significantly our personnel recruitment and development practices.

And also of course the diversity of personnel and function, both in the State Department itself and throughout the spectrum of U.S. foreign activities, dramatically underscores the premium we must place on the development of coordinating and management skills.

So if the Department is to perform its leadership role in the remaining decades of this century, it must build a personnel system which develops specialists, which instills the core skills in all personnel regardless of specialty and which produces experienced and effective managers.

An important key to accomplishing this is to refine and fully institute a "functional specialization" personnel system.

V

What we have in mind is the full development, and implementation in the next few months, of a five-category system. The first four functional specializations would be political, economic/commercial, administrative, and consular. I will come back to the fifth in a moment. From now on we think our basic policy should be to recruit officers for one of these specific categories. We would ascertain how many recruits we need for each, based on the projections of the five-year manpower planning mechanism we intend to develop. In following this system I think we can obtain a much wider range of background and aptitude than we have had up to now in the new officers entering the service. To target on the people we want, we would propose to use the following devices:

The new written examination would emphasize aptitude over specific academic knowledge so as to broaden the base of candidates.

Oral examination panels would be divided up by functional specialization.

A permanent system of recruiters would be established in business schools, universities and through the Public Members Association.

Selection procedures would be considerably shortened so that we do not lose many of our best applicants.

The idea of joint recruiting with AID, as we already do with USIA, would be explored.

Every effort would be made to supply the applicant in advance with sufficient information about the nature of, and aptitudes required for, each functional specialization so that he can make an informed selection. Moreover, if later in his career it appears that his interests and aptitude would indicate a shift in specialty, we would be as flexible as possible in effecting this.

In addition, the panel would be authorized to recommend to an applicant that he change his choice of specialization, if this seems appropriate as a result of its interview with him.

While we are on the subject of recruiting, I have long felt that we overlook one of the best sources of new blood in our own house. Accordingly, to borrow a Navy-Marine Corps phrase, I recommend that we develop a *Mustang Program* for the Department of State. I would like supervisors at every level in this building to identify and encourage junior employees who have the wish and aptitude for officer careers. At the same time, we shall use our training resources to the maximum in filling the education gaps of these employees to help them aspire to positions of officer rank. I especially hope that this program will effectively supplement our continuing minorities program.

Turning back to the functional specialization system, with the exception of occasional broadening assignments in other fields or agencies, most officers recruited for a particular specialty will be expected to spend the bulk of their careers working in assignments that fall into that specialty. They will compete for promotions by specialty and not across the board; officers in a given specialty will have the opportunity to rise to the top echelon of each specialty and the way will be kept clear for that purpose.

For example, we are not going to appoint political specialists Consuls General as consolation prizes if they fail to become Ambassadors or Deputy Chiefs of Mission. We believe that most important consular posts should be held open for consular specialists.

And those officers in all fields demonstrating executive talent will be moved across specialty lines and will provide a pool of managers for program direction positions, but I will return to this in a moment.

We will expect the four basic personnel specializations—that is Political, Economic/Commercial, Administrative and Consular—to be manned largely by Foreign Service Officers. You are all familiar, of course, with the type of work normally performed by each of these groups and I need not elaborate further on it here. I would like to stress, however, that in the future in all four categories we are going to expect a greater effort and competence in trade promotion. And in two of our personnel specialization—Consular and Economic/Commercial—trade promotion will be a responsibility equal to any other they carry.

I said earlier we plan to have a fifth personnel specialization. We suggest that the fifth specialty be manned however by Foreign Service Reserve Unlimited Officers (FSRU's), a category which we now have available to us under the provisions of last year's farsighted Hays Bill. This category will be reserved for scientific specialists, doctors, nurses, security officers, communicators, building engineers, permanent faculty members of the Foreign Service Institute, and other specialists with unique skills who are going to play a permanent and important part in our career system.

Under our present thinking no one will be eligible for an FSRU appointment who is not prepared to serve abroad. However, the ratio of time spent abroad and in the United States will vary markedly from the FSO specialty areas.

FSRU's will be included in the Foreign Service retirement system and will be subject to selection-out. But the rules for selection-out, time in grade, and so on will be much more flexible than in the four "line" specialties.

As I have said, we want the five categories manned by FSO's and FSRU's. Officers who are presently in the GS system and Foreign Service Staff Officers will be invited to convert their status. We hope many of them will convert where their work clearly fits into one of the five specialty areas. For example, it would seem to us that many Foreign Service Staff Officers would make excellent Foreign Service Officers in the consular and administrative fields of specialization. I would stress, however, that if they decide not to convert, that is their decision, and it will be respected and accepted without prejudice to them. But in the future we would expect new recruits for these areas of specialization to be Foreign Service Officer personnel.

Before proceeding with the conversions I have mentioned, however, we will need to complete, on a priority basis, the updating of an inventory of our needs in each of the five State Department specializations

In the process of developing this inventory, we intend to emerge with a projected five year rolling personnel plan—always set up five years ahead, but reviewed and altered on an annual basis.

After comparing our requirements with the number of Foreign Service Officers now in those specialty areas, we will look at the number of additional persons we need in each one and at what the appropriate grade levels should be for each existing opening. After we have identified the number and levels of openings, we will fill them by lateral entry from our GS and those of our FSR and Foreign Service Staff Officers who are interested in converting.

Let me say parenthetically a word to the FSR's without re-employment rights. Those officers, unlike Civil Service and Foreign Service staff personnel, and not in a position to retain their present status indefinitely, even if they wish to do so. Not only is there a legislative time limit running on their reserve appointments, but more immediately we are under instructions to reduce the total number of employees in the Department between now and June 30. Some FSR's will become eligible for integration into the FSO and FSRU specialties, but some others regrettably will have to leave the Department.

We will, of course, continue to have many Civil Service colleagues in important positions in the Department which do not have counterparts abroad, such as, for example, our lawyers, intelligence specialists and other types of specialists. In the clerical and secretarial area we shall also continue to have many Civil Service employees who for family or other reasons cannot serve abroad. We will thus continue to be deeply dependent on both officer and clerical-level Civil Service personnel. And management must insure that their interests are appropriately supported and protected.

Before leaving the subject of personnel resources, a word is in order about regular lateral entry into the career FSO and FSRU ranks. And this is quite apart from the special conversion program I have just spoken of in connection with the installing, over the next few months, of our five-category functional specialization system. Our problem in the past has been the erratic use of lateral entry. It is obviously not helpful to a career system to insert into it widely-fluctuating numbers of outside personnel from year to year, thus foreclosing promotional opportunities.

On the other hand, our system becomes isolated and weakened if it does not, on a regular basis, infuse itself at the middle and senior levels—in a limited but constant way—with talents and experience developed outside. We should plan for the day, therefore, when we can absorb on an annual and steady basis a relatively unfluctuating number of lateral entrants—thereby helping to preserve an openness in our system without disrupting the pace of normal career advancement.

That effort must be largely deferred in the short run, however, until we can complete our effort to absorb as many as possible of the excellent officers in the vulnerable FSR position I have just alluded to.

We will also have to provide a more satisfactory means of appointing a few high-level personal assistants to Presidential appointees. This type of official, who moves in and out of the Department as the party in power changes, clearly does not fit into our permanent career appointment system nor on the other hand should he be limited to a 5-year Foreign Service Reserve appointment. A more flexible device, reminiscent of the old Schedule-C authority, must be found to appoint such officials for the duration of their pricipals' tenure.

I am pleased to report that USIA and AID have agreed, at the request of the Board of the Foreign Service, to explore the possibility of further developing and formalizing similar functional specialization personnel systems in their organizations. What we hope to end up with is a family of personnel systems so compatible and interchangeable that it is academic whether they are merged into one system or not.

VI

But basic to our program for the 70's is not just the development of specialization on the one hand, and the mastering of the core diplomatic skills in all specialities on the other. There is, as I have already indicated, an equally critical need to be met by our personnel system. That is to develop managers, people at the senior executive level who are capable by training and experience of managing the overall foreign affairs effort of the United States.

An absolutely essential requirement for our future Ambassadors, Deputy Chiefs of Mission, Assistant Secretaries, Deputy Assistant Secretaries and counterparts in our sister agencies is the capacity to manage. They will have to be more than very succesful substantive officers. That type of experience will not be enough to prepare them for the basic management responsibilities of coordinating and orchestrating inherent in these top positions.

The key to our system, then, will be to spot our potential managers early and, having identified them, to insure that they have a chance to be tested by experience in management. Our interchange of personnel will not be limited to functional specialities within the Department. There is greater management experience to be found in AID and USIA than in many sections of the State Department. This type of experience also gives our people a better understanding of the workings and objectives of our sister agencies—and those agencies are not going to accept fully our orchestrating and coordinating role unless they are also convinced that we fully understand their work.

Conversely, AID and USIA officers would gain from experience in this Department, which would give them a better understanding of our own objectives and methods. In the process we hope to broaden significantly the base of career officers from which to select executives for senior management positions. In other words, while a majority of top diplomatic assignments will continue to come out of our Department, they will not be limited to this source, and we will be looking across the range of eleven or twelve AID-State-USIA specializations in our search for senior executive talent.

We should also I think be developing greater exchange possibilities with, and looking for potential top managers from, several other agencies and departments which play important roles in the foreign affairs community.

VII

Within our own specialization categories, we think we can get younger officers off to a faster and more interesting start by beginning cross-specialty and other agency assignments earlier and by lowering position levels to provide more meaningful job experience for junior and mid-career officers. This effort is important because cumulative experience in the craft of diplomacy, in the exercise of management and in the mastery of specialization is a key commodity this institution must, in the national interest, steadily supply. And we cannot afford to waste time in starting our young officers in the process of getting this experience.

But the reverse of the coin is that it makes no sense to sacrifice older and more experienced officers—just on a "youth must be served" basis. We are going to keep the promotion channels unclogged. We are going to correct the top-heavy character of our system. We shall be ever on the lookout for older officers who have lost their drive. But let's keep our perspective. It is our more experienced and senior officers who are our principal current assets in the immediate effort each day to protect the interests of our country and to keep the world from unleashing its megatons. Neither youthful impatience nor the responsibility and natural enthusiasm that management has for the rapid development of younger officers' potential must blind us to that fact.

There is one caveat to what I have just said however, and it is this. Older and more experienced officers do not seem to have natural advantages in the critical areas of creativity and innovation. Here, clearly, our younger officers should feel neither humility nor inhibition. In fact, it can be argued that creativity can better come from those who do not already know too many reasons why too many things won't work. I will return to this problem of creativity in a moment. For now, suffice it to say to my younger colleagues: "the sky's the limit. Let's see what you can do!"

VIII

A career development system is only as sound as its performance appraisal and promotion policies. Our present performance evaluation system is inadequate for an era in which we are encouraging professional specialization, and even more important, initiative and assertive leadership. We will therefore want to take a hard look at our evaluation procedures, and also find better ways to assure the promotion of officers displaying these qualities.

Now let me say a word with respect to retirement and selection-out. I am very pleased that legislation pending before Congress will give FSO's the same benefits that their Civil Service colleagues receive, and will make early retirement fairer and more attractive.

However, this development will not entirely solve the problem of senior congestion in the Department. The rank structure of our Service resembles an inverted pear, and it has become more misshapen in recent years. As a result, we have had to recommend, and the Board of the Foreign Service and the Secretary have approved:

Recommending legislation to the Congress reducing the mandatory retirement age for Career Ministers from 65 to 60.

In the future holding the number of Career Ambassadors on active duty to approximately five.

In addition we shall:

Be prepared to use section 519 of the Foreign Service Act which permits the *retirement* of former Ambassadors for whom there are no longer suitable positions available.

Continue to use selection-out.

Facilitate early retirement by searching for ways to improve our "counseling-out" and outplacement services—and if possible, obtain authority for monetary incentives as well.

Even these measures, however, may not solve the fundamental problems. If not, we will want to turn to such other means as providing retirement annuities for Foreign Service personnel who have completed 20 years of service. We do not want to attract people who are only interested in a 20-year career, but because of the competitiveness of our system, we want to provide fairly for good men and women who will be with us only that length of time.

Finally, there are a number of problems involving personnel perquisites we plan to look into. For example:

There are inequities between the Civil Service and the Foreign Service transfer allowances.

We hope to extend education allowances abroad to cover kindergarten.

Widows of Foreign Service personnel who

die abroad should continue to receive housing and other allowances for a reasonable period of adjustment.

Additional medical benefits are needed.

The Civil Service Commission has been considering a number of improvements which we fully support for our own GS employees; for example, optional retirement after 30 years regardless of age and a full 2% annual retirement compensation rate.

Before leaving the subject of personnel, I would like to announce an important new position. As a result of a recommendation made by the American Service Association and the Board of the Foreign Service, we have authorized the establishment of an Office of Welfare and Grievances in the Department of State. The Director will be a senior, able and highly respected officer who will have wide authority to investigate and advise on personnel grievances and wrongs. His name will be announced shortly, his scope will be unlimited, and he will report directly to me.

IX

Now let me turn to certain non-personal aspects of the way we manage our affairs. Here again, as a result of earlier studies, we already have a great many useful recommendations about organization and management to choose from.

There have been a number of suggestions made with respect to re-organizing the top structure of the Department, and the Secretary is considering certain possibilities in this regard at the present time.

However that may develop, I hope we can maintain the principle that a career officer would always occupy at least one of either the current Under Secretary or Deputy Under Secretary positions, and that an incoming administration would retain at least one occupant of these top four positions. A number of administrations have resisted the idea of a "Permanent Under Secretary" and of course no administration can bind a successor to accept this device. What I am suggesting is a compromise. In this way an incoming administration would maintain a wide range of choice with regard to its selection of top management personnel, while at the same time preserving an element of continuity.

X

But as any bureaucrat knows, changes in tables of organization, significant as they may be, are never final and never finally solve basic management problems.

More fundamental to management success are: first, the attitudes and approach that managers at all levels bring to their jobs and instill in those about them; and second, the management tools we are contiffually developing and making available throughout our organization.

Here again however, there are no final answers, for the process of improving management must always be a continuing one. But our "Program for the 70's" can establish goals, identify areas to work on and directions to move in.

With respect to attitudes and approach, let us recognize that, while persistence and consistency are important in foreign policy, an essential key to our ability to lead lies in whether we produce ideas. We are quite effective in coming up with short-term tactical ideas. Since that creative period following World War II, however, our record for producing new ideas of long-term significance is not a notable one.

Even with respect to short-term tactical ideas, it is important that we find improved ways to insure that we come up with them before we are overtaken by events. If we can get the jump on situations, if our ideas are sound, and we are aggressive and persuasive in asserting them, we will lead. If not, others will. So timely as well as longer term creativity lies at the heart of our problem and becomes a major goal.

It is the job of management to establish conditions designed to promote such creativity. One obvious way is to give all our people more time to focus on new ideas, alternative solutions and imaginative tactics. But messages to and from the field are so voluminous that officers here and abroad do not have this essential time. We want officers in the field to report less—to send in a minimum of fragmentary factual reporting—and to have more time for making contacts, for creative thinking, for analytical and reflective reporting. This, along with allowing more time for creative thinking, by our Washington-based officers, is the objective of the reporting reduction operation currently underway.

The Open Forum Panel has been a useful new device for encouraging more innovative thinking and more constructive dissent. But we must find additional ways to insure that officers at all levels are more effective in developing alternatives to the ideas of others before final decisions are taken. As I have suggested, we would like to gear promotions more closely to the display of these qualities. We will also wish to examine clearance procedures to see what can be done to prevent their stifling dissent and creativity.

But however much we succeed in stimulating creativity, we must also develop more fully the management instruments available to us.

To begin with, we have seen the evolution of what are now known as the Under Secretaries Committee and the Interdepartmental Groups. They are chaired respectively by the Under Secretary of State and our regional Assistant Secretaries and now play a critical role in the National Security Council machinery. They present us with an important opportunity to strengthen through our performance the constructive leadership role we covet as, of course, does the fact that the ranking departmental executive on the National Security Council is the Secretary of State.

To strengthen our performance, we are developing a new staff on the 7th floor known as the Planning and Coordination Staff. Its duties are to provide policy analysis and advice for the Secretary on the near and long-term implications of important policy issues.

Second, it backstops the work of the Under Secretaries Committee which, in addition to being an integral part of the NSC machinery, is the senior operational foreign policy committee in the Government.

Third, it backstops our other activities in connection with the NSC, namely the work of the Secretary, of the members of the NSC Review Group, and of the Assistant Secretaries with the interdepartmental groups they chair.

Next, it performs the traditional long-range planning functions of the former Policy Planning Staff.

The Executive Secretariat is the other half of what might be called the Executive Office of the Secretary of State. Its functions—the coordinating of day-to-day operations and monitoring priorities of time allocation for the 7th floor officials—are extremely important.

In connection with the latter function, we all know that the Secretary and Under Secretary must necessarily spend much of their time dealing with important crises of the moment. When time is left over from such fire brigade exercises, the natural tendency is to turn to matters which aggressive desk officers and aggressive Assistant Secretaries have gotten before them. This may mean that the 7th floor is responsive to the most energetic quarters of the Department rather than to the areas which on a priority basis most need their attention.

It is the job of the Secretariat to make sure this does not happen, that top management's attention is directed to what from an over-view appears to have priority.

I have referred to the Assistant Secretary-level Interdepartmental Groups. Here, as in other activities we chair, we cannot and should not operate as a czar. But these groups represent a promising leadership tool for the State Department as well as a very useful management tool for the Department and all other IG members.

In the days ahead we will also want to carry these management concepts and tools more effectively down to the country director level. At that level, the leadership operation is more informal and much of its success will continue to depend on the skill with which the Country Director operates and on his ability to win the confidence of others in the foreign affairs community dealing with his country at that level.

One of our foremost needs, in order to strengthen the Department's leadership performance in these interdepartmental activities, is to find more systematic ways of (1) defining foreign policy objectives, (2) establishing priorities, and (3) allocating resources.

We will particularly wish to work with the regional Assistant Secretaries here, because it is at this level where the need is especially important. The trend now is for Deputy Assistant Secretaries to follow either specific countries or specific issues. This means that all too often the hard pressed Assistant Secretary has no one else in the Bureau primarily responsible for assisting him in assessing bureau-wide objectives, priorities, and resources. We will wish, therefore, to explore the desirability of the senior Deputy Assistant Secretary serving as a full time overall "Deputy Manager" of the Bureau, or finding some other management arrangement to meet this need.

We will also wish to explore, among other things, the maturing and expanded use of an extremely promising management device known as the CASP—the Country Analysis and Strategy Paper prepared annually on every country in Latin America.

CASP is an interdepartmental policy document initiated annually by the Ambassador and the Country Team and then reviewed and approved in Washington by the Assistant Secretary—Interdepartmental Group. It relates desired policy to resources. Its preparation is timed to precede the field program budget submissions of all agencies so that policy and operations are joined from the very start of the planning cycle. It requires the Ambassador and his Country Team staff—and in Washington, the Assistant Secretary and Country Director and their counterparts in the other foreign affairs agencies—to identify U.S. interests, to state objectives, to establish priorities and to make judgments on basic U.S. strategy as it relates to the current situation and near-term prospects. Thus, the CASP associates policy planning with decision making, and objectives with budgeted strategies.

In addition, the CASP principle can be expanded to a region-wide concept and can serve as a further management tool for establishing priorities on a region-wide basis.

Now, I am not suggesting that the CASP is a completely matured system or exactly adaptable to other areas. We will ask other bureaus to develop similar management tools, however, geared to their own requirements—and we are pleased to see that the Bureau of African Affairs presently has such an effort underway. Our earlier experiment with the Defense-derived "Comprehensive Country Programing System" was not a happy one. We feel, nevertheless, that the CASP type of approach may be a more practical way to help achieve what the CCPS was designed to accomplish.

Without waiting for the full implementation of a CASP-type system, the Secretary has decided to initiate early this year an annual posture statement. This will be on the "state of our foreign relations," and similar to those statements issued in recent years

by the Defense Department. These will not be easy to produce but it is important that the Department's voice be clearly heard in this annual exercise. Eventually the matured CASP system, over and above its value as a management tool, should greatly facilitate the preparation of these annual posture statements.

XI

Turning now to the field, we are initiating a major and searching review of the role and functions of our diplomatic missions. We shall review the functions and activities of the Government overseas—in priority order—with a view to achieving a better balance among agency representatives and to eliminate all but essential activities. And we intend to strengthen our controls over the numbers of American and local positions required by all agencies in the field.

There are, of course, certain functions common to all Embassies, but we must recognize that our interests, both in character and in intensity, vary enormously from country to country, and our Embassies' organizational and staffing patterns should reflect this variety much more than they do now.

We may conclude that in some posts the traditional embassy organization is outmoded. We intend to encourage Ambassadors to use their personnel more flexibly in solving special problems which arise in meeting mission goals. As the President said in his December letter to all Ambassadors, the Chief of the U.S. Diplomatic Mission has "full responsibility to direct and coordinate the activities and operations of all its elements."

XII

Another basic management question is how we determine our strong points and our weaknesses. We need, I believe, a much enlarged concept of inspection and evaluation which would encompass not only our efforts, but also those of our sister agencies. Not only do we wish to be sure that all components of our Embassy are performing in a coordinated and effective way, but also that our Embassies are sensitively attuned to the most subtle shifts in the President's policies.

Furthermore, I think the time has come again to use the inspection process to evaluate our domestic operations. Some of these will be looked at once every few years. We will wish, however, to inspect certain domestic operations each year.

XIII

We would like to strengthen the Foreign Service Institute's capacity to provide training, on a reimbursable basis, for the other foreign affairs agencies—thus moving its role more in the direction of an overall national institute for the foreign affairs community. We have been quite successful, in this respect, in the way we have trained a wide selection of Government employees for service in Vietnam. Drawing on this experience, therefore, we plan to explore the possibility of setting up, again on a reimbursable basis, regional training centers at the Institute similar in aim and scope to the Vietnam Training Center.

We will wish to use FSI as our principal in-house training arm to strengthen the knowledge of our functional specialists. The Institute already has considerable capacity for this, but we will wish to strengthen it in certain specific areas. I have in mind, for example, the importance of all officers in all our functional specialties—especially those in the economic and consular specializations—acquiring a mastery of trade promotion techniques. I believe the Institute can be of considerable help here.

The Institute is also interested in putting greater stress on training in modern management and executive techniques, as well as in developing courses to strengthen—perhaps through the case study method—knowledge of the core skills.

We will wish to continue to support the Institute's valuable and highly successful program to upgrade clerical and secretarial skills, thus both strengthening the resources of the Department and facilitating promotions for many valued employees.

There is one special training imperative I should mention, and that is the American public's need—and right—to know more about our foreign affairs establishment, the policy issues and the men and women who serve their country. As one way of meeting this need, we should do a better job of developing trained public speakers.

We also want to expand our resources by tapping the vast reservoir of talent and experience in the non-governmental foreign affairs community. For example, we are thinking of establishing a series of scholar-diplomat seminars at the Institute similar to last month's successful pilot project in African studies. In recent years, we have sent a good many of our officers to universities, either as Diplomats-in-Residence or for specialized training. We shall continue to do this, among other reasons, because such contacts are needed to expose the Department to fresh ideas and new insights.

On the subject of outside contacts, we plan to explore the idea of a *State Department Fellows Program* which, like the scholar-diplomat seminars, was suggested by the Foreign Service Association and the International Studies Association. Under the Fellows Program we would exchange some of our best mid-career officers with men in comparable positions in business, the foundations and the communications media. We recognize there are conflict-of-interest problems to be worked out. But in the spirit of the President's Executive Interchange Program with private industry, we would hope at least to be able to send some of our officers on training assignments with business firms.

XIV

There is an important area of management I have not mentioned: our efforts to modernize information handling. Although it is generally known that we use computers for such things as personnel data management and accounting, I am sure many of you don't know that this "old-fashioned" department uses its modern computer in a growing number of substantive ways. We have a good many specialists in the building who know a lot about computers. But we do not have nearly enough substantive officers who know what a computer can and cannot do.

Finally, in the field of administrative services, we need to continue:

Improving the efficiency of joint administrative support in the field.

Seeking ways of offering better health and exercise facilities to our employees.

Developing a modern program for dealing with the travel explosion we are facing in the 1970's.

Recommending to Congress the elimination of the visa requirement for 90-day visitors to the U.S. for business and pleasure.

Improving the security of foreign missions in Washington and the security of our personnel in certain areas overseas.

Upgrading our foreign affairs communications around the world.

Studying the relative merits of accrual and obligating budgeting systems.

Examining the alternatives available to us with respect to the future strengthening and handling of the Foreign Service Retirement Fund.

Examining the feasibility and desirability of centralizing in Washington most of the budget and fiscal work, as well as some of the other administrative work, now done in the field.

XV

You have been patient in hearing me out.

One does not not ordinarily think of the development of management and organization as a great adventure. The effort we are embarked on, however, is just that. And working together, I am convinced we can produce a modern dynamic diplomatic establishment fully geared to the challenges ahead.

None of us can settle for anything less.

## PRESIDENT NIXON'S VETO MESSAGE ON THE LABOR-HEW APPROPRIATION BILL

Mr. MANSFIELD. Mr. President, the President has his independent responsibilities; he has acted on them, according to his lights. I do not agree with the President's action. I hope the Congress will reverse that action.

The veto message in its reference to inflation ignores the fact that the Congress has already cut out of the President's overall budget many times the amount which has been added in this bill. It has cut frills for defense. It has cut fancies for space. The reduction in foreign aid alone roughly equals the sum that was added by the Congress to this bill for better education and libraries, for pollution control, for hospital construction, health research, and nurses training, for programs to try to get the poor off the relief rolls and into productive occupations. All of these items and others in this bill have a lot to do with the quality of American life about which the President has spoken so eloquently. Where, then, if so much more has been cut than has been added, is the overall inflationary impact?

There are items in this bill with which I do not agree. That is the way with most significant legislation. I might say, one of the items which I think is open to scrutiny is the one which the President emphasized in his veto message, and that is the question of impacted aid, because there are some areas where it is not needed and where, I think, some tightening up and corrections can be made. But because a small part of the program is affected in this particular measure, it does not mean necessarily that the whole program of impacted aid is bad. It is not. There are items in this bill with which the President disagreed but we do not have an item-by-item veto power in the Presidency. We still operate on the principle of compromise in this Government.

There comes a time when the perfection which is attainable in words confronts the practicabilities which are pursuable in action. Between them lies a void of immobilized disenchantment. That is the point of decision. It seems to me that is where we are on this appropriation bill. To fail to pass this bill, in my judgment, will be to invite the continued neglect of the Nation's inner needs. To pass this bill will be to move a little closer toward a new and better balance as between domestic urgencies, the needs of defense and the requirements of foreign policy. I want to emphasize that, in my opinion, the keyword is "balance" between all three. In that sense, this is the right bill at the right time and for the right purpose.

## GOOD ADVICE FROM YOUNG COMBAT VETERAN

Mr. YOUNG of Ohio. Mr. President, a fine young man, resident of Milan, Ohio,

a beautiful historic little community where Thomas Edison was born, 4 miles from Puckerbrush Township in Huron County where I was born and reared, returned to his home in Milan following service for our country including 1 year of combat in Vietnam. Many other fine young Americans served with him in Vietnam. Unfortunately, some of them made the supreme sacrifice in that undeclared, unpopular war.

Capt. Larry P. Turner was more fortunate. He is now back home in Milan. In a letter to me he stated that he is very unhappy. He is not unhappy for having served his country. He is unhappy because he believes that all of Vietnam is not worth the priceless life of one American youngster and because he knows that Vietnam is of no importance whatever to the defense of the United States. "There is nothing really wrong with serving one's country," he observes. He is very unhappy with the "worthless cause many thousands of Americans have died for in Vietnam." If he had to do it again he said he would "join the Peace Corps or VISTA."

Larry P. Turner was commissioned as a lieutenant after graduating with a master's degree from the University of Indiana. He had specialized in social work at Indiana University. As a commissioned officer in the Army he used his university education and experience in helping GI's with their emotional problems. Captain Turner states "that before being commissioned in the Army his views about the war were those of indifference—seemingly uninformed," he recalls.

During his year's service in Vietnam talking with soldiers about their problems, learning everything he could regarding Southeast Asia and by his own stark observations he says:

I was convinced that it was a horrendous blunder for the United States to fight this ground and air war in Vietnam.

He is convinced that the cause is worthless.

Captain Turner reports:

The Saigon Vietnam government is as corrupt, ruthless and weak as it was before we went there.

He adds that the United States has supported "one corrupt puppet government after another in Vietnam." Little of the money the United States pours into Vietnam ever reaches the poor people in their hamlets and villages. Instead, he says:

It is the wealthy, small elite with accounts in Swiss and Hong Kong banks who benefit from the American presence in Vietnam. It is also only this small group that would suffer if the United States withdraws altogether from Vietnam.

He states:

Being in Vietnam has been a tragic mistake. This is because it is a civil war and it is a civil war among various groups religious and cultural. Above all it is a war between the rich and the poverty stricken. We are on the side of the rich.

Continuing his observation he stated:

It is the poor who join the Vietcong. Also, in the army of the Saigon regime many desert taking United States supplies and weapons with them. It is not unusual at all for Americans to find American weapons with the captured Vietcong.

Here is an angry young man—angry with our Government for its handling of information about Vietnam.

The higher ranking officers according to Captain Turner "only tell the soldiers what they believe they should know."

He also said:

When soldiers raise questions in Vietnam regarding the civil war, in which we are involved, some are transferred because of the doubts they express.

While Americans have been shocked by the recent disclosure of the Mylai massacre, the truth is that such things have been common occurrences in the Army.

You do what the commander tells you—

Said Turner—

and in Vietnam the enemy is often largely who the commander says it is. It is very true that it is hard to distinguish the enemy from a civilian.

This is inevitable in a little country where people are tired of wars.

He concluded:

Whatever savage reactions our soldiers may have, the blame is really on the government that sent them to fight for a worthless cause.

Some officers and GI's have their own racial prejudices before going to Vietnam and to them the Vietnamese people become "Gooks" or "slant eyes."

Pentagon officials are not disclosing the truth to Americans. Captain Turner said:

I have known pilots who have told of comrades shot down in Laos and Cambodia. Also, members of the Green Beret who told me of invading Cambodia following Vietcong or alleged Vietcong soldiers.

Americans should know above all else that lies have been told them about the dead. Americans wounded who die days or weeks later in hospitals in Japan, for example, or in the Philippines are not counted as Vietnam casualties. However, this number is really insignificant compared to the total number of soldiers who returned home emotionally "wracked."

Captain Turner expressed amazement over the corruption, including that of American corporations which supply the Army with most of its materials. Many of his fellow officers hope eventually they will make it in big corporations, and this does not help the soldier. Furthermore, corruption in South Vietnam is prevalent among the native officials, both military and civilian.

Most of the supplies unloaded in Vietnam ports—

He reports—

are stolen. Then much of this merchandise useable in combat ends up in Cambodia with the Vietcong. Yet here we are supposed to be helping the poor people in the civil war reaching them.

His conclusion is that if President Nixon's present policies are pursued this program could keep Americans in Vietnam indefinitely. Captain Turner advocates a definite fixed date for the withdrawal of all of our soldiers, warplanes and naval forces from Vietnam. And, to the final question regarding a possible Communist takeover after we leave South Vietnam, he says:

If people want to go communist, that's their business.

He says:

We are fighting the Vietnamese where the French left off. The Vietnamese people have waited for many years to get rid of an enemy. Evidently they are prepared to wait a long long time to get rid of us.

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## PEACE IN THE MIDDLE EAST

Mr. ELLENDER. Mr. President, for many years now I have been concerned with efforts to find a peaceful solution to the problems of the Middle East. As far back as 14 years ago, I toured extensively throughout the area as a member of the Senate Appropriations Committee. During that 1956 visit, I met with leaders in the Government of Israel and the governments of many of the Arab States.

At the conclusion of my formal and informal visits and consultations with these representatives, I reported to the Senate in February 1957:

What the Middle East needs is the promotion of a political climate under which the Arab and Jewish populations could cooperate to raise the living standards and develop the economy of the area.

To accomplish this, there would have to be direct negotiations between the leaders of Israel and the leaders of the Arab States, which I have been advocating. I voiced a similar sentiment on several occasions in the past when there have been flareups in the area. In each instance Arab leaders have indicated that under no conditions would they meet with the Israelis around the conference table. To do so would require that the Arab States recognize the existence of Israel, which they have always refused to do.

Mr. President, it is my understanding that President Gamal Nasser of the United Arab Republic has recently stated that there can be no direct negotiations between these two parties until the land taken from Egypt and other Arab States during June 1967, is returned. In other words, it is stipulated that Israel must withdraw to its pre-1967 borders before any actual peace talks between the combatants can take place.

Frankly, Mr. President, I do not believe that we can put too much stock in these promises. As I mentioned a moment ago, Arab leaders were making the same statements even before June 1967, and as far back as Israel's beginning as a modern state. In other words, the same position is being maintained now as in the past.

I think this is unrealistic. I have stated time and time again that Arab leaders should confer directly with the leaders of Israel, and that failure to recognize their existence is to base a policy upon myth rather than reality. When myth predominates in foreign policy, it almost always brings about dangerous conditions in international affairs and this is the situation facing the world today in the Middle East.

I think it is of the utmost importance

that the great powers cooperate as closely as possible in finding some way to quiet down the continuing crisis of the Middle East. I do not believe that we and the other powers should seek to impose a solution entirely against the will of either of the parties, but I do believe that cooperation between the great countries with interests in the area can do much to bring about a solution.

In that connection, I was amazed and disappointed to learn of the actions of the French Government in making jet fighters available to Libya, more or less behind the back of the United States. I do not believe this action represents a good-faith attitude on the part of the French toward either the United States or the citizens on both sides of the Middle East conflict.

Recently, our Government has attempted to assume an even-handed approach toward both the Israelis and the Arabs. Actions such as that of France make our position almost untenable, for it threatens the balance of power which is the basis for what little stability there is in the area.

On Sunday, January 25, President Nixon took a stand behind Israel as one of our friends in the Middle East. In light of the French action in making additional armaments available to one side, the President could not have done otherwise. The President pointed out that our Nation does not intend to negotiate or impose the terms of peace, but that we do have interests in seeing that a durable and fair settlement is reached. We also have an interest in seeing that we are not brought directly into the conflict and I am sure this is the President's overriding concern. Certainly it should be for I am absolutely convinced that we cannot afford to be drawn into this conflict directly on the side of either party.

## JUDGE CARSWELL SHOULD NOT TAKE A SEAT ON THE SUPREME COURT

Mr. PROXMIRE. Mr. President, soon this body will be faced with a momentous vote—a vote that may well have a profound influence on the direction of Supreme Court decisionmaking for years to come. Within the next few weeks we will decide whether President Nixon's latest Supreme Court nominee, Judge George Harrold Carswell, will follow in the footsteps of the last Nixon nominee, Judge Clement Haynsworth, or will take a seat on the Nation's highest judicial tribunal.

In my view it is not enough for a Supreme Court Justice to have no strikes against him. He must have a positive record of distinction. He must be among the very top in the legal profession. He must have demonstrably high intellect and understanding. Does Judge Carswell measure up?

What do we know of Judge Carswell? We know that he made a blatantly racist speech in seeking public office back in 1948—and lost the election. We know that when the Republicans took office in 1953 Judge Carswell, who was a Democrat for Eisenhower in 1952 and whose father-in-law was a major contributor to the Republican Party, became a U.S. district attorney in Tallahassee. We know that in 1958, after his change in party from Democratic to Republican, Judge Carswell was named to a district judgeship. And, finally, we know that President Nixon elevated Judge Carswell to the Fifth Circuit Court of Appeals last June—perhaps with the knowledge that by so doing he was strengthening Mr. Carswell's credentials for an appointment to the Supreme Court.

Judge Carswell's credentials, then, are distinguished by their mediocrity. They show the heights which an average intellect can reach by riding the coattails of political favoritism. For Judge Carswell owes everything he has achieved as a lawyer and judge to the Republican Party. This is not to condemn Judge Carswell. Surely party affiliation does play a part in the selection of Federal judges. However these facts should give us pause for reflection when we are considering Judge Carswell's appointment to the Supreme Court. They should alert us to the need for taking a particular careful look at Judge Carswell's performance on the Federal bench.

The most intense interest has, naturally, focused on Judge Carswell's civil rights opinions. Have his views really changed since that 1948 speech? This has been the most controversial area of legal conflict within his jurisdiction if not within the United States generally. It is an area that will receive continuing scrutiny by the Supreme Court, whose opinions over the next few years may well determine the quality of life in this country for black and white alike.

Regretfully Judge Carswell's civil rights record has been less than distinguished. It is true that he has not given expression to the racist doctrine he espoused when running for public office in 1948. But of four Carswell civil rights cases appealed to the fifth circuit when he was a district judge, three were reversed. I believe it is fair to question a judge's skill in interpreting the law when he is reversed by a higher court in more than 50 percent of his cases.

Perhaps an even more disturbing phenomenon, however, because it goes beyond interpreting the law, has been Judge Carswell's habit of delaying civil rights litigation as long as possible. For example in Steele against Leon County Board of Education, a school desegregation case, plaintiff filed a motion for further relief on May 7, 1964. On May 26, Judge Carswell sustained defendant's objections to the raising of questions looking into teacher segregation. No further hearings were ordered before school opened. On January 20, 1965, the school was found to be in compliance with certain 1963 orders. In February of 1965, plaintiffs filed a further motion for hearings. After a series of legal maneuverings the court reaffirmed a denial of plaintiff's motion for further relief. Finally, on January 18, 1967, the circuit court remanded the case for further consideration in light of its decision in U.S. against Jefferson County Board of Education—tantamount to a reversal. Finally, after almost 3 years, the Carswell court granted the relief sought. This dilatory behavior in civil rights cases, where justice delayed is certainly justice denied—in this instance for 3 school years—casts serious doubt upon Judge Carswell's judicial temperament.

In a study done as a Yale Ph. D. dissertation in 1966 by Mary Hannah Curzan, Judge Carswell was found to be one of a group of 10 southern judges whose civil rights decisions merited them the segregationist label. This label was applied, by the way, to only one-third of the southern judges whose civil rights decisions were analyzed.

Finally there is the 1948 speech which received so much attention. It is good that Judge Carswell has repudiated that speech. But his admission that the speech, at least in part, was an opportunistic effort to combat the campaign rhetoric of a more conservative opponent should make us ask ourselves whether Judge Carswell does, indeed, have the judicial temperament. I, for one, believe that a man's ways of thought and action are pretty well fixed by the age of 28.

There are other indications that Judge Carswell's career has lacked distinction. His opinions have been characterized as reading like plumbers' manuals. They are short and mechanical. When asked by the Justice Department for a list of his legal articles, he responded that he had written none. He has shown a predilection for dismissing cases without considering them on the merits. Since 1968, higher courts have reversed him five times for not having evidentiary hearings on such cases.

Mr. President, the Supreme Court is a coequal branch of the Government. The nine men that serve on the Court are considered to be as important to the well-being of our Nation as the 535 Members of Congress—as important as the executive branch with its hundreds of thousands of employees. The Court can overrule the President and the legislature. It is the final repository of knowledge when it comes to interpreting the Constitution of the United States.

For all of these reasons, and because the members of the Court do not serve at the pleasure of the voters or the party in power, we must set exacting standards for Supreme Court nominees. We must make sure they are men not only of the highest moral fiber, but of the highest intelligence. The nominee we consider this month may play a part in setting the tone of the Court's decisions for the next 25 years.

Today, more than ever before, we need men of distinction on the Supreme Court. We need men of great intelligence and vision. In a changing world we need men with flexible minds—men who can acclimate themselves to changes within society—men who look to the future as well as the past. Last week President Nixon said in his state of the Union address:

> In times past, our forefathers had the vision but not the means . . . let it not be recorded that we were the first generation that had the means but not the vision.

I have regretfully come to the conclusion that Judge Carswell does not have the means or the vision to serve effectively on the Supreme Court. Thus, I must oppose his nomination. I will vote

against Judge Carswell for the Supreme Court because Supreme Court appointees should meet a standard of excellence. And Carswell does not. I could forgive a Supreme Court nominee for past errors or indiscretions, but for a record of unbroken mediocrity I cannot.

## THE PRESIDENT'S VETO OF THE LABOR-HEW APPROPRIATION BILL

Mr. HANSEN. Mr. President, during the next 24 hours we will be hearing a lot of plaintive noise about education. Those who want to override President Nixon's veto of the Labor-HEW appropriation bill will claim that it destroys our last great chance to educate America's youngsters.

This is the sheerest nonsense.

What this particular bill does is to provide an extra $200 million a month to perpetuate and increase waste in our educational system. Worse than that, it will actually force waste on our educators.

The extra billion dollars contained in this appropriation bill carries with it a mandatory feature. It has to be spent. The administration has no choice but to dole it out—immediately. It has to be spent within the next 5 months.

I plan to vote to sustain the President's veto. Had this situation arisen back in July or August of last year, my decision would have been a great deal tougher than it is now. Six or seven months ago, it is entirely possible that this extra billion dollars could have been spent usefully during this school year. School officials would have had time to develop sound and workable plans for spending it. There would have been time to review those plans and to assess them properly and to gage with some hope of accuracy their effects on the total education needs of the community.

As it is now, that billion-dollar bonanza will have to be spent hurriedly and without proper planning There will be no time for assessment. No time for review. The theme will be to spend, and spend in a hurry.

As to the allegation by some school officials that they had been planning on this money and that they will now have to cut back without it, that, too, is sheer nonsense.

The only school funds these officials could count on in their planning for the school year 1969–70 were the funds provided in the budget. This extra billion dollars was added long after the school year had begun, long after planning had been completed.

What this extra billion amounts to for the educators is a windfall that they can hurry out and spend. We will witness a spending spree that will pump an extra $200 million a month into our education economy. Not much of it will ever teach one child how to read better, how to write better, or how to prepare himself better to meet life in these United States.

I ask unanimous consent that two articles dealing with this subject 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, Jan. 27, 1970]

IN THE NATION: THE EDUCATION BOONDOGGLE

(By Tom Wicker)

WASHINGTON, January 26.—"I am afraid," said a Democratic head-counter recently, "that we have enough votes to override."

He was referring, naturally, to the H.E.W. appropriations bill, which President Nixon has decided to veto; and he meant that it looked to him as if the Democratic Congress could and would pass it even over the veto. The question was whether or not it would be good politics to do so.

The measure contains $1.3 billion more than Mr. Nixon had asked for; hence, he has labeled it inflationary. This is a peculiarly Nixonian way of looking at it, because the same Congress that added the $1.3 billion reduced all the fiscal 1970 appropriations bills by a net of about $5.6 billion, including a cut of more than $5 billion in the Pentagon appropriation.

It is not yet clear what will happen on the revenue side of the budget, although the Administration still is shooting for a surplus. The $1.3 billion in additional education funds conceivably could result in a small deficit over-all, but not many economists would maintain that a billion dollars either way will have a $200-billion budget and a trillion-dollar economy.

Given Mr. Nixon's dominance of the airwaves, however, and the obvious public concern over high prices, high interest rates and high taxes, the Democrats may have a hard time convincing anyone other than the so-called education lobby and the convinced liberals, that they, and not the President, are acting responsibly.

PROBLEM FOR DEMOCRATS

About all the Democrats can do is to make their usual claim that they care more about social issues than the Republicans do. But not only is there no Democratic leader as imposing as a President to make the claim; there also is some question whether that kind of thing wins as many votes as it once did. There is the likelihood, too, that to the extent Mr. Nixon is persuasive in calling the H.E.W. bill inflationary, even some supporters of education expenditures may conclude that this is a time to cut back.

One particular aspect of the measure illustrates best the political fraudulence on both sides of the argument. This is the $600 million included in the Democratic bill for the program ungrammatically called "impacted aid"—that is, Federal assistance to certain school districts to help them bear the impact of the children of Federal employes on their educational costs.

Every President since Dwight Eisenhower has recognized this as what H.E.W. Secretary Robert Finch recently called a "direct boondoggle," but nothing has been done because it benefits without any restriction 375 of the 435 Congressional districts—including some of the wealthiest areas of the country. Montgomery County, Md., a Washington suburb, got $5.8 million from this program last year, although its median household income is almost twice the national average.

Mr. Nixon asked in his budget for only $202 million for impact-aid. By holding the appropriation for it to something like that figure, the Democratic Congress could have reduced by about a third the overage that Mr. Nixon objects to as inflationary. That would have weakened the case for a veto and protected the more vital programs covered by the bill.

Mr. Nixon's agents are now busily assuring members of Congress that if they vote to sustain the veto of the whole appropriation, the President will consent to a separate bill that would continue the impact-aid pork barrel at a level above $400 million.

RIDICULOUS IS THE WORD

The whole thing is a ridiculous way to do business with anything so important—and at the moment so beset with difficulties—as the American education system. It is ridiculous that seven months into the fiscal year, when it is already time to start work on next year's appropriation, this one has not yet been made. It is ridiculous that the most heavily burdened political office in the world does not have the right of item veto. It is ridiculous that the greatest nation in history finances its highest purposes piecemeal and without any real comparison of the values involved. (Who is vetoing the SST? And who votes $600 million for the impact-aid boondoggle and only $717 million for elementary and secondary schools?)

And the most ridiculous thing of all is that the public that suffers insists so little on sensible change.

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[From the Washington (D.C.) Post, Jan. 27, 1970]

HILL DEBATE OVER VETO SHOULD FOCUS ON HEW BILL'S WASTEFUL DEFECTS

(By Frank Mankiewicz and Tom Braden)

It will be unfortunate if the debate over President Nixon's veto of the Health, Education and Welfare appropriation turns only on the issue of inflation. High HEW officials are anxious that the occasion be used to strike a major blow at what is wrong with our schools.

The President's veto is courageous, since it pits him against one of the nation's most powerful lobbies, and is risking the chance that he will be called "anti-education" by his own Silent Majority. But it will be even more courageous if Mr. Nixon chooses to tell the truth about this bill, which is that like much of the money we spend on education, it allocates resources to the wrong places and does little or nothing for our children, the quality of whose education seems to deteriorate in direct proportion to the money spent on it.

The HEW bill, asking for one billion more educational dollars than the President budgeted, is only part of what the government spends on education, but it reflects What is wrong with the whole.

$400 million extra goes to so-called "impacted areas." These are school districts with a high percentage of federal employees. But only those who actually live on federal land penalize the local schools (they don't pay property taxes)—and they are too few to justify the windfall.

Thus in Fairfax County, Virginia, a booming Washington bedroom community, $229,000 will go to school districts in lieu of taxes for federal employees who live on federal installations. But more than $10 million will be paid for "off base" children, whose parents own property, pay taxes and contribute to the general business expansion.

A truly scandalous increase is $200 million in funds for vocational education. A sounder move would have been to strike out the more than $200 million already in the bill.

The vocational education program is the most entrenched of the school lobbies, dating back to the early years of the century, and consists largely of the purchase of shop equipment and the training of students for long-vanished jobs.

The increase in Title I funds is at least arguable, but even here, the President has sound reasons for a veto based on educational grounds. Title I money is supposed to be spent on the direct benefit of poor children. But in the South as well as the North, educational administrators have swindled the Congress and the taxpayers by withholding from these children ordinary

expenditures that would otherwise be made. The result is that poor children get Title I money, middle class children in the same districts get the major share of funds raised by local taxes, and the only beneficiary is the property taxpayer.

Finally, liberals hot to override the Nixon veto will have to answer the argument that these extra funds are for the fiscal year that ends July 1. Thus they would have to be spent in three or four months. It is in order to prevent the inevitable mountain of slide projectors and band uniforms, that HEW officials support the veto and ask for an orderly study of how these funds could be profitably spent over twelve months instead.

But a measure of the pressures at work lies in a little-noticed cut put through by Congressmen who fear being savaged by the education complex. HEW has asked for $25 million, to test whether intelligent people who knew their subject could teach their subject, without having to go through the dreary years of teacher education This picks at the iron lock held by teachers colleges on the profession. The appropriation went out—fast.

The extra education money, in short, reinforces existing inadequacies in public education, fattens needless programs to appease powerful lobbies, acts as a bonanza to upper middle-class property taxpayers, and will be sold somehow as an "investment in America" by the people who otherwise think it wrong to waste public funds.

## EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT ON SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report of the Battelle Memorial Institute on School Assistance in Federally Affected Areas, A Study of Public Laws 81–874 and 81–815, to Office of Education, Department of Health, Education, and Welfare, dated December 1969 (with an accompanying report); to the Committee on Appropriations.

REPORTED VIOLATION OF SECTION 3679, REVISED STATUTES, AS AMENDED

A letter from the Administrator, Office of the Administrator of Veterans' Affairs, Veterans' Administration, reporting, pursuant to law, a violation of section 3679 of the Revised Statutes, as amended, involving Appropriation 3690160, Medical Care, VA, for fiscal year 1969, in the amount of $616.52, occurred on June 30, 1969; to the Committee on Appropriations.

REPORT OF FINAL CONCLUSION OF JUDICIAL PROCEEDINGS IN THE STILLAGUAMISH TRIBE OF INDIANS V. THE UNITED STATES, BEFORE THE INDIANS CLAIMS COMMISSION

A letter from the Chairman, Indian Claims Commission, transmitting, pursuant to law, a report of final judgment and additional findings of fact regarding Docket No. 207, The Stillaguamish Tribe of Indians, Plaintiff, v. The United States of America, Defendant, before the Indian Claims Commission (with an accompanying report); to the Committee on Appropriations.

REPORT ON OPERATIONS OF THE SELECTIVE SERVICE

A letter from the Director, National Headquarters, Selective Service System, transmitting, pursuant to law, the fourth semiannual report of operations of selective service during the period from January 1, 1969, to June 30, 1969 (with an accompanying report); to the Committee on Armed Services

PROPOSED LEGISLATION BROADENING THE AUTHORITY OF THE SECRETARIES OF THE MILITARY DEPARTMENTS TO SETTLE CERTAIN ADMIRALTY CLAIMS ADMINISTRATIVELY

A letter from the Acting Secretary of the Navy, transmitting a draft of proposed legislation to amend title 10, United States Code, to broaden the authority of the Secretaries of the military departments to settle certain admiralty claims administratively, and for other purposes (with accompanying papers); to the Committee on Armed Services.

REPORT OF OFFICERS ASSIGNED OR DETAILED TO PERMANENT DUTY IN THE EXECUTIVE PART OF THE DEPARTMENT OF THE AIR FORCE AT THE SEAT OF GOVERNMENT

A letter from the Office of the Secretary, Department of the Air Force, reporting, pursuant to law, on officers assigned or detailed to permanent duty in the executive part of the Department of the Air Force at the seat of government, as of December 31, 1969; to the Committee on Armed Services.

REPORT ON DISPOSAL OF FOREIGN EXCESS PROPERTY

A letter from the Deputy Administrator, Office of the Administrator of Veterans' Affairs, Veterans' Administration, transmitting, pursuant to law, a report on the activities of the Veterans' Administration in the disposal of foreign excess property, covering the period January 1, 1969, through December 31, 1969 (with an accompanying report); to the Committee on Government Operations.

FINANCIAL REPORT OF AGRICULTURAL HALL OF FAME

A letter from the Assistant Secretary, the Agricultural Hall of Fame and National Center, transmitting, pursuant to law, the annual audit and report to the Board of Governors for fiscal year 1967, through August 31, 1968, dated August 31, 1969 (with an accompanying report); to the Committee on the Judiciary.

REPORT ON ACTIVITIES IN CERTAIN COUNTRIES RELATING TO APPLICATIONS FOR CONDITIONAL ENTRY

A letter from the Commissioner, U.S. Department of Justice, Immigration and Naturalization Service, transmitting, pursuant to law, a report of activities in certain countries relating to applications for conditional entry, for the period July 1, 1969, and December 31, 1969 (with an accompanying report); to the Committee on the Judiciary.

## 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 a joint resolution (H.J. Res. 1051) designating the week commencing February 1, 1970, as International Clergy Week in the United States, and for other purposes, in which it requested the concurrence of the Senate.

## PETITIONS AND MEMORIALS

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

By the PRESIDENT pro tempore:

A letter, in the nature of a petition, from H. M. Davis, of Richmond, Va., praying for the confirmation of the nomination of G. Harrold Carswell as Associate Justice of the Supreme Court; to the Committee on the Judiciary.

A letter, in the nature of a petition, from Delores Feltmann, Des Plaines, Ill., praying for the enactment of legislation abolishing the practice of soring horses; to the Committee on Commerce.

## NINETEENTH ANNUAL REPORT OF THE ACTIVITIES OF THE JOINT COMMITTEE ON DEFENSE PRODUCTION (S. REPT. NO. 91–636)

Mr. SPARKMAN. Mr. President, from the Joint Committee on Defense Production, I submit the 19th Annual Report of the Joint Committee on Defense Production and ask unanimous consent that printing of the same be held in abeyance for a few days until the Senate can act upon a resolution authorizing additional copies of the report.

The PRESIDING OFFICER. The report will be received, and, without objection, will be held in abeyance.

Mr. SPARKMAN. The Joint Committee on Defense Production, of which I am chairman, today issues its 19th annual report on our Nation's preparedness for future emergencies.

A nation never can be fully prepared for an extreme emergency, such as nuclear war—in our case brought on by attack by a foreign power—but let me say we have made great strides in the United States in the last 19 years to fortify our security against such a threat.

At the same time, we have continued to prosper economically and living standards for most Americans have continued to grow better and better. Even the social and economic problems that beset us today, have not dampened the overall picture appreciably.

You do not hear much about it, but national preparedness is a dramatic, never-ending job. We must continue to plan all the time for the future defense of our people and our democratic institutions.

As you know, this program of preparedness is being directed by the Office of Emergency Preparedness, with the cooperation of a number of Federal departments and agencies. We have a peacetime apparatus which could quickly be accelerated and expanded for use in some future emergency.

The Joint Committee on Defense Production keeps these activities of the Federal Government under constant study and review.

Suffice it to say that the current preparedness program is geared to conserve and coordinate all of our resources, human and material, to safeguard the Nation against almost anything that might happen in the future.

You might call it our peacetime blueprint for national survival.

When the present conflict in Vietnam is ended, we all look forward, hopefully, to a millennium of peace. However, in this world we must always remain ready for any eventuality and it is encouraging to know that we have at our command, among other things, the greatest stockpile of strategic and critical materials in history.

The stockpile is a crucial component of the overall preparedness program. All of these strategic materials—ranging from copper, aluminum, and titanium to rubber and quinine—are urgently needed to maintain our position as the strongest country in the world—to keep us safe and sound.

What Fort Knox is to the U.S. Treasury, the stockpile is to our national security.

Let me inject a financial comment here which should please every American. Our stockpiled materials in all Government inventories today are worth an estimated $6,966,890,200, or close to $7 billion. This is $284,694,700, or almost $300,000,000 more than they cost the taxpayers. This is one Government program that is clearly showing a profit.

However, though the national stockpile is presently in good shape, let me add that a major war or sudden cutoff of needed foreign materials could raise serious problems in the future. The United States is self-sufficient in only three of the 76 items in the stockpile—magnesium, molybdenum, and vanadium.

Of the remaining 73 items, we are almost totally dependent upon foreign sources for a third. Of 23 strategic minerals and metals which we get chiefly from abroad, five are now in short supply, or do not measure up to the objective of the stockpile.

They are mica, nickel, metallurgical fluorspar, copper, and rutile. Rutile is the ore from which we get titanium, a light, durable metal, highly suitable for ultra-high-speed aircraft, such as the SST. We now have roughly 51,000 short tons of rutile—almost all of it imported from Australia—in the stockpile, whereas our objective is 200,000 short tons.

Other metals in tight supply include cadmium—partly supplied by Soviet Russia and used for electroplating, and so forth—nickel, and platinum.

The National Academy of Sciences, an excellent authority, recently reported that our domestic mineral production, as a percentage of the gross national product, has fallen off steadily from about 4 percent a decade ago to a present level of about 3 percent, while during the same period the increase in the net value of mineral imports over exports has tripled.

The National Academy further declared:

> Looking ahead to the figure, there is a general agreement that world population, now over 3 billion, is likely to double within the next 30 to 40 years. A population increase of this magnitude will make incalculable increases in worldwide demand for minerals.
>
> At the same time, superimposed on population growth are worldwide demands for higher standards of living, which can be realized only through greatly increased per capita consumption of minerals. If the United States is already using about one-quarter of the present world mineral production, how will it continue to maintain its supplies in future years, and how can the billions of other people hope to have even a modest standard of living?

So it will not be easy to keep the stockpile adequately supplied with strategic minerals if we are using one-fourth of the present world production, and demands from the rest of the world are increasing. This is all the more reason why we should redouble our efforts to expand imports as well as mining and exploratory activities.

This exploratory work may be helped by the first ERTS satellite—meaning Earth Resources Technology Satellite—which will be launched into space late in 1971 or early 1972. Our report reveals that this satellite will play a significant role in the constant search for mineral raw materials and other natural resources—a helping hand in space in future years for our inventory of strategic and critical materials.

Just a word about how American industry is being aided under the preparedness program. Surplus stocks of strategic items are sold whenever possible from the national stockpile when there is a need in the commercial market. For example, over $63 million worth of aluminimum was sold during the fiscal year 1969 from the national stockpile and the Defense Production Act inventory.

While large corporations continue to receive the major share of defense contracts, our report shows that small business firms received $6.5 billion in prime military contracts in fiscal year 1969, or 17.5 percent of all contracts awarded.

In conclusion, the mobilization of our resources has never been a popular subject, because it means preparing for a rainy day and because it is incompatible with American ideals of peace and prosperity. But it is our best insurance for survival, both defensively and economically, in this everchanging and troubled world.

It has been neglected in the past, but every American who wants a decent life for his children and grandchildren knows there is no future for any nation any longer that is not amply prepared to meet the storm clouds of emergency.

## SENATE RESOLUTION 324—RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON COMMERCE FOR INQUIRIES AND INVESTIGATIONS

Mr. MAGNUSON, from the Committee on Commerce, reported the following original resolution (S. Res. 324); which was referred to the Committee on Rules and Administration:

S. RES. 324

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

(1) interstate commerce generally, including consumer and environmental protection;

(2) foreign commerce generally;

(3) transportation generally;

(4) maritime matters;

(5) interoceanic canals;

(6) domestic surface transportation, including pipelines and highway safety;

(7) communications, including a complete review of national and international telecommunications and the use of communications satellites;

(8) Federal power matters;

(9) civil aeronautics;

(10) fisheries and wildlife;

(11) marine sciences; and

(12) weather services and modification, including the use of weather satellites.

SEC. 2. For the purposes of this resolution the committee, from February 1, 1970, to January 31, 1971, inclusive, is authorized (1) to make such expenditures as it deems advisable; (2) to employ, upon a temporary basis, technical, clerical, and other assistants and consultants: *Provided,* That the minority is authorized to select one person for appointment, and the person so selected shall be appointed and his compensation shall be so fixed that his gross rate shall not be less by more than $2,700 than the highest gross rate paid to any other employee; and (3) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government.

SEC. 3. The committee shall report its findings, together with its recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1971.

SEC. 4. Expenses of the committee, under this resolution, which shall not exceed $759,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

## SENATE RESOLUTION 325—RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON THE DISTRICT OF COLUMBIA FOR INQUIRIES AND INVESTIGATIONS

Mr. TYDINGS, from the Committee on the District of Columbia, reported the following original resolution (S. Res. 325); which was referred to the Committee on Rules and Administration:

S. RES. 325

*Resolved,* That the Committee on the District of Columbia, or any duly authorized subcommittee thereof, is authorized under section 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdictions specified by rule XXV of the Standing Rules of the Senate, to examine, investigate, and make a complete study of any and all matters pertaining to the District of Columbia.

SEC. 2. For the purpose of this resolution the committee from February 1, 1970, to January 31, 1971, inclusive, is authorized (1) to make such expenditures as it deems advisable; (2) to employ upon a temporary basis technical, clerical, and other assistants and consultants: *Provided,* That the minority is authorized to select one person for appointment, and the person so selected shall be appointed and his compensation shall be so fixed that his gross rate shall not be less by more than $2,700 than the highest rate paid to any other employee; and (3) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government.

SEC. 3. The committee shall report its findings, together with its recommendations, to the Senate at the earliest practicable date, but not later than January 31, 1971.

SEC. 4. Expenses of the committee, under this resolution, which shall not exceed $133,100 shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

## REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. HOLLAND, from the Committee on Agriculture and Forestry, with amendments:

S. 1862. A bill to amend section 8c(6)(I) of the Agricultural Marketing Agreement Act of 1937 to permit projects for paid advertising under marketing orders applicable to tomatoes (Rept. No. 91-637).

## BILLS AND JOINT RESOLUTIONS INTRODUCED

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

By Mr. TALMADGE (for himself and Mr. CRANSTON):

S. 3341. A bill to amend title 38, United States Code, to increase the rates of compensation for disabled veterans, and for other purposes; to the Committee on Finance.

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

By Mr. FANNIN:

S. 3342. A bill for the relief of David L. Kennison; to the Committee on the Judiciary.

By Mr. HART:

S. 3343. A bill for the relief of Soledad R. Isturis; to the Committee on the Judiciary.

By Mr. DODD:

S. 3344. A bill for the relief of Attilio Vincenzo Motta; to the Committee on the Judiciary.

By Mr. BOGGS:

S. 3345. A bill for the relief of Mr. and Mrs. Donald Ashworth; to the Committee on Banking and Currency.

By Mr. HARRIS:

S. 3346. A bill for the relief of Miss Sima Jatala; to the Committee on the Judiciary.

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## S. 3341—INTRODUCTION OF A BILL INCREASING THE RATES OF COMPENSATION FOR DISABLED VETERANS

Mr. TALMADGE. Mr. President, in recent years it has been fashionable for various interest groups to demand that the Government do more for them.

Therefore, it is a refreshing experience for me to introduce legislation for a group of American citizens which makes no demands—but which deserves more than the Government is giving them. The group to which I refer is the disabled American veterans.

I am introducing today on behalf of myself and the distinguished chairman of the Veterans' Affairs Subcommittee of the Labor and Public Welfare Committee, Senator CRANSTON, a bill to increase compensation payments to veterans whose disability is related to their military service.

Of course, there is no way to adequately compensate a veteran who has lost a limb or an eye, or a veteran who has suffered irreparable psychological damage in the service of his country. The Congress has never sought to repay the disabled American veteran for the pain and suffering, physical and mental, which a disability oftentimes brings. Who can place a price tag on the value of one's eyesight? Who can attach a dollar value to a man's ability to be a working, productive member of society?

The compensation payments for disabled veterans have never done more than a bare minimum. The purpose is to compensate the veteran for the average economic loss resulting from the disease or injury sustained during his military service. Thus, compensation payments are based not on need, but on the degree of disability of the veterans. I wish to emphasize that the compensation payments are based only on the average economic loss resulting from the disability. While disability payments might, in a few cases, be higher than the disabled person would ever earn, the loss of a hand, for example, would hardly be compensated by the payments available to a man who would have enjoyed a prosperous career as a dentist.

Since disability compensation payments can never be more than a bare minimum under the standards we now use, I feel that it is the duty of the Congress to at least insure that we are truly compensating our veterans for their average economic loss resulting from the disease or injury.

Unfortunately, I am not convinced that our present method of computing compensation payments actually reflects the average economic loss suffered by a veteran as a result of his disability. The Veterans' Administration is currently undertaking an intensive study to determine whether the compensation payments in the law are a true measure of average economic loss.

Also, the VA is looking into the question of compensation for losses or impairments that cannot be expressed in economic terms.

The results of this study are not expected until 1971. I believe that the Congress should act to increase compensation payments this year. Consideration of legislation to improve the disability compensation program will receive top priority from the Finance Committee's Subcommittee on Veterans' Legislation this year.

Two years ago, when the disability compensation program last received congressional review, the monthly payment to a totally disabled veteran was increased to $400.

At that time, $400 represented an amount equal to the average aftertax earnings of the 46 million production workers in the private sector.

It was sound policy to choose this as the basis for determining the average economic loss suffered by a totally disabled veteran.

The bill I am introducing today would increase the monthly payment to the totally disabled from $400 to $450 effective this July. This amount would continue the congressional policy, established 2 years ago, of linking monthly payments to veterans rated 100 percent disabled to an objective index representing the veteran's economic loss.

I await with great interest the results of the Veterans' Administration study. We will learn much about the adequacy of the disability rating schedule under present law. It may well turn out that an adjustment will have to be made in that schedule.

Until we have information based on this study, however, we must also act to increase monthly payments to veterans rated at 10 to 90 percent disabled. In the past, compensation payments for veterans rated less than totally disabled have been increased only by amounts representing increases in the cost of living.

In my opinion, this is not appropriate in a program designed to compensate veterans for the loss in earnings they suffer due to a service-connected disability. My bill incorporates an increase for veterans less than totally disabled which is based on the increase that has taken place in earnings since the present compensation rates were set by law in January 1969.

These represent a larger increase than the increase in the cost of living that has taken place since then, and this is only appropriate in view of the fact that the veteran's disability has limited his earning capacity.

Under present law, an allowance is provided for the dependents of veterans whose disability is rated at 50 percent or higher. These allowances have not been increased since 1965. The bill I am introducing today would increase these allowances by the same percentage as the increase in the bill for the veterans who are less than totally disabled.

The final provision of the bill I am introducing, Mr. President, relates to veterans who were prisoners of war for at least 6 months. Because of the conditions they suffered and the kinds of long-range harm that may have been caused, it is sometimes difficult for a former prisoner of war to establish many years after his military service that a disability or the aggravation of a previous disability is related to his military service. I believe that the veterans should be given the benefit of the doubt in such cases. The burden of proof in such cases should not rest on the veteran to show that his disability is service connected. Instead, it should be presumed to relate to his military service unless the Veterans' Administration can show by clear and convincing evidence that the disability is not service related.

Mr. President, it is my hope that the Subcommittee on Veterans' Legislation will take early action on measures to improve the disability compensation program. I ask unanimous consent that a table comparing compensation payments under present law and under my bill, as well as the text of the bill itself be printed at this point in the RECORD.

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

The bill (S. 3341) to amend title 38, United States Code, to increase the rates of compensation for disabled veterans, and for other purposes, introduced by Mr. TALMADGE, for himself and Mr. CRANSTON, was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

S. 3341

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 314 of title 38, United States Code, is amended—

(1) by striking out "$23" in subsection (a) and inserting in lieu thereof "$25";

(2) by striking out "$43" in subsection (b) and inserting in lieu thereof "$48";

(3) by striking out "$65" in subsection (c) and inserting in lieu thereof "$72";

(4) by striking out "$89" in subsection (d) and inserting in lieu thereof "$99";

(5) by striking out "$122" in subsection (e) and inserting in lieu thereof "$135";

(6) by striking out "$147" in subsection (f) and inserting in lieu thereof "$163";

(7) by striking out "$174" in subsection (g) and inserting in lieu thereof "$193";

(8) by striking out "$201" in subsection (h) and inserting in lieu thereof "$223";

(9) by striking out "$226" in subsection (i) and inserting in lieu thereof "$250";

(10) by striking out "$400" in subsection (j) and inserting in lieu thereof "$450";

(11) by striking out "$500" and "$700" in subsection (k) and inserting in lieu thereof "$550" and "$750", respectively.

(12) by striking out "$500" in subsection (l) and inserting in lieu thereof "$550";

(13) by striking out "$550" in subsection (m) and inserting in lieu thereof "$600";

(14) by striking out "$625" in subsection (n) and inserting in lieu thereof "$675";

(15) by striking out "$700" in subsections (o) and (p) and inserting in lieu thereof "$750"; and

(16) by striking out "$450" in subsection (s) and inserting in lieu thereof "$500".

(b) The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) The increase in rates of disability compensation made by subsections (a) and (b) of this section shall become effective July 1, 1970.

Sec 2. (a) Section 312 of title 38, United States Code, is amended by striking out "For" at the beginning of such section and inserting in lieu thereof "(a) For"; and by adding a new subsection as follows:

"(b) For the purposes of section 310 of this title, the disability of any veteran of a war or of service after January 31, 1955, shall be deemed to be service-connected if for a period of not less than 180 days during his active military, naval, or air service such veteran (1) was held as a prisoner of war, or (2) while in line of duty was forceably detained or interned by a foreign government or power, unless the Administrator can show by clear and convincing evidence that such disability was not incurred in or aggravated in line of duty by such veteran while serving in the active military, naval, or air service."

(b) The catch line of section 312 of such title is amended to read as follows:

"§ 312. Presumptions relating to certain diseases and disabilities".

(c) The table of sections at the beginning of chapter 11 of such title is amended by striking out

"312. Presumptions relating to certain diseases."

and inserting in lieu thereof the following:

"312. Presumptions relating to certain diseases and disabilities."

The table presented by Mr. TALMADGE, is as follows:

COMPARISON OF COMPENSATION RATES UNDER PRESENT LAW AND UNDER TALMADGE BILL

| Disability | Present law | Talmadge bill |
|---|---|---|
| (a) Rated at 10 percent | $23 | $25 |
| (b) Rated at 20 percent | 43 | 48 |
| (c) Rated at 30 percent | 65 | 72 |
| (d) Rated at 40 percent | 89 | 99 |
| (e) Rated at 50 percent | 122 | 135 |
| (f) Rated at 60 percent | 147 | 163 |
| (g) Rated at 70 percent | 174 | 193 |
| (h) Rated at 80 percent | 201 | 223 |
| (i) Rated at 90 percent | 226 | 250 |
| (j) Rated at total | 400 | 450 |
| Limit for veterans receiving payments under (a) to (j) above | 500 | 550 |
| (k) Anatomical loss or loss of use of both hands, both feet, 1 foot and 1 hand, blindness in both eyes (5/200 visual acuity or less), permanently bedridden or so helpless as to require regular aid and attendance | 500 | 550 |
| (m) Anatomical loss or loss of use of 2 extremities so as to prevent natural elbow or knee action with prosthesis in place, blind in both eyes, rendering veteran so helpless as to require regular aid and attendance | $550 | $600 |
| (n) Anatomical loss of 2 extremities so near shoulder or hip as to prevent use of prosthesis, anatomical loss of both eyes | 625 | 675 |
| Limit for veterans receiving payments under (l) to (n) above | 700 | 750 |
| (o) Disability under conditions entitling veteran to 2 or more of the rates provided in (l) through (n), no condition being considered twice in the determination, or total deafness in combination with total blindness (5/200 visual acuity or less) | 700 | 750 |
| (p) If disabilities exceed requirements of any rates prescribed, Administrator of VA may allow next higher rate or an intermediate rate, but in no case may compensation exceed | 700 | 750 |
| (r) If veteran entitled to compensation under (o) or to the maximum rate under (p), and is in need of regular aid and attendance, he shall receive a special allowance of the amount indicated at right for aid and attendance in addition to whatever he is receiving under (o) or (p) | 300 | 300 |
| (s) Disability rated as total, plus additional disability independently ratable at 60 percent or over, or permanently housebound | 450 | 500 |

## DISABILITY COMPENSATION BILL

Mr. CRANSTON. Mr. President, I am pleased to join with the distinguished chairman of the Finance Committee's Subcommittee on Veterans' Legislation in cosponsoring his bill to increase by about 11 percent compensation payments to veterans whose disability is service connected. Senator TALMADGE amply demonstrated his leadership last year in authoring a bill, which recently became law, to make needed improvements and increases in the program of monthly payments to widows and orphans of servicemen and veterans whose death was related to their military service. Another bill he introduced, which passed the Senate and is now pending before the House Veterans' Affairs Committee, would increase the amount of servicemen's group life insurance. It was my privilege to cosponsor those bills with him.

Mr. President, the clearest need in the disability compensation program today is for an increase in the amount of monthly payments to veterans with service-connected disabilities. I strongly support the policy, incorporated in the bill, of linking the increase in these payments to increases in average earnings. This essential feature of the bill which I am cosponsoring represents a long overdue recognition that these payments represent compensation for economic loss. Clearly, economic loss should be measured in terms of earnings rather than substance; thus, increases in compensation should be related to earnings rises rather than to increases in the cost of living.

Some time ago, the Subcommittee on Veterans' Affairs of the Committee on Labor and Public Welfare, which I am privileged to serve as chairman, reported a bill—S. 1279—giving special recognition to the problems of former prisoners of war. The bill, which passed the Senate as reported on October 21, raised a presumption that the illness or disability of a former prisoner of war is service connected for purposes of receiving VA medical care—unless the Veterans' Administration has clear and convincing evidence that the illness or injury is not service connected. I believe that it is most appropriate that we extend this same policy in the case of disabiilty compensation for former prisoners of war.

Mr. President, I am in full agreement with the distinguished Senator from Georgia (Mr. TALMADGE) that an increase in disability compensation is a legislative item of the highest priority during this session of Congress. It would be my hope that he will be successful in his plans to move expeditiously on the bill.

## ADDITIONAL COSPONSORS OF BILLS

S. 2674

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Hawaii (Mr. INOUYE), I ask unanimous consent that, at the next printing, the name of the Senator from Arizona (Mr. GOLDWATER) be added as a cosponsor of S. 2674, to amend title 37, United States Code, to provide for the procurement and retention of judge advocates and law specialist officers for the Armed Forces.

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

S. 3151

Mr. BYRD of West Virginia. Mr. President, at the request of the Senator from Wisconsin (Mr. NELSON), I ask unanimous consent that, at the next printing, the names of the Senator from Indiana (Mr. BAYH), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. JACKSON), the Senator from Montana (Mr. MANSFIELD), the Senator from Minnesota (Mr. MONDALE), the Senator from Utah (Mr. MOSS), the Senator from Vermont (Mr. PROUTY), the Seantor from Wisconsin (Mr. PROXMIRE), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Ohio (Mr. YOUNG), and the Senator from Massachusetts (Mr. KENNEDY) be added as cosponsors of S. 3151, to authorize the U.S. Commissioner of Education to establish educational programs to encourage understanding of policies and support of activities designed to enhance environmental quality and maintain ecological balance.

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

## THE ELEMENTARY AND SECONDARY EDUCATION ACT AMENDMENTS OF 1970—AMENDMENTS

AMENDMENT NO. 460

Mr. GOODELL. Mr. President, on any given day, the corrections component of

our criminal justice system is responsible for approximately 1.2 million offenders in prisons, jails, juvenile training schools, and probation and parole organizations.

About 100,000 of these persons are released from confinement each year into a society which has been quite content to keep them out of sight.

Up to 75 percent of these persons again commit serious crimes and return to confinement. Thus, for a great many offenders, corrections do not correct, and this failure is directly and crucially related to the high incidence of street crime in the Nation today.

In an effort to contribute to the solution of this problem the Teacher Corps in 1968 undertook four corrections education programs in the States of New York, Illinois, Connecticut, and Georgia.

The objective of these efforts, briefly stated, was to encourage local school systems to establish and expand specialized programs of teacher training to assist in the rehabilitation of juvenile delinquents and youth offenders in penal institutions and community based correctional facilities.

The Teacher Corps was assisted in the development of these projects by the Joint Commission on Correctional Manpower and Training, the National Council on Crime and Delinquency, and the VERA Institute of Justice.

It successfully demonstrated its ability to initiate effective reforms in an area crucially and clearly related to our national well-being.

Such reforms are now more urgently needed than ever before. Specialized teacher training and curriculum development must be developed for use in correctional institutions, juvenile detention facilities, and community delinquency intervention programs throughout the country.

I submit today on behalf of myself and Mr. NELSON, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. HARTKE, Mr. JAVITS, Mr. MONDALE, Mr. RANDOLPH and Mr. SCHWEIKER an amendment intended to be proposed by me to H.R. 514 to provide a 3-year, $24 million authorization to develop such programs. The proposal would amend title VIII of ESEA since the latter contains other provisions relating to the Teacher Corps.

The pilot programs in the field of corrections education carried out successfully by the Teacher Corps have had the following objectives, which would be continued under my amendment.

First. To encourage colleges and universities to establish and expand specialized programs to train education personnel to work with juvenile delinquents, predelinquents, youthful offenders, and other criminal offenders in penal institutions and community corrections facilities.

An interdisciplinary approach to the problems of corrections education, including study in the fields of criminology, sociology, and psychology would be coordinated within our schools of education.

Training would be sufficiently broad to prepare teacher-interns in the specialized area of corrections education and to meet university and State requirements for degree preparation and certification. It is hoped that a permanent curriculum offering at universities throughout the Nation can be developed.

Second. To encourage and assist correctional and penal institutions to provide improved education programs for those placed in their charge, in the hopes of insuring that young offenders reenter society with a better chance to assume normal, productive lives.

Third. To encourage dedicated young people to make education in the corrections field a permanent career choice through the development of such special training and new opportunities for service.

Fourth. To complement the efforts of other Federal, State, and local agencies to provide better education programs for juvenile delinquents and youthful offenders.

During the past year the Teacher Corps has conducted three corrections education programs and one pilot project in the States of New York, Illinois, Connecticut, and Georgia. The Corps was assisted in the development of these projects by the Joint Commission on Correctional Manpower and Training, the National Council on Crime and Delinquency, and the VERA Institute of Justice, as well as several other highly regarded experts in the field.

The first corrections education program began at Rikers Island, N.Y., in August 1968. In September 1969, the highly respected VERA Institute of Justice prepared an evaluation of the project.

It reported that—in terms of the educational accomplishments of the program, and indication of success is provided by the number of juvenile and youth offenders who took and passed the high school equivalency examination. For the year, 31 of 72 who took the examination passed.

This is a good percentage, given the low level of proficiency at which many inmates started and the fact that the Teacher Corps placed no restrictions on which inmates could take the examination.

Further, at least 10 inmate-participants in the school have been placed in college programs for the coming academic year.

In addition to such objective accomplishments of the program, there were less tangible, but equally significant achievements of other kinds. For any rehabilitation program to be successful, it must begin by changing the offender's self-image and gave him an opportunity to see himself as a potentially productive person.

The most exciting thing about the Teacher Corps project was that this kind of attitudinal change seemed to occur in so many of the approximately 190 inmates enrolled in the program during the two sessions from September 1968 to June 1969.

The Teacher Corps interns were successful in establishing rapport with the inmates by showing interest in their ideas and treating them as equals. Classroom discussions involved broad participation and were articulate and sophisticated. Many inmates told us that this was the first educational experience in which they felt that teachers gave them credit for being able to think and contribute worthwhile ideas.

The inmates' enthusiasm is probably a result of several factors. The interns are not too different in age from the inmates and thus shared many values common to young people, which cut across social and economic barriers.

Further, the curriculum included topics that were relevant to the problems of Negroes and Puerto Ricans in an urban environment today. Also, because the ratio of teachers to students was low, about 1 to 6, interns were able to devote a significant amount of time to private tutoring, which allowed inmates to move at their own pace.

This impressive evaluation by the VERA Institute reflects the significant potential of this program.

In the State of Illinois, six interns are teaching and working with predelinquents in a delinquency intervention program in the Carbondale Community High School. Six additional interns are supplementing the education staff of the Pere Marquette Camp for delinquent boys, which is operated by the Illinois Youth Commission.

The project is directed by Mr. Charles Matthews, director of the Center for the Study of Crime, Delinquency, and Corrections at Southern Illinois University. Teacher Corps interns are receiving their professional training at this institution. The superintendent of public instruction for Illinois has approved the training experiences as qualifying requirements for teacher certification.

In Connecticut, 20 members of the Teacher Corps are serving in an education program in the school of the Cheshire Reformatory and in Somers Prison, where they are introducing new curriculums and teaching techniques. While serving at Cheshire, interns are enrolled as graduate students in the Department of Education at the University at Hartford.

The Connecticut Department of Education has established a classification of correctional education specialist, and graduates of the program will be so certified.

In Georgia, seven Teacher Corps interns are teaching basic and vocational education subjects, and providing counseling at the Buford Prison near Atlanta. They are enrolled in a 2-year graduate degree program at the University of Georgia. Buford is a small prison which has been converted to a special education and training institution for 180 young offenders.

Mr. President, in addition to these programs, there are a significant number of correctional education proposals which have been submitted to the Teacher Corps by various organizations and universities in several States. At the present time, Teacher Corps funding for these programs is not available. Although they have not been finally approved for inclusion in the Teacher Corps corrections program, they demonstrate the broad and innovative potential for effective action in the new field of corrections education.

A proposed corrections education program at the University of Southern California would utilize 60 Teacher Corps in-

terns, 12 teams of five persons each. These interns would be enrolled in a program focused on the causation of delinquency and the particular educational needs and problems of delinquent youth. They would seek to determine when and how the delinquency pattern begins to develop. They would rotate through both public school and correctional institution experiences.

At the completion of the program, interns would be certified to teach, with the special qualification to work with delinquent and predelinquent youths and programs in both school and community facilities.

This project would have the support of the university's school of public administration and its delinquency control institute. Dr. E. Kimberley Nelson, the distinguished former director of the task force on delinquency for the President's Commission on Crime and Delinquency, a member of the staff of the school, would bring a broad prospective of experience in the field of juvenile delinquency control to the program.

At Sacramento State College, a proposal contemplates the use of 36 corps members in six teams of six each. Each team will be composed of leadership personnel and teacher interns at three levels: undergraduate, graduate—or Teacher Corps—and post graduate or team-leader training, so that the program will culminate in both B.A. and M.A., dependent upon entry level of intern.

A proposed program at the University of Massachusetts would enroll inmates of prisons as teachers for correctional institutions on an experimental basis. They would also be awarded released time to study at the University of Massachusetts.

A project proposed at the University of Minnesota would put teams of Teacher Corps interns into an adult prison and a youth school.

Another proposal submitted to the Teacher Corps by the VERA Institute of Justice in New York contemplates adding a Teacher Corps corrections education component to its current youth offender rehabilitation program, utilizing Fordham University's School of Social Service to assist its development.

Cooperating with VERA in this undertaking would be the New York criminal court system, the Bronx criminal court, the New York State Crime Control Council, the central Brooklyn model cities project, the youth aid division of the New York City Police Department, the New York City family court, and the New York City Board of Education.

The Center for the Study of Metropolitan Problems at the University of Missouri at Kansas City has also submitted a proposal. Cooperating with the proposed correction education program would be the school district of Kansas City, Mo.; the Institute for Community Studies, Kansas City; and the juvenile court services, Kansas City judicial district.

At the University of Oregon, interns for the Teacher Corps correction program would be recruited from three projects at the university that make college study available to blacks, Indians, and Mexican-American migrants. These recruits would be undergraduates and gain experience in local schools and correctional institutions. In the second year, a career opportunities program component would be added to the present proposal.

Cooperating agencies would include the Lincoln County schools; Portland school district; Oregon Correctional Institute, Salem; Skipworth Detention Home, Eugene; and Portland correctional agencies.

The city and county of Denver in cooperation with the University of Colorado and Denver University has also proposed a corrections education program.

Other innovative corrections education proposals have been submitted to the Teacher Corps by Florida Atlantic University, Boca Raton, Fla., and Sam Houston State University, Houston, Tex.

A primary goal of the former proposal is to handle corrections education and other delinquency rehabilitation efforts in the community, rather than in correctional institutions.

The development of the latter proposal would be assisted by Dr. George G. Killinger, director of the State-funded institute of contemporary corrections and behavioral sciences at the university. Cooperating agencies would include the Texas Department of Corrections, Texas Youth Council, juvenile and adult probation departments, Texas Board of Pardons and Parole—Adult; Texas Education Agency, and boards of education in Houston, Dallas, Fort Worth, and San Antonio.

Mr. President, in view of the pitifully small amount of money devoted to research in the field of criminal justice, my amendment would also authorize the Commissioner of Education to make grants for research relating to the academic and vocational education of antisocial, aggressive, or delinquent persons, including juvenile delinquents, youth offenders, and adult criminal offenders. An $18 million authorization for 4 years is recommended.

The proposals embodied in my amendment have been the subject of broad discussion and concern by those in and out of the fields of education and criminal justice, who are concerned about growing delinquency and criminal recidivism in our society.

The Senate Subcommittee on Education heard of the need for new initiatives in this field when it considered the Education Professions Development Act last year.

Mr. President, I call on the Congress to respond to one of the most appalling problems facing America today—our virtual total inability to rehabilitate those who have run afoul of the law.

Corrections education can play a significant role in contributing to the solution of this enormously complicated and costly problem. I, therefore, ask my colleagues to support this amendment and again urge them to give their earnest attention to the entire question of broad based corrections reform in this session of Congress.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

AMENDMENT NO. 461

Mr. ANDERSON. Mr. President, I am submitting an amendment intended to be proposed by me for the relief of St. John's College in Santa Fe, N. Mex. It will solve a unique problem which this educational institution is confronted with as a result of certain technical language included in section 202 of title II–A of the Higher Education Act of 1965.

Section 202 authorizes the issuance of basic library grants to institutions of higher education provided, in part, that they expend, during the fiscal year for which the grant is requested, an amount not less than the average amount expended for library purposes during the 2-year period ending June 30, 1965. In short, this section imposes a minimum annual average expenditure requirement on each grantee based on that grantee's fiscal year 1964–65 library expenditures.

The unique problem here is that St. John's completed its first fiscal year of operation on June 30, 1965. Needless to say, its expenditures for library purposes during this all-important base period were abnormally high. In addition to normal ongoing library materials totaling $8,154 in fiscal year 1965, St. John's spent $12,000 on crucial one-time cost reference works needed to commence operation.

Believing that it qualified for assistance to its library under the Higher Education Act on a basis of its $8,154 ongoing library materials expenditure for fiscal year 1965, St. John's applied and received a $5,000 library grant in fiscal year 1967. Subsequently, the Office of Education informed the college that the $12,000 in extraordinary initial expenditures in fiscal year 1965 would be calculated into the average expenditure figure employed in section 202. I am appending to this statement correspondence from the Office of Education which indicates its position in regard to this unique problem.

St. John's cannot meet this inflated annual average expenditure requirement and has been requested to return the $5,000 Federal grant. In addition, where all other colleges are able to employ their normal fiscal year 1965 library expenditures in complying with the section 202 minimum annual average expenditure requirement, St. John's is precluded from doing so since it is saddled with a $20,154 expenditure base for this all-important year.

The need for these grants and the concomitant minimum annual average expenditure requirement is obvious. However, I hasten to point out the inequity of the technical language of section 202 as it applies to this unique situation. It is to this problem that my amendment is addressed. The amendment I offer simply places St. John's College of Santa Fe on a par with all other colleges by excluding its one-time, extraordinary initial library expenditures amounting to $12,000 from that computation required pursuant to section 202 of the Higher Education Act of 1965.

The PRESIDING OFFICER. The amendment will be received and printed and will lie on the table.

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

RECORD, together with a letter dated February 24, 1969, from Mr. Ray M. Fry, Director of the Division of Library Programs in the Office of Education.

The amendment intended to be proposed by Mr. ANDERSON, and letter, were ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 461

On page 217, add at the end thereof the following:

"RELIEF OF SAINT JOHN'S COLLEGE

"SEC. 809. In determining whether Saint John's College at Santa Fe, New Mexico, may receive or retain basic college library grants under title II of the Higher Education Act of 1965, the Commissioner of Education is authorized and directed to exclude from the computation required pursuant to section 202 (a) and (b) of such Act (relating to maintenance of effort by such college with respect both to total library purposes and to the purchase of library materials), the sum of $12,000 representing extraordinary book purchase expense incurred by such college in fiscal year 1965 in the establishment of a library in the college's initial year of operation."

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OFFICE OF EDUCATION,
*Washington, D.C., February 24, 1969.*

Hon. CLINTON P. ANDERSON,
*U.S. Senate, Washington, D.C.*

DEAR SENATOR ANDERSON: Thank you for your February 6 letter regarding the Higher Education Act of 1965 Title II–A grant to St. John's College in Santa Fe, New Mexico.

The $12,000 expenditure for reference and other essential volumes in fiscal year 1965 must be included in averaging expenditures for fiscal years 1964 and 1965. Since these volumes are considered as books or other related library materials, institutional expenditures for them cannot be excluded. There is no provision in the statute or Policies and Procedures Manual at present to make an exception in this matter.

We realize that this requirement poses a problem for a very few new institutions. We are examining the problem and hope to derive a solution for future operations.

Do not hesitate to contact us again on this or any other aspect of the Title II–A program.

Sincerely yours,

RAY M. FRY,
*Director, Division of Library Programs.*

AMENDMENTS NOS. 462 AND 463

Mr. STENNIS. Mr. President, I submit two amendments to the Elementary and Secondary Education Act.

My present intention is at the appropriate time to propose first the amendment that would apply nationwide the New York freedom of choice plan for public school students that is now the law in that State.

Also, at the appropriate time, I plan to propose the amendment that would establish and make clear that it is the national policy to have uniform enforcement of desegregation of schools in all regions of the United States.

Let me make it clear that my primary purpose is to preserve the neighborhood school and, so far as possible, rescue all schools in every section of the Nation from this killing squeeze put on by those who have made education clearly secondary to integration in the public schools.

I emphasize also that this is not an attempt to repeal the Civil Rights Act. It is simply a good faith attempt to save the schools of every section of the Nation, including the South where they are now literally being emasculated in many areas as educational centers for educating the children.

I wish to make it absolutely clear that I want every child, and I have always wanted every child, to have every opportunity to obtain adequate schooling and training under just as favorable conditions as can be had. I want faculties and others who are engaged in school work generally to have conditions as favorable and as encouraging as possible.

For several years, the Department of Health, Education, and Welfare and the Justice Department have conducted, or attempted to conduct, a campaign to bring about a total integration of the public schools in the South. Both the Department of Health, Education, and Welfare and the Department of Justice have launched a crash program to integrate the races in every school in the South.

This drive for allout integration has been so intense and so demanding that the education and welfare of the students and teachers have actually become secondary. The prime objective has been allout integration.

Those who are directing this campaign have either failed to recognize, or have deliberately chosen to ignore, the fact that this localized effort against the South overlooks segregated conditions in the North that are as pronounced, and in some instances even more pronounced, than segregation in the South which is actually the sole target of this massive integration program.

The record is heavy with facts collected and verified by the Department of Health, Education, and Welfare that show the extent of segregation in the North.

Last year, I placed in the RECORD detailed figures showing the extent of segregation in several Northern and Western States. The references are as follows, in volume 115, part 30:

| State | Date in Record | Pages |
|---|---|---|
| Ohio | Nov. 25, 1969 | 35738 to 35758. |
| Indiana | do | 35820 to 35835. |
| Washington, D.C. | Dec. 1, 1969 | 36266 to 36267. |
| New Jersey | Dec. 2, 1969 | 36387 to 36401. |
| Pennsylvania | Dec. 3, 1969 | 36637 to 36651. |
| Illinois | Dec. 6, 1969 | 37529 to 37557. |
| New York | Dec. 9, 1969 | 37859 to 37882. |
| California | Dec. 11, 1969 | 38427 to 38454. |

These figures show, for instance, that in Ohio there are 197 predominantly Negro schools. There are 154 which are 90 to 100 percent Negro. There are 131 95 to 100 percent Negro, and 105 of them are 98 to 100 percent Negro.

In Indianapolis, the capital of Indiana, there are 13,765 Negro students in 17 schools that are from 99.2 to 100 percent black. In all these 17 schools there are only 37 students listed as white.

In Philadelphia, the largest city in Pennsylvania, there are 9 schools with a total enrollment of 7,206 that are 100 percent Negro.

Also in Philadelphia there are 57 schools with an enrollment of 68,402 that are 99 to 99.9 percent Negro.

In Los Angeles, there are 48 schools with a total enrollment of 65,877 that are 99 to 99.9 percent minority segregated.

These are but some examples. The facts show that in many sections of the North, in large and small school districts, segregation is as extensive, and in some cases, more so, than in the South. Segregated conditions are much worse in the North than in the South now after the Supreme Court decisions have been implemented and put into effect in the South.

The policy of singling out the South for enforcement of the 1954 Supreme Court decision prohibiting discrimination in the public schools on account of race is based upon the idea that enforcement should be directed against areas of the Nation that once had State or local laws that required or allowed segregated schools.

This is known as de jure segregation. Segregation in public schools that has arisen out of a fact, or a combination of facts, not required or permitted by law is classed as de facto segregation.

By establishment of this policy—that is, a differentiation between de jure and de facto segregation—Federal officials have sought to excuse their inaction against segregation in the North while pursuing an intense program to achieve total and immediate integration in the South.

The practical effect of this policy is to say that segregation in the South is wrong but segregation in the North is not wrong.

This procedure, this approach, is merely a policy. It is not supported by the Civil Rights Act of 1964 nor by the Supreme Court decisions.

However, even under this policy the States of the South should be considered on the same footing and treated the same as New York for the reason that as late as 1938 New York law provided for separate schools for Negroes.

The New York statute, laws of 1910, chapter 140, article XXXVI, section 921, read as follows:

Sec. 921. Provision for separate schools.—The Trustees of any union school district, or of any school district organized under a special act, may, when the inhabitants of any district shall so determine, by resolution, at any annual meeting, or at a special meeting called for that purpose, establish separate schools for the instruction of colored children residents therein, and such school shall be supported in the same manner and receive the same care, and be furnished with the same facilities for instruction, as the white schools therein.

As I read this law it clearly provides for a dual school system. It is the separate but equal doctrine.

The New York Supreme Court declared this law to be constitutional and therefore in effect in New York, in decisions rendered by that Court in 1883, and again in 1900; and said section continued to be the law in that State until it was repealed in 1938.

Notwithstanding the fact that the schools of New York should be treated the same as the schools of other States where de jure segregation existed, the New York Legislature last year passed and Governor Rockefeller signed a State law which precludes the application of the civil rights law and other desegregation measures in that State as now being applied in States of the South.

By an overwhelming vote of more than two to one in the new State General As-

sembly, the New York Legislature prohibited the busing of students and also gave to the public school student's parent or guardian the freedom of choice as to the public school a child shall attend.

The inequity thus created is unacceptable under the principles of our form of government. While public school students in the South are now forced to ride a school bus many tens of miles, and in some cases for hours each day, against their will, and the will of their parents, to attend a school across the county from their homes, the State of New York has by law provided there will be no bussing of students and there will be freedom of choice to attend a neighborhood school.

If freedom of choice is wrong, the State of New York should not be allowed to continue freedom of choice as an official policy. If freedom of choice is right as official policy in New York, all other States should have the same right to freedom of choice.

If public school students in New York should not be bused to overcome the vestiges of a dual school system, the public school students of the South should not be bused for that purpose either.

If the students of the South should be bused for that purpose then the students of New York should also be bused.

For a picture of the extent of segregation in the public schools of New York State, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a summary of HEW statistics for the school year ending June 1968.

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

(See exhibit 1.)

Mr. STENNIS. A sense of fairness should give wide support to the proposition that every State be treated alike.

I challenge those who advocate this dual standard and duplicitous policy to put this matter in national issue by adopting as part of their platform in the next election the proposition that all States, including their own, should be treated as the South is now being treated.

I predict that any candidate or political party who does so will be defeated overwhelmingly.

I further predict that not one party, nor one candidate, will make such a proposal as part of the platform on which they seek election, because every knowledgeable person in public office knows full well that defeat would be certain.

If this drastic policy is not to be pressed with equal diligence in all sections of the Nation, fairness then dictates that the pressure be eased in these sections where it is being unwisely and unjustly applied before the public schools are destroyed and there is no chance for any student—black or white—to obtain a decent education.

I consider no matter now before the Senate, or likely to come before the Senate, more important or more serious than that of preserving public school education and the concept of the neighborhood school, and I will pursue this matter as vigorously and effectively as I can.

I ask unanimous consent that the amendments to which I have referred be printed and be allowed to lie on the table, and that the text of the amendments be printed at this point in the RECORD.

The PRESIDING OFFICER. The amendments will be received and printed and will lie on the table; and, without objection, will be printed in the RECORD.

The amendments, ordered to be printed in the RECORD, are as follows:

AMENDMENT NO. 462

On page 45, between lines 4 and 5, insert the following new section:

"DISCRIMINATION ON ACCOUNT OF RACE, CREED, COLOR OR NATIONAL ORIGIN PROHIBITED

"SEC. 2. (a) No person shall be refused admission into or be excluded from any public school in any state on account of race, creed, color or national origin.

"(b) Except with the express approval of a board of education having jurisdiction, a majority of the members of such board having been elected, no student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of achieving equality in attendance or increased attendance or reduced attendance, at any school, of persons of one or more particular races, creeds, colors, or national origins; and no school district, school zone or attendance unit, by whatever name known, shall be established, reorganized or maintained for any such purpose, provided that nothing contained in this section shall prevent the assignment of a pupil in the manner requested or authorized by his parents or guardian."

AMENDMENT NO. 463

On page 45, between lines 4 and 5, insert the following new section:

"POLICY WITH RESPECT TO THE APPLICATION OF CERTAIN PROVISIONS OF FEDERAL LAW

"SEC. 2. It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 and section 182 of the Elementary and Secondary Education Amendments of 1966 shall be applied uniformly in all regions of the United States in dealing with conditions of segregation by race in the schools of the local educational agencies of any State without regard to the origin or cause of such segregation."

Mr. STENNIS. Mr. President, I ask unanimous consent that the name of the Senator from Georgia (Mr. RUSSELL) be added as a sponsor and author of these amendments.

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

Mr. STENNIS. I ask unanimous consent that the name of the Senator from South Carolina (Mr. HOLLINGS) be added as a cosponsor of the amendment, and other Senators who wish their names to be added as cosponsors.

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

EXHIBIT 1

NEW YORK

According to the 1968–69 HEW school survey, there was a total of 3,364,090 students in the elementary and secondary public schools of New York. Of this total, 2,601,708, or 77.3% of the total enrollment, were white; 473,253, or 14%, were Negro students; 263,799, or 7.8%, were Spanish-speaking Americans; 19,620, or 0.6%, were classified as Orientals; and 5,710, or 0.1%, were American Indians.

The HEW's IBM data reflects that there are 17 school districts in the State of New York with at least one school with a minority group enrollment of over 80%. However, in 14 of these cities, or school districts, there is an aggregate Negro enrollment of 403,127, or 85.2% of the total state Negro student enrollment in the New York City schools alone.

Let's take a look at New York City. It has a total enrollment of 1,363,067, of which 467,365, or 43.9%, are white, 334,841, or 31.5%, are Negro, 244,302, or 23%, are Spanish-speaking Americans, 15,753, or 1.5%, are classified as Oriental, and 1,526, or 0.1%, are American Indian students.

In New York City, there are 119 schools which are 99% and 100% minority group segregated, which have a Negro enrollment of 89,957, or 19% of the city's total Negro student enrollment. There are 207 schools having a Negro student enrollment of 146,575 (43.7% of the city's total Negro enrollment) that are 95% to 100% minority group segregated. There are 269 schools with an aggregate Negro enrollment of 173,791 (or 51.9% of the city's total Negro enrollment) in schools that are 90% to 100% minority group segregated. There are 322 schools with a total Negro enrollment of 201,462 (or 60.1% of the city's total Negro enrollment) where the minority group enrollment is 80% to 100%. There are 18,865 white students (or 4% of the city's total white student enrollment) attending these 322 schools that are 80% to 100% minority group segregated. There are 82,794 white students (or 17.7% of the total white student enrollment) attending 50% to 100% minority schools.

Now let's look at the white majority schools. There are 211 schools which are 80% to 100% white, which are attended by 17,994 Negro students (or 5.3% of the city's total Negro student enrollment. In all, there are 393 majority white schools in New York City, and 65,490 Negro students (or 19.5% of the city's total Negro enrollment) attend these majority white schools.

In the public schools of the city of Buffalo there is a highly segregated Negro minority. Buffalo has a total enrollment of 72,115, in 101 schools, of which 43,942 (or 60.9%) are white, 26,381 (or 36.6%) are Negro, and 1,792 (or 2.5%) are from other minority groups.

In the Negro majority schools, there are 16 schools with a total of 11,562 Negro students, which is 43.8% of the total Negro enrollment in Buffalo public schools, which are 99% and 100% Negro. There are 21 schools, with 66,122 Negro students (or 61.6% of the city's total Negro student enrollment) that are 95% to 100% Negro segregated. 19,268 (or 73% of the city's total Negro students) attend majority Negro schools, and 27% attend majority white schools.

1,821, or 4.1% of the total white student enrollment of Buffalo, attend majority Negro schools, and 95.9% of the white students attend majority white schools.

There are a number of other interesting city school districts in New York State. For example, there is Rochester, which has a Negro student enrollment of 13,679, which is 28.9% of the total public school enrollment of the city, where there are 6 schools that are 90% to 100% Negro segregated.

In Utica, which has a Negro enrollment of only 11.8%, has one school that is 93.6% Negro.

Newburgh, New York, where the Negro student enrollment is only 23% of the total school enrollment of the city, has two schools which are 99% and above Negro segregated.

Monticello, New York, with only a 17.3% Negro student enrollment, has one school that is 100% Negro.

## CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969—AMENDMENTS

AMENDMENT NO. 464

Mr. HUGHES proposed an amendment to the bill (S. 3246) to protect the public health and safety by amending the nar-

cotics, depressant, stimulant, and hallucinogenic drug laws, and for other purposes, which was ordered to lie on the table, be printed, and printed in the RECORD.

(The remarks of Mr. HUGHES when he proposed the amendment appear later in the RECORD under the appropriate heading.)

AMENDMENT NO. 465

Mr. MOSS submitted an amendment intended to be proposed by him to the amendments (No. 452) proposed by the Senator from Iowa (Mr. HUGHES) to the bill (S. 3246) supra, which was ordered to lie on the table and to be printed.

## ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, January 27, 1970, he presented to the President of the United States the enrolled bill (S. 476) for the relief of Mrs. Majorie Zuck.

## DELAY OF SENATE HEARINGS ON VOTING RIGHTS AMENDMENTS

Mr. ERVIN. Mr. President, on December 16, 1969, H.R. 4249, an amendment to the 1965 Voting Rights Act, was referred to the Judiciary Committee with instructions to report to the Senate by March 1. I thereupon announced that the Constitutional Rights Subcommittee would resume hearings as soon as possible after the second session resumed. The hearings were, accordingly, scheduled to begin January 27, a week after the Senate returned from adjournment.

The deadline was set in mid-December, when March 1 seemed years away. The suggestions that such a deadline was warranted because of delay by the subcommittee are simply not founded. The Constitutional Rights Subcommittee began its hearings on July 9, a scarce 9 days after the administration bill was introduced. Thereafter, there was no apparent desire for subcommittee action from any quarter for over 6 months. Neither the Department of Justice nor supporters of a 5-year extension gave any sign to me that they desired action during this period. There was obviously a tacit agreement by both sides to delay further action by the subcommittee until the House had completed its work.

The March 1 deadline gives the subcommittee and the Judiciary Committee a bare 27 working days to hold hearings, resolve basic disputes about the 1965 act, and take action on numerous proposed amendments. With the full committee hearings on Judge Carswell and the resultant delays it will cause, I think it is obvious to all now, if it was not in December, that a March 1 deadline can be maintained only at the sacrifice of responsible legislative action. This is a most controversial item, upon which there are many strongly held, differing views. If they cannot be aired and resolved satisfactorily in commitee where they should be, then they very well may have to be ironed out on the Senate floor.

In any event, the subcommittee will endeavor to operate as best it can under the restrictions so unwisely placed upon it. The hearings will begin as promptly as possible following the completion of hearings on the nomination of Judge Carswell.

## FIVE YOUNG MONTANA MOUNTAINEERS DISAPPEAR

Mr. MANSFIELD. Mr. President, adventure is always an admirable quality in our young people, and each year we hear of new challenges presented by Mother Nature. The lure of mountain climbing is irresistible to many. During the holiday season, five young Montanans attempted to climb Mount Cleveland, the highest and most rugged mountain in Glacier National Park. This is a challenge which has defeated others, and, apparently, these five have failed to reach the summit of Mount Cleveland. After 2 weeks of searching, it was generally determined that the climbers had met an unfortunate fate. This part of Glacier National Park is extremely hazardous because of heavy snowfall and the constant threat of avalanche. The search parties were unable to find any clues as to possible fate of these young men. It is likely to be spring before the recovery is accomplished.

The five youths, Clare Pogreba and Ray Martin, Butte; James Anderson, Bigfork; Jerry Kanzler, Bozeman; and Mark Levitan, Helena; set out on December 27 to attempt the first ever winter ascent up the mountain's north face. Three of the climbers were students at the Montana State University, and the boys from Butte were enrolled at the Montana College of Mineral Science and Technology.

This is indeed a tragic occasion, not only the apparent loss of these young men, but the uncertainty which must linger within the hearts of their immediate families. Mrs. Mansfield and I extend our personal bereavement to the mothers and fathers, sisters and brothers of these outstanding young men.

This is a very sad story but one which is a tribute to the strength and character of five youthful mountaineers. I ask unanimous consent that a series of articles published in the Missoulian and the Hungry Horse News be printed in the RECORD.

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

[From the Missoulian, Jan. 7, 1970]

SEARCHERS BELIEVE FIVE YOUNG CLIMBERS DEAD

WEST GLACIER.—The five climbers missing on Mt. Cleveland in Glacier National Park never made it to the top.

Authorities said a helicopter being used in search operations landed on top of the frozen peak Wednesday. The crew checked the registration log at the summit. The log did not contain the names of the missing men, authorities said.

Searchers left the mountain Wednesday night with the temperature hovering near 10 degrees below zero. Authorities said the search would be continued for the sixth day Thursday, weather permitting.

Even the remote hope of finding any of the five missing mountaineers alive faded Wednesday after searchers found in a slowslide a parka and camera. Officials said the articles belonged to one of the climbers.

"We're assuming now that this is just a recovery operation," said Dan Nelson, park spokesman, although there was no indication the search would be disbanded as long as the weather held.

Mountaineering experts, for the first time since the youths failed to report in to park officials last Friday, said the operation now should be "considered one of recovery rather than search and rescue."

A spokesman for the Canadian National Parks Service said that American and Canadian officials met with parents and relatives of the missing climbers Wednesday to explain the situation.

Film found in the camera was developed in the hope it would give searchers clues to the youths' ascent path. One picture on the two rolls showed a panoramic view of the north face of 10,448-foot Mt. Cleveland, the park's highest mountain.

On the basis of prints made, the search Wednesday was concentrated on the northwest side of the mountain where a provisions cache and back pack were found earlier.

Avalanche conditions in the region were described by the Canadian spokesman as "considerably dangerous." More snow or a light wind could start more slides, he said.

He said deteriorating weather conditions might force abandoning of recovery efforts, although they would be continued as long as possible.

The youths set out Dec. 27 to attempt the first-ever winter climb up the mountain's north face, a 4,000-foot perpendicular rock wall. Indications are they never made it.

Nelson said the picture apparently was taken as the climbers approached their goal.

Parents of the climbers declined to identify the articles found, still holding slim hopes their sons might be tucked away awaiting aid.

Three of the climbers were students at Montana State University in Bozeman. They were James Anderson, 18, *Bigfork; Jerry* Kanzler, 18, Bozeman, and Mark Levitan, 20, Helena. The others, students at Montana Tech in Butte, were Clare Pogreba and Ray Martin, both 22, of Butte.

An incoming weather front, carrying with it what forecasters said would be numerous days of adverse weather, was expected to hamper continued search operations.

Nelson said from the articles found it appeared two members of the party moved from the north face to the northwest slope to come in above the other three climbers and give assistance to those making the perpendicular climb.

"They may not have gotten back to the other three on the face," said Nelson. "If they did, the question now is where are all five of them?"

Most of today's efforts were combined just below the cliffs where searchers used metal probing poles to break through the heavy snow.

A Canadian Park Service official was in the area using a magnetometer, a piece of equipment that detects metal objects under the snow.

Nelson said an earlier plan to bring in specially trained dogs from Washington was abandoned because the animals could not arrive in time.

[From the Hungry Horse News, Jan. 9, 1970]

MOUNTAIN HOLDS CLIMBER MYSTERY

(By Mel Ruder)

Concerned relatives and friends of five Montana families prayer this week for a successful search operation on Glacier National Park's highest peak.

Mt. Cleveland rises more than a mile above Waterton Lake which is shared with Waterton Lakes National Park. It is no longer a rescue operation but a search.

Missing are five young mountaineers, who planned to climb the 4,000-foot rock wall that reaches to the top of 10,488-foot high Mt. Cleveland.

Situation with worsening weather is that

eight-day search will involve fewer men Friday and will become a matter of surveillance.

Three of the climbers were Montana State University students. They were: James Anderson, 18, Bigfork; Jerry Kanzler, 18, Bozeman, formerly of Columbia Falls, Mark Levitan, 20, Helena, along with Clare Pogreba and Ray Martin, both 22 of Butte, students at Montana Tech.

During Thanksgiving week, Anderson, Levitan and Pogreba along with Jim Kanzler, Jerry's older brother; Dr. Pat Callis, MSU chemistry teacher, and Jurg Hofer, climber from Switzerland, reached the top of Mt. Wilbur, 9,303-foot high peak that rises 4,000 feet about Swiftcurrent Lake. It is nowhere as hazardous as the north face of Cleveland.

EXPEDITION PLANNED

The expedition to climb Mt. Cleveland was planned for some time. The youths headed for Glacier Dec. 26. They stopped and checked with District Ranger Robert Frauson, an experienced mountaineer, at St. Mary. Frauson checked their clothing, supplies and equipment. At mention of Cleveland's north face, he strongly cautioned that this not be attempted.

Most conventional route is up Camp Creek to the west face, being arduous even in summer, rather than the hazardous north face. Tracks found later confirmed the boys had gone up Cleveland Creek to the north face.

The youths went to Waterton and were taken up the seven-mile long lake by Alf Baker.

They were last seen about 11 a.m. Saturday, Dec. 27.

Baker commented about the fine young men, well clothed for a Montana winter.

SCANS MOUNTAIN

Bud Anderson, 25, MSU graduate, Air Force trained pilot, now a civilian, flew a small plane over Mt. Cleveland Dec. 31. He was checking to see how the climbers were doing. There was no sign, but he wasn't unduly concerned since the expedition was to continue for five days—on or about Jan. 1.

Anderson had tried to fly, Dec. 29 and 30, but area was "socked in."

Jan. 1 saw Bud Anderson go to the head of the lake by boat. No one was waiting to be picked up. He saw no sign of the climbers and alerted Warden Jack Christiansen.

Friday developments included telephoning Chief Ranger Ruben Hart of Glacier at 9:10 a.m. from Warden Christiansen's office. Report was overdue climbers.

ASKS AIR FORCE

Glacier requested use of a helicopter from Malmstrom Air Force Base. Flying weather was poor in the Flathead. * * *

Bud Anderson and Warden Christiansen saw climber ski tracks up through the timber leading to the bottom of the north face. Friday afternoon they found where the young men had left their skis at timberline.

Saturday, Bud Anderson, Warden Christiansen and Naturalist Kurt Seel located the base camp including two tents, a food supply, hard hats. It was near the base of north face.

FINDS TRACKS

Tracks were found where climbers separated—three in one group, two men in the other.

Three snow caves were located, where men had burrowed in. There were candy wrappers.

A second three-man search team Saturday probed the conventional climbing northwest slope of Cleveland and found nothing. In this group were Rangers Jerry DeSanto and Doug Erskine, new to Glacier and mountain-rescue trained in Yosemite and Mt. Rainier, and Warden Larry Trembley.

Meanwhile, Supt. William J. Briggle and Supt. Tom Ross of Waterton Lakes National Park were in contact with various offices. It was truly an international rescue.

TRAINED RESCUERS

Canada has large parks and a lot of snow. Trained mountain rescue men arrrived from Baniff and then Jasper, Saturday and Sunday.

Flying conditions slowed arrival of four men who work summers in mountain guiding and rescue in the Tetons. They came from Salt Lake City getting to Waterton Tuesday.

An Air Force helicopter was in use from Malmstrom Saturday and Monday. A Johnson Flying Service helicopter was flown up Monday by Bob Schellinger, who was relieved by Pilot Charles Trail.

This helicopter has been in use each day this week.

Mountain hazards didn't allow two helicopters to be flying in the area which was closed to other plane use.

The Air Force was praised by Supt. Briggle for their assistance.

ICE TAKES OVER

Monday saw the last use of Waterton Lake by boats. The ice took over.

Transportation to the base camp—the new American ranger station at the head of Waterton Lake—was by helicopter after Monday. Snowmobiles were also used to get part way up the Mt. Cleveland slope, and had some possible utilization from the townsite to the ranger station.

In charge of ground search for Glacier is Ranger William Colony with District Ranger Robert Frauson, search coordinator, working from an office made available at the Waterton National Park administration building.

There is high praise by Supt. Briggle to the Canadians for their cooperation and skill.

Dan Nelson, management assistant at Glacier National Park headquarters, has handled press and radio in a number of emergencies and accidents. He worked to keep the public informed, as did Jack Wheat, Glacier's new management assistant, detailed by Supt. Briggle to work at Waterton.

George Ostrom, public relations staffer at Bell Manufacturing, who is Hungry Horse News columnist, and has had years of radio broadcast experience, arrived in Waterton Sunday. He sent a number of news broadcasts back to KOFI, and kept the Hungry Horse News informed. "Sleepy George" of KOFI days was back in his element—getting news out.

SUPPORT TEAM

When the climbers checked at St. Mary Ranger Station they left names of climbers to be called in case of emergency. These included Jim Kanzler, Dr. Pat Callis and Pete Lev. graduate student, all of Montana State University. They arrived Sunday.

Dr. Callis and Lev came down from the dangerous, hard work on the mountain Thursday. Jim Kanzler wouldn't leave and finally did.

It was Jim who found a packsack of a missing climber Tuesday. There is a large snowslide in shape of a giant Y. The pack was found in one of the upward arms of the Y. Somewhat later, a parka with a 35 mm film type camera in a pocket was located by a probe. It was found in the base part (downward) of the snowslide Y.

NOT JERRY OR JIM

Identity of owners is not being released, but they did not belong to Jerry Kanzler or Jim Anderson.

Film was developed and showed a panorama of the north face as the men approached the north face. There was also color film exposed.

It is believed two of the climbers are in the Y slide as evidenced by finding the pack and parka. Perhaps the other three are in the Y slide or under snow in the same general area.

Wednesday saw Ranger Erskine land on top of Cleveland by helicopter and check the registration log. Names of the missing men with a recent date weren't found. Some had climbed the mountain in previous years.

Wednesday also saw use of magnetometer obtained from Canada's Glacier National Park in a night drive. It can detect metal as far down as 30 feet in the snow, and will note shoe nails at shallow depths.

MARKING SNOW

George Ostrom told of pressure paint cans being used to color snow, so that the area of present activity can be located after snowfall and snowslides. Saplings are being placed to denote edges of slides, and sleeping bags staked out on the slide to see how they move.

Wednesday saw a meeting of parents with Superintendents Briggle and Ross and William McKim, Calgary, Canadian NPS regional director, and others.

A session to keep parents advised was also held Monday. The Hungry Horse News editor declined to sit in since there are times when a newsman shouldn't be present.

The parents designated which one would accompany Supt. Briggle and Helicopter Pilot Trail over the search area. Art Martin, father of one of the missing youths, was selected.

PARENT REPORTS

Martin later told the parents of the search area, its bleak location and obvious dangers.

Park officials, including District Ranger Frauson with whom there was more contact, kept the parents informed, and advised of the obvious de-escalation that must take place.

Men are working in extreme cold, under threat of slides and rock falls, and not many men can function under such conditions.

Weather forecasts this week were threatening, but it turned out better than anticipated. However it was ten below zero at Waterton Townsite Thursday, and building plumbing "was frozen."

Ostrom told of the great confidence parents of the missing young men have in District Ranger Frauson. He feels Supt. Briggle and Glacier has handled the rescue operation well, and had "high praise for the Canadians."

The Hungry Horse News editor met Dr. Morton Levitan, Helena, and Art Martin, Butte, fathers of two missing young men. They spent hours at the foot of Waterton Lake in a car, watching, hoping and praying. They saw us taking pictures. Mr. Martin opened a car window, and said: "Come in, get warm." It was cold.

Waterton cooperation includes the Bakers offering facilities, wives of Waterton community opening the Lions Hall Sunday and feeding personnel. There aren't restaurants open. Waterton Park has a fine mess hall facility and a good cook in Mrs. Helen Nedgaard.

SATURDAY CAMP

Our notes also show that the base camp of the climbers was established Saturday, Dec. 27 the day they arrived. Sunday they apparently dug the snow caves up a little ways, and they'd use the caves briefly.

One set of tracks—three men—led to the face, and two sets of tracks led to the right up a gully.

Dan Nelson feels that from articles found it appeared two of the climbers moved from the north face to northwest slope to come in above and give assistance to the three making the steeper climb.

There are comments about rescue costs. A civilian helicopter costs $120 an hour.

Glacier doesn't have emergency operation funds. Sometimes they come from regional accounts, and at other times, the park is required to reduce its operational expenditures.

Increased awareness of dangers men on the mountain encounter has resulted in most people realizing that reduction in the search effort will have to come.

No thinking person wants it on his conscience that he urged continuance of a search, and then have another man lost.

There is also realization that the parents want to know where their boys are.

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[From the Hungry Horse News, January 16, 1970]

MOUNTAIN SHOULD REVEAL CLIMBER MYSTERY IN JULY

(By Mel Ruder)

Glacier National Park's mountain of mystery should reveal the secret of five missing climbers in July.

This was comment of District Ranger Robert Frauson, experienced mountaineer, who directed operations from Waterton Townsite. Search center on Glacier's highest peak, Mt. Cleveland that rises more than a mile above seven-mile Waterton Lake which is half in the United States and half in Canada.

Last seen about 11 a.m. Saturday, Dec. 27 were: James Anderson, Bigfork; Jerry Kanzler, 18, Bozeman, formerly of Columbia Falls, and Mark Levitan, Helena, all Montana State University students, along with Clare Pogreba and Ray Martin, both 22, Butte, Montana Tech students.

WEATHER ENDING

Search efforts started Jan. 2 and terminated Jan. 8 with arrival of wind, snow and cold that made survival of men on the search extremely hazardous.

The effort involved Canadian and American alpinists—tremendous men. Before termination Supt. William J. Briggle of Glacier and Supt. Tom Ross of Waterton reviewed the situation with parents.

Only clues of climber whereabouts were a pack and parka with camera found Jan. 6. Then nothing Jan. 7 or 8. Film developed showed a panorama of the mountain.

The Hungry Horse News editor talked with District Ranger Frauson and Ranger William Colony who headed search operations from the American end of Waterton Lake. They were at Glacier headquarters Monday in a review with Supt. Briggle, Chief Ranger Ruben Hart and other staff members.

TWO AVALANCHES

We asked Ranger Frauson about a theory that three of the youths were caught in an avalanche and then the two others going to their rescue and were caught in a second slide.

Frauson replied: "We won't know what happened until we find them. Then he referred to the possibility of a climax type avalanche that could come off Mt. Cleveland and mix up the whole snow field."

The mountaineer-ranger also observed: "You could hide an army up there."

Search area concentrated in about four square miles of snowfield, rock and ice above timberline country.

Replying to a question, Frauson said the youths came to his home Dec. 26, sat down, and told him of their plans to attempt to climb the north face. These plans had been underway for some time.

Frauson continued: "I reasoned strongly against it."

The young men were well clothed, had mountaineering experience and climbing equipment. Glacier is not out-of-bounds for such as them.

WHAT WAS ATTEMPTED

We asked Ranger Colony about comments in the press regarding the mountain, and whether the youths attempted the north face.

Colony replied: "There's no way we can judge it climbable," and he referred to the situation where most men wouldn't have attempted it.

Colony noted disappointment of the searchers that more trace of the climbers wasn't found, and the considerable amount of speculation "quarterbacking and second guessing."

He said: "We know they established a camp on the north side. One or two men went toward the west side."

As to what man was wearing the pack, he said: "They could have traded packs."

Colony said it required about eight hours for support men to make the trip from the ranger station at head of the lake to the search area and return. It wasn't suitable for snowmobile use.

Colony observed: "We had a lot of luck breaks. First there was the weather. Nearly every day there was a forecast of bad weather coming soon, but it held off. Then the lake didn't freeze over until Tuesday."

29 SEARCHERS

Maximum number of searchers on Mt. Cleveland at one time was 29, trained Canadians and Americans including volunteers from Butte and Bozeman. The men who were on the search mission were termed "tremendous," and there was special word for the Canadians.

A man who has been largely overlooked is Helicopter pilot Charles Trail of Johnson Flying Service. Frauson and Colony said: "He's a fine pilot and did a wonderful job."

Trail wasn't able to get his helicopter back to West Glacier and Missoula from Waterton until Monday. Adverse turn of weather was the factor.

Search effort also included a look at the register on top of Mt. Cleveland, inspection of Mokowanis Shelter and Pass Creek Cabin, possible havens.

Day after day there were zero and below temperatures, and fortunately "comparatively little wind."

Colony told of a Canadian in a tent near the search area. He had a small stove in the tent, and was having a cup of hot tea. There were icicles on the cup. "It was that cold."

Search area was marked by fluorescent orange spray paint and many bamboo and willow poles with the idea of identifying it next spring.

Ranger DeSanto, who frequently was aerial observer, is considered to have best knowledge of the area covered. He took bearings with a compass in preparation for search renewal.

NEW SNOW

The past week saw a foot of new snow at Waterton Townsite, and more on Mt. Cleveland which has had a number of new slides.

Rangers DeSanto and Doug Erskine Monday and Tuesday re-winterized the American ranger station at the head of frozen Waterton Lake, and left. They were last men out.

As weather permits there will be some aerial surveillance of Mt. Cleveland, but it will be the mountain spring late June at the earliest before active ground search resumes.

Montana and Alberta newspapers, radio, and television were much concerned with the Mt. Cleveland tragedy, but the story of the five missing youths somehow didn't get on major network newscasts. A conclusion is that this nation of over 200 million has somewhat restricted news coverage.

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[From the Hungry Horse News, Jan. 16, 1970]

COMMENTS

The following is a few paragraphs from Arnold Akelstad, former Bigfork scoutmaster, about Eagle Scout Jim Anderson.

It wasn't intended to be a letter for print. Permission was asked of Akelstad, however, to publish a few of his thoughts.

I did not know any of the other boys, but they no doubt were of the same high caliber as was Jim Anderson. If all of our youth were as well adjusted as Jim what a great nation we would be.

There is not a single memory in mind of Jim that was not of complete happiness and contentment. The only reprimand I ever gave the boy in five years of scouting was for being too brave. What a wonderful flaw!

It is not for me to conjecture what drives young men to conquer mountains. The obvious thing on the other hand is that without this burning desire to conquer we would as a nation, long since be reduced to a covey of slaves.

This has to be what our greatest leaders, statesmen, explorers, scientists, journalists, doctors are made of. Each in his own way of course, but all boiled down, they try harder.

I concur with your message that this right for men to reach fulfillment of their ambitions not be denied.

It is a saddening of our hearts when the final hand of fate is dealt, but it is also saddening when our senseless slaughter on the highways continues. It is also saddening that we are sacrificing our environment, if not all of mankind by pollution in the name of progress. We wonder if we can afford the price.

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[From the Hungry Horse News, Jan. 16, 1970]

ABOUT PHONE CALL WITH MRS. KANZLER

Last week the Hungry Horse News editor attempted to telephone Mrs. Jean Kanzler, Bozeman, mother of one of the missing climbers. We tried twice, couldn't reach her, and let well enough alone.

Saturday noon there was a telephone call from Mrs. Kanzler. She had just received the Hungry Horse News, and appreciated the personal approach in presenting the tragedy. There was also the comment that she would like us to communicate with friends.

Mrs. Kanzler said: "When it's time to go, they go," and she referred to Hal and now Jer. That's what the family calls Jerry.

Jean continued: "There's no way of stopping it. I'm comforted in that Jer went the way he wanted to."

Then she added: "We had a happy 18 years. The Lord has my son now."

Mrs. Kanzler will be in the Flathead next spring or early summer for memorial services. She also mentioned a memorial to Jerry in connection with the Episcopal Church, and how much comfort the church was to her in her loss.

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[From the Hungry Horse News, Jan. 16, 1970]

OSTROM TELLS OF SEARCH

On Saturday, Jan. 3rd I skied the upper runs on Big Mountain until increasing cold detracted from my pleasure and drove me down to the lodge where friends were gathered.

The topic there was of Jerry Kanzler and four of his friends overdue on a climb in northern Glacier park, something I had not heard about before.

As I drove home I recalled the incompetence and chaos with which the park administration had faced the several crises of 1967. At home I gathered foul weather gear, climbing pack and snowshoes, reviewed maps, and studied slides I've taken in and around Mt. Cleveland.

I had no illusions about a fat and 40 man pulling off any heroic class 5 climb to rescue anyone on the north face of Cleveland, but I did know I had to do what I could, and see first hand what was going on. Several telephone calls were unsuccessful in finding the right kind of man who could go with me.

Around 9 o'clock I called the one park man I knew who is completely competent in mountain rescue work, Bob Frauson. Although he must have been very busy, Bob courteously briefed me on the whole situation. Thus reassured I decided to not go to Waterton that night.

Sunday in Waterton I met Ranger "Willy" Colony for the first time, and decided there were now two men in Glacier in whom I could place trust and respect. At Waterton headquarters I was shown the list of experienced climbers who were already positioned in the American end of the lake in the search area. It couldn't have been better.

The logistics problems were staggering but Frauson had covered them all. The Cana-

dians had committed themselves to meet the American problem immediately and completely. I was frankly amazed to the point of lump in the throat emotionalism.

Thousands of words have been written about what happened at Mt. Cleveland and Waterton. Some of it was inaccurate, much was good, much was factual, and some was poor. In the back of my mind I have a book to write about it, but for this column perhaps a few personal thoughts and random observations might be interesting.

It is a rare and precious time in anyone's life when he finds 60 or 70 people from all walks of like who momentarily lay selfishness aside and commit themselves wholeheartedly to aiding or comforting all those around them.

Some gave of their sleep, their comfort, and their pantries. Others came very close to giving their lives . . . and they all acted as if it was the natural thing to do.

One father in his despair wondered if it wouldn't have been better for his son to have died in the jungles of Vietnam and I disagreed.

Only those young men who dare to challenge, shall ever really accomplish, and I believe the world will be much better off when bold young men can "find themselves" on a wind swept mountain instead of in a machine gun swept rice paddy. Personal freedom encompasses a choice of where and how to die as well as where and how to live.

Audacity is probably as good a word as any to explain the calm manner in which Jock Glidden of the Teton Rescue climbers showed me how to make 30 foot nylon avalanche cords for the search crews to wear on their belts, like tails. He explained that if they were hit by a slide, there was a good chance the tails would stick out of the snow so subsequent rescuers would know where to dig for them.

A rock of strength and courage at Waterton was Jim Kanzler's wife, Linda, the kind of woman a man wants his sons to marry.

Glacier Supt. Briggle handled things very well. He picked the most qualified men he has to run the operation and he let them run it.

This is the first measure of administrative ability. As in all bureaucracies, the park still has some deadwood and misfits in high places, but Briggle wisely kept them in spots where they could do the least harm.

Telling parents, relatives, and friends of five lost men that hope was gone, has to be one of the most difficult things any man could face, but Superintendent Briggle handled it exceedingly well. He was given fine support by Ranger Frauson, an uncommon man.

The next time the temperature drops to 30 below zero and wind is howling, go up and spend the night on the roof of your house and you'll get some idea of how Doctor Callis, Pete Lev and Jim Kanzler spent Jan. 5, 1970.

A final note. Except for some thin circumstantial evidence, I have nothing or heard nothing that convinces me the five young men on Mount Cleveland did, or were doing, anything rash.

I do not know they actually attempted an assault on the north face.

They obviously considered it, went and looked at it, and camped below it . . . but did they try it?

There are state and federal snow removal crews, who have been caught by unexpected avalanches on well traveled highways, who weren't exactly foolish.

The climbers were taking some calculated risks but any life worth living involves some risks. Was it a nice safe cozy deal for Pilot Barton, Scoutmaster Akelstad and Mel Ruder to be flying around that peak in the clouds on Sunday the 3rd?

In the good book there are some words about not judging unless you can stand judgment, and I guess that's about where I stand on my decision about my friend Jerry Kanzler, his young friends, and their last adventure.

[From the Hungry Horse News, Jan. 16, 1970]

JIM'S MOTHER THANKS PUBLIC FOR CONCERN

Mrs. Florence Anderson, Bigfork, mother of one of the missing youths on Mt. Cleveland, telephoned Wednesday.

She said: "From the bottom of my heart I appreciate the kindness of people and all the efforts to find the boys. It's not just for Jimmy. It's for all of them."

Mrs. Anderson continued: "So many have asked what they could do to help, and I feel that when the bodies are found, maybe a living memorial—a fountain or something for Canadians as well as for Americans. Because they all helped."

Mrs. Anderson commented: "I feel that Jimmy went into mountain climbing knowing the dangers. He was prepared for survival or what might happen. He wanted his ashes spread over the park if anything happened. That's how much he loved the park."

Mrs. Anderson remembers Jimmy "as always happy. He used to sing a lot, and he belonged to a combo band." She referred to him as a searcher "who has found his answers."

Then she again mentioned thanking people for their wonderful kindness to us: "their cards, calls, visits and offers to do anything they could."

Saturday evening, the Hungry Horse News editor say Danny On. Danny commented that last week's story on Jimmy "was just the way it should be. I thought of him as a young brother."

## REPUBLICAN REPORT—"OUR POISONED SKIES"

Mr. SCOTT. Mr. President, I wish to commend the Senator from Colorado (Mr. ALLOTT) and the staff of the Senate Republican Policy Committee on their January 22 Republican report "Our Poisoned Skies." This excellent study examines several aspects of our critical national air pollution problem. It describes the nature and causes of air pollution in Apache Junction, Ariz., as well as in Los Angeles and New York City. Senators on both sides of the aisle should have an opportunity to examine this excellent report. Mr. President, I ask unanimous consent that the report entitled "Our Poisoned Skies" be printed in the RECORD.

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

OUR POISONED SKIES

The great question of the seventies is, shall we surrender to our surroundings, or shall we make our peace with nature and begin to make reparations for the damage we have done to our air, our land and our water?

Restoring nature to its natural state is a cause beyond party and beyond factions—President RICHARD M. NIXON, state of the Union message, January 22, 1970.

This month in his message to the California State Legislature, Governor Ronald Reagan, a Republican, asked for stern new measures to restore purity to California's air. His authority for doing this came from Senator George Murphy's (R., Calif.) successful fight in 1967 for an amendment to the Air Quality Act, reserving for California the right to enact tougher standards than those being considered at the Federal level.

Already in California a bill has been reintroduced designed to outlaw use of the internal combustion engine on California highways. Such a measure once passed one house of that legislature but was killed by the other.

On January 20, 1970, the U.S. Department of Transportation forced American air carriers to agree to immediate installation of air pollution control devices on jet engines. There is still strong pressure in Congress to write that agreement into law.

CLEAN AIR: A MAJOR ISSUE

*Watery eyes, stinging nostrils, sore throats* have been the lot of urban Americans for a generation. The battle against air pollution which is *poisoning our skies* has been a losing one in Los Angeles, New York, Boston, Chicago, Washington, D.C., to mention but a few metropolitan centers.

These urbanites have long envied the freedom from smog of their fellow citizens who live in "the wide open spaces." *"Going out west is like getting your glasses cleaned,"* comments one young easterner.

It was thus a shock to pick up the January 4, 1970 issue of The Arizona Republic and find more than a fourth of the front page devoted to *local smog*. A four-column, eight-inch picture showed thick, oily smog sliding "around the south end of the Supersitition Mountains . . . toward Apache Junction and Phoenix."

The realization is brought home implacably: *Air, clean air, has become a major political issue affecting the entire country.*

Smog, polluted air, poisoned skies, however it may be described, is a *universal problem* in the United States. Predictions the planet Earth is fast running out of breathing air become believable, not only in New York and Los Angeles, but also in Phoenix, Albuquerque and Omaha.

Within the past year the warning issued by the Senate Republican Policy Committee in its 1966 staff study, "Where the Votes Are," has finally become generally accepted. *"Clean air,"* that study stated, *"Means votes."*

*Just how many votes are involved and where they are to be found are only now becoming fully appreciated.*

Emotional impact of pollution is beginning to surface, particularly *among the young.* Many young people are taking very seriously predictions by ecologists that within the next 20 to 30 years Earth will run out of breath.

These young Americans are saying to their parents, "It won't affect you so much but we'll still be alive 40 years from now—if you leave us enough oxygen to stay alive."

On some college campuses today *pollution* has become the *new cause for activities*, preempting the war in Vietnam.

Of air, land, and water pollution, polluted air is the *most visible*, the *most noxious* and the *most personal.* Dr. Lee A. DuBridge, President Nixon's chief scientific adviser, says,

"Air pollution is the most hazardous because it is so pervasive. You can't get away from it if you live near a city. You're continually breathing it and even air-conditioned buildings and apartments aren't completely clean."

Dr. DuBridge adds, *people "are much more angry about pollution than they used to be. They have more to complain about,* too, for the environment is deteriorating . . ."

Another way of saying it: *Polluted air has the most potential for political impact.*

WHAT IT IS

Air pollution varies from city to city, from one type of industry to another, from one form of transportation to another. It can be said to have *two common denominators* in all parts of the country. First, *air pollution is harmful* to man, animals, plants and structures. Second, *it is growing worse everywhere* at such a rapid rate that technicians tend to despair of our ability ever to reverse the trend.

Earth's atmosphere is a *chemical laboratory* in which *hundreds of gases* roil and interact upon each other. *Concentrated, many of these gases are deadly* to men and animals alike; *properly dispersed* and intermingled with other gases, in the right percentages and at the right places, *they can be beneficial.*

*Ozone* ($O_3$ as compared with Oxygen $O_2$), continuously created and destroyed by sun-

light at altitudes of about 15 miles, forms a blanket against ultraviolet rays. *Without ozone these ultraviolet rays would cook us all.* On the other hand, ozone on *the Earth's surface* is a known cause of lung and upper respiratory ailments and *could cause death.*

*Carbon dioxide* in proper quantities performs a useful service in plant growth. All green plants absorb carbon dioxide from the air and convert it into carbon and oxygen. As we burn oil, coal and gas—which we do in a thousand ways in homes, industries and automobiles—we pump colossal quantities of carbon dioxide into the air, far more than the ecological system of the Earth has ever been forced to handle.

Dr. DuBridge suggests we may be pouring more of this gas into the atmosphere than our plants and oceans can possibly absorb. If this is the case, one of the effects could be a drastic, perhaps disastrous, change in Earth's temperature.

Carbon dioxide in the air performs much the same function that glass does in a greenhouse. It permits the sun's rays and heat to penetrate and heat the interior, but prevents heat from being radiated back into space. This is the reason for the whitewash so often splashed on greenhouse glass.

Over a period of time—and scientists disagree on how long it might take—such a greenhouse effect could so raise the temperature of our planet as to melt polar icecaps. In point of fact, a rise of only a very few degrees, over a period of time, would be required. In that event coastal cities would be inundated and billions of persons would have to flee to higher ground or drown.

As one observer notes grimly, this could have one beneficial side effect: the greatest smog producing cities of the world would be destroyed—and the rest of the planet could breathe easier.

*Clean air is a balanced natural mixture of gases* and other chemical substances that *supports all life on Earth.*

When *out of balance,* that is, when one or more gases become too prevalent or dominant, *the resulting unbalanced atmosphere can be equally destructive of life.*

NATURE, TOO POLLUTES

Man is not alone responsible for creating such imbalances. As Donald E. Carr points out in his book, "Breath of Life," such natural destructive imbalances have been known and noted from earliest recorded history. Hot sulphur gases escaping at the site of asphalt mines 200 miles west of Babylon led to early imagery of Hell as a nether world of fire and brimstone. *Volcanic fissures, geysers, hot springs* and other phenomena *spew out gases which spread death and plant destruction around them.*

Such natural phenomena are however so small and so scattered that their destructive effect has always been confined to a small area. It was not until man discovered the utility of artificially created fire that *air pollution began to appear* as a problem throughout the world.

Most pollutants, *singly* and in *limited quantities,* are not in themselves a *health hazard.* Most pollutants enter the atmosphere through combustion or explosion.

The problem is simply that as man has learned to use a wider variety of fuels, and has used them more intensely, he has caused a *staggering increase in the amount of pollutants in the air we breathe.* Our atmosphere is rapidly becoming more and more unbalanced. It is not yet poisonous—except occasionally in certain heavily industrialized areas—but it soon will be if nothing is done about the process.

THE DEADLY BREW

Among the more common ingredients of the pollution brew are the sulphur oxides (and acid), carbon monoxide, ozone, and nitrogen oxides (and acid) hydrocarbons (and acid), arsenic, asbestos fibers (from hot auto brake linings), beryllium, cadmium and lead.

These substances, if ingested by humans or animals in too-large doses, are deadly. *Carbon monoxide,* for instance, *has killed many thousands of motorists and homeowners* over the years.

The following information from the Public Health Service, U.S. Department of Health, Education, and Welfare, refers only to amounts *quite frequently found in the air in cities where smog commonly occurs.* In short, these substances are part of the daily life of the average urbanite as he travels to and from work, or of his wife if she leaves her windows open.

The effects listed below are those that have been documented by health authorities. Research continues to determine other, perhaps equally dangerous, effects. Robert and Leona Train Rienow in their "Moment in the Sun" quote researchers as saying *living in New York City is like smoking 38 cigarettes a day.*

Carbon monoxide—Impairs response time, cognition function and vision, thus contributing to the accident rate on highways.

Sulphur dioxide, sulphur trioxide—Irritates nose, throat and upper lungs, aggravates existing respiratory ailments, causes cardiovascular morbidity in the elderly.

Ozone—Causes coughing, choking, severe fatigue; interferes with lung function; impairs visual acuity; causes recurrent headaches and chest pains.

Nitrogen dioxide—Causes eye and nose irritation, and may increase susceptibility to infection.

Hydrocarbons—May be major contributing factor to increased death rate from lung cancer among urban population.

Arsenic—Associated with cancer.

Asbestos fibers—Induces lung disease.

Beryllium—Has produced malignant tumors in laboratory experiments.

Cadmium—Contributes to high blood pressure and increased susceptibility to heart disease.

Lead—A cumulative poison, may cause brain damage and death among small children; impairs functioning of nervous system in adults.

Particulates—Tiny particles of solids which in themselves act as irritants on nose, throat and lungs. They have the additional feature of coating themselves with toxics from gases and, since they penetrate deep into the lungs, taking other poisons with them. Without the presence of particulates the vaporous toxics in most instances lodge in the upper respiratory tract, not penetrating deep into lungs, and are therefore less damaging.

THE BREWMASTERS

*Every fire that burns creates its own set of pollutants.* Every fuel creates some heat and leaves some residue of pollutant in the air. To a degree *every one of the pollutants is dangerous to man and animals.*

Signs of real trouble began to show a century ago as the industrial revolution took hold. Smoke-belching industries concentrated in river valleys, which tended to confine the smoke and prevent it from dispersing readily into atmosphere. *As technology advanced, trouble spots multiplied* and the localized smogs thickened. Each mill, factory and smelter added to the layers of pollution around the world's great industrial centers.

Until a few years ago factories, mills, smelters, power plants and incinerators were assigned most of the blame for the smog choke. In the 1950's and 60's, however, *research developed information that pointed to another, more serious source of pollution.* It has been demonstrated that between *60 and 90 percent* of all city air pollution is due to internal combustion engines—the *automobile, truck, and bus.*

Just how much junk the average automobile throws into the air was documented in 1961 by Dr. John T. Middleton, professor of plant pathology at the University of California, Los Angeles, and Diana Clarkson, secretary of the State of California Motor Vehicle Pollution Control Board.

In a paper written for Traffic Quarterly, April 1961, they cite figures on automobile pollution. For every thousand gallons of gasoline burned, an automobile emits into the atmosphere:

Carbon monoxide, 3,200 pounds.

Organic Vapors (hydrocarbons), 200–400 pounds.

Oxides of nitrogen, 20–75 pounds.

Aldehydes, 18 pounds.

Sulphur compounds, 17 pounds.

Organic acids, 2 pounds.

Ammonia, 2 pounds.

Metallic solids (zinc, lead, carbon, other metallic oxides), .3 pounds.

Thus, *for every 8,000 pounds* of fuel burned (5 jaunts across the country) the average automobile of 1961 was pumping between *3,600 and 3,700 pounds* of very unhealthy garbage into the atmosphere.

One car, on a trip from New York to Los Angeles, will add to the air approximately 576 pounds of carbon monoxide, 73 pounds of hydrocarbons, 13.5 pounds of oxide of nitrogen, 3.2 pounds of aldehydes, 3 pounds of sulphur compounds, a third of a pound each of organic acids and ammonia and a trace of zinc, metallic oxides, lead, and other solids.

Based on Middleton-Clarkson estimates, collectively the 104 million automobiles in the United States are emitting an overwhelming 47,500 tons of hydrocarbons, 14,500 tons of nitrogen oxides, and 296,670 tons of carbon monoxide every day into the atmosphere over the Nation.

The Middleton-Clarkson estimates are based on the 1961 automobile. Since 1968, under Federal law, automobile manufacturers have been forced to adopt some pollution control devices. Environmental engineers contend that any advantage gained by these devices *is offset* by the higher power of the 1969 and 1970 cars. Additionally, they point out, the new devices *do not apply to old cars* and there are *more than 90 million* such older cars still on the roads. Furthermore the devices *are not completely efficient,* and some of them adversely affect engine performance, so that there is a tendency to disregard or disconnect them.

Automobile manufacturers in January of 1970 announced they hopefully can produce smog-free engines by *1980;* apparently until then the limited-value control devices on present models will have to suffice, *unless much more rapid progress can be made.*

Noxious as these automotive emissions are as they pour out of your car's exhaust pipe, something even more interesting happens to them when they hit sunlight. Sunlight works on these gases to create, through an extremely complex photochemical reaction, even more deadly gases.

*Photochemical smog* results from the sunlight's action on carbon monoxide, the hydrocarbons and nitrogen oxides. The resultant mix is known as the oxidants, among the most common and most deadly of which is *ozone.*

Ozone is highly explosive and when manufactured in laboratories is treated more gently than nitroglycerine. As previously noted, in its place at 80,000 feet, ozone is beneficial. At Earth's surface *it can be deadly* and is a known cause of a large number of human ailments.

This photochemical smog, largely involving ozone, is blamed by the Forest Service for damage being done to stands of ponderosa pines in the hills high above the Los Angeles basin.

POPULATION AND POLLUTION

The problem, as seen by Dr. DuBridge and other scientists, is not simply the automobile. Nor is it one factory belching smoke from its chimney. The problem is we have *so many* of everything—so many factories, so many mills, so many smelters, so many powerplants, and so many automobiles.

The problem is one of population. But, more, it's one of a fast-growing population that is used to and demands goods and services on an unprecedented scale.

As technology develops to meet these demands, it creates its own problems of pollution and waste. In turn, technology is thereby called upon to develop disposal systems that do not themselves create new problems. Says Dr. DuBridge:

"We are in a difficult race; the race between rising production of waste products and our ability to develop the technology to reduce the pollution created by these waste products."

To date, *we appear to be losing the race,* not primarily because of expanding population, but rather because of the high standards we have set for ourselves to meet the needs of this expansion. Again, Dr. DuBridge:

"Population growth in this country is a *more serious problem* than that in developing countries. Those countries do not use many resources. It is the rather slow-growing population of the developed nations, producing waste at a rapid rate, that are a greater threat to the world's environment." (Emphasis added)

Biologist Wayne H. Davis of the University of Kentucky, writing in the January 10, 1970, New Republic, contrasts this American population growth with the explosion in India. The United States, he notes, has a population of 203 million, while India has a population of over a half-billion and is adding new citizens at an extremely high rate. Yet the Indian peasant, even though there are many more of him, does less damage to his land on the whole than does the more advanced American. The Indian eats his few cups of rice daily, draws his water from a communal well, sleeps in a mud hut and gathers cow dung for fuel with which to cook his rice and warm his feet.

"His footsteps, along with those of millions of his countrymen, help bring about a slow deterioration of the ability of the land to support people."

By contrast, this description of the United States by Dr. Robert Rienow of the State University of New York at Albany:

"Every 7½ seconds a new American is born. He is a disarming little thing but he begins to scream loudly in a voice that can be heard for seventy years. He is screaming for 26,000,000 tons of water, 21,000 gallons of gasoline, 10,150 pounds of meat, 28,000 pounds of milk and cream, 9,000 pounds of wheat, and great storehouses of all other foods, drinks and tobacco. These are his lifetime demands of his country and its economy.

"He is requisitioning . . . $5,000 to $8,000 for school building materials, $6,000 worth of clothing, $7,000 worth of furniture—and 210 pounds of peanuts . . .

"He is heralded as a prodigious consumer in a nation that has one-fifteenth of the world's people but consumes half of its produce. In one year we use up enough big trees to build a ten-foot boardwalk thirty times around the world at the equator. . . ."

ANOTHER SIDE OF THE COIN

There is, obviously, another side of the coin, analogous to the one which George Schwartz points out in The Sunday Times, London, January 11, 1970. "It may be distasteful to see electricity pylons striding across the open countryside," he writes, *"but who is to carry the cost of putting them underground?"* Ultimately, he notes, the choice may be between putting utility lines underground or spending money for expansion of universities or on other facets of modern life.

*Jet airliners* which *pour some 1,200 pounds* of gunk a day on Washington, D.C., and are contributing to the more rapid erosion of national monuments in the capital, *also make it possible to handle the business of governing a nation of 203 million people expeditiously.*

The *millions of cars* that erupt onto the Nation's highways each morning and into traffic-clogged streets each evening *also make it possible* for Americans to live in *private homes with at least small swatches of green* between them and their nearest neighbors.

The electric power plant that pours *heavy coal or oil smoke* into the city's air *is also providing the power* for *lights, flameless cooking,* and *home entertainment.*

*Without technology* and the comforts and luxuries it provides almost all Americans, *life in America would be as drab as that of the Indian peasant* about whom Dr. Davis writes.

The problem facing America is not a choice between technological advance or regression. We long ago made *this* choice.

It is rather for technology to catch up with itself.

IS SOLUTION POSSIBLE?

Is it possible to detoxify our air?

That question can best be answered by answering another question: Do we *want* to clean up our skies?

Nearly every scientist, engineer and scholar writing in the field agrees that, *technically, it is feasible.* The question, as they see it, is not so much one of feasibility as one of desire to get the job done.

Just as *air pollution* with its watery eyes, sore throats and stinging nostrils *is the most personal* and direct form of pollution for the average city-dweling American, so also is *the solution* to the problem *the most directly personal.*

Government at all levels—Federal, State and local—can take affirmative steps to clean up streams (the Federal Government can physically dredge the Potomac) and polluted land (car graveyards can be reclaimed). Citizen participation in this type of pollution cleanup would be *largely liimted to paying taxes.*

Decisions can be made by Government: *how much tax money will be spent, and where it will be spent.*

To clean our air, on the other hand, *hard decisions will have to be made by people.*

*Are people willing to spend over $300 extra* per car to convert smog-producing automobiles into comparatively smog-free automobiles?

Such devices are available. In California, for instance, a conversion unit using natural gas instead of gasoline has been developed and Governor Reagan has ordered them installed on State-owned vehicles.

State action in this case barely makes a dent in the smog problem. To achieve real pollution control involves *owners* of the other *11 million cars in California* alone—and the total bill to that State will be somewhat over $3.3 billion. To add such smog-eliminating conversion units to the entire Nation's 104 million cars would cost *$31.2 billion*—all of it paid for by individual automobile owners.

That's the beginning.

Other decisions the *consuming public* has to make involve *how much more* they are willing to pay for electricity so power plants *can be converted* from smog-producing to smog-free operation.

The consumer, who is also the taxpayer and the voter, must make decisions on *how much more* he is willing to pay for everything, from smoked ham to baby carriages, to provide the funds to clean up the toxic skies.

Ecologists say it involves more than just decisions on money. It involves *decisions on how Americans want to live.*

Are they, for example, willing to forego some air conditioning if that would mean less pollution (and, scientists note, less real need for air conditioning)?

Are Americans willing to ride crowded mass transit vehicles, whether trains or buses, rather than drive their own cars to work?

*Each decision involves money and living standards.*

Each decision *must be made by an individual* because *Government*—in a democratic republic—*cannot make those decisions for us.*

No representative of a suburban area, whether in a State legislature or the Congress, could support harsh measures barring the use of automobiles in commuting unless he could be assured his constituency would back him up.

*To date few have had that assurance.*

The question then remains, how seriously do we mean it when we say that we not only *can* clean up our skies—but we *shall?*

## INDUCTION OF DELINQUENTS BY LOCAL DRAFT BOARDS

Mr. KENNEDY. Mr. President, last week the U.S. Supreme Court delivered its opinion in Gutknecht against United States, holding that accelerated induction of delinquents by local draft boards was unauthorized by Congress. I stated at that time that I believed this was an important step in reforming the present draft system, so that young men could have respect for it.

The Supreme Court made another step yesterday in its decision in Breen against Selective Service Local Board No. 16. The Court held that when Congress "acted to replace discretionary standards with explicit requirements for student deferments, it did not specifically provide or in any way indicate that such deferred status could be denied because the registrant failed to possess his registration certificate."

Again, I feel that this is an important decision. I ask unanimous consent that the opinion of the Court be printed in the RECORD.

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

[Supreme Court of the United States, No. 65.—October Term, 1969]

TIMOTHY J. BREEN, PETITIONER, *v.* SELECTIVE SERVICE LOCAL BOARD NO. 16, BRIDGEPORT, CONNECTICUT, ET AL.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[January 26, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

This case raises a question concerning the right of a young man ordered to report for induction into the Armed Forces to challenge the legality of that order prior to reporting for duty. Petitioner Breen, while enrolled in the Berkeley School of Music in Boston, Massachusetts, was given a II–S student classification by his local draft board, and deferred from military service pursuant to the provisions of the Military Selective Service Act of 1967, 81 Stat. 100, 50 U. S. C. App. § 451 *et seq.* (Supp. IV). According to an agreed stipulation of facts, in November 1967, he surrendered his draft registration card to a minister at a public gathering "for the sole purpose of protesting United States involvement in the war in Vietnam." Shortly thereafter his local draft board declared he was "delinquent" for failing to have his draft card in his possession and at the same time reclassified him I–A—available for military service.[1] He appealed this reclassification to the appropriate Selective Service Appeal Board, and while that appeal was pending filed this suit in the United States District

Footnotes at end of article.

Court in February 1968, seeking an injunction against any possible induction into the Armed Forces on the ground that his delinquency reclassification was invalid. The respondent local board moved to dismiss the suit for want of jurisdiction, relying on § 10(b)(3) of the Act which provides that:

"No judicial review shall be made of the classification or processing of any registrant by local boards, appeals boards, or the President, except as a defense to a criminal prosecution instituted under section 12 of this title, after the registrant has responded either affirmatively or negatively to an order to report for induction . . ."[2] 50 U.S.C. App. § 450(b)(3) (Supp. IV).

The District Court granted the motion to dismiss and Breen appealed that decision to the Court of Appeals.[3] While the appeal was pending, we rendered our decision in *Oestereich* v. *Selective Service Bd.*, 393 U.S. 233 (1968), holding that § 10(b)(3) did not bar preinduction judicial review in the circumstances presented in that case. Although Breen argued that *Oestereich* controlled his own case, the Court of Appeals affirmed the District Court's dismissal of the suit, with one judge dissenting, holding that *Oestereich* did not cover this case and § 10(b)(3) therefore required dismissal of the suit. 406 F. 2d 636 (C.A. 2d Cir. 1969). We granted a petition for certiorari, 394 U.S. 997 (1969), and because we conclude that *Oestereich* does control this case, we reverse the judgment of the Court of Appeals.

In *Oestereich* a student preparing for the ministry surrendered his draft registration card in protest against the war in Vietnam and was reclassified as a "delinquent." He then filed suit seeking to enjoin his induction, claiming that he was being inducted contrary to the clear statutory requirement that students preparing for the ministry "shall be exempt from training and service" under the Act, 50 U.S.C. App. § 456(g). We held in that case that since Congress had unambiguously said that students preparing for the ministry were not to be drafted, and since there was no indication in the statute that such exemptions could be denied for "delinquency," Oestereich's induction was unlawful and in such a case § 10(b)(3) would not be interpreted to bar preinduction judicial review and thereby force the registrant to submit to an illegal induction or risk the possibility of a criminal prosecution to regain his exempt status.

In the present case petitioner Breen argues that he, like Oestereich, should not be inducted and he relies on § 6(h)(1) of the Act, which provides that:

"Except as otherwise provided in this paragraph, the President shall, under such rules and regulations as he may prescribe, provide for the deferment from training and service in the Armed Forces of persons satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution of learning and who request such deferment." 50 U.S.C. App. § 456(h)(1) (Supp. IV).

In his complaint Breen alleged that he was a 20-year-old student and argued that he was clearly qualified for a student deferment. The Government has never contested Breen's factual allegations concerning his student status, nor has it argued that he is not qualified for such a deferment for any reason except the alleged "delinquency." As in *Oestereich*, we do not find any indication that Congress intended to allow the draft boards to deprive otherwise qualified students of their deferments for the reasons relied upon in this case.

In concluding that *Oestereich* did not control this case, the Court of Appeals felt that any reference in § 6(h)(1) to "such rules and regulations as [the President] may prescribe" was an indication that Congress authorized revocation of student deferments for violations of the delinquency regulations. 406 F. 2d, at 638. That conclusion must be rejected for several reasons. The explicit language of the Act provides that the President "shall" provide for the deferment of undergraduate students except as otherwise provided by the terms of the Act itself, and Congress then set forth the specific conditions which a student must meet to qualify for such a deferment.[4] The reference to "rules and regulations" is clearly intended only to authorize such additional administrative procedures as the President may find necessary to insure that all qualified students are given the deferment which Congress provided in § 6. There is nothing in the language of the Act itself which indicates a congressional desire to allow the President to add to or subtract from the factors specified in the statute for determining when students would be deferred.[5] The legislative history of § 6(h)(1) clearly indicates that Congress intended that only the conditions specified in that section need be met to warrant a student deferment. Prior to the 1967 Act the draft law provided that student deferments were provided only according to presidential regulation and in practice such deferments were subject to the discretion of the local draft boards.[6] The committee reports and floor debates on the 1967 Act show that a primary purpose of the amendments was to eliminate this local option and provide clear, uniform standards for undergraduate student deferments.[7] When Congress thus acted to replace discretionary standards with explicit requirements for student deferments, it did not specifically provide or in any way indicate that such deferred status could be denied because the registrant failed to possess his registration certificate.[8] Finally, any contention that "delinquency" induction is proper in this case must be rejected for the reasons set forth in our decision in *Gutknecht* v. *United States*, *ante*, p. —, holding that induction pursuant to the delinquency regulations has not been authorized by Congress.

The Attorney General advances another argument for distinguishing this case from *Oestereich*, *supra*. He points out that Oestereich met the requirements for a statutory "exemption" from military service, while Breen is at best qualified only for a statutory "deferment." On the basis of this observation he urges that the provisions of § 10(b)(3) preclude pre-induction judicial review in all cases of deferments and that *Oestereich* provides an exception only in certain cases where an exemption is claimed. We fail to see any relevant practical or legal differences between exemptions and deferments. The effect of either type of classification is that the registrant cannot be inducted as long as he remains so classified. Congress has specifically said that the only persons who may be inducted into the Armed Forces are those "who are liable for such training and service and who at the time of selection are registered and classified, *but not deferred or exempted*." 50 U.S.C. App. § 455(a)(1) (Supp. IV).[9] (Emphasis added.) Thus it is clear that the crucial distinction in draft classifications is between individuals presently subject to induction and those who are not so subject, either because of deferment or exemption.

The Attorney General also argues that a rational distinction exists in the statutory scheme between deferments which merely postpone the time when a registrant will serve and exemptions which place the registrant "outside the manpower pool." Brief for the Respondent, at 20-21. A careful reading of the entire Act indicates that no such consistent distinction is preserved. Congress has provided that "[n]o . . . exemption or deferment . . . shall continue after the cause therefor ceases to exist." 50 U.S.C. App. § 456(k). Many of the "exemptions" are not absolute, as the Attorney General implies, but conditioned on certain factors. Thus an exempt ministerial student like Oestereich will lose that exempt status if he withdraws from study in preparation for the ministry. Similarly exempt veterans can be inducted into the Armed Forces if Congress declares a war or national emergency. 50 U.S.C. App. § 456(b). On the other hand there is absolutely no assurance that an individual who is simply deferred will only have his military obligation postponed. So long as a registrant remains in a deferred classification he cannot be inducted, and deferment past the maximum age of draft liability would effectively exempt the registrant from compulsory military service. Although a registrant like Breen cannot be deferred as an undergraduate student past his 24th birthday,[10] he may continue to be deferred on the basis of extreme hardship to dependents or employment in the national interest. 50 U.S.C. App. § 456(h)(1) (Supp. IV). There is thus no statutory scheme to permanently exempt certain individuals while only deferring service for others. Both deferments and exemptions accomplish the same congressional purpose, that of not inducting certain registrants at a particular time.

We are consequently unable to distinguish this case from *Oestereich*. In both situations a draft registrant who was required by the relevant law not to be inducted was in fact ordered to report for military service. In both cases the order for induction involved a "clear departure by the Board from its statutory mandate." *Oestereich*, *supra*, at 238, and in both cases § 10(b)(3) of the Act should not have been construed to require the registrants to submit to induction or risk criminal prosecution to test the legality of the induction order. The judgment below is reversed and the case remanded for further proceedings in conformity with this opinion. *Reversed and remanded.*

FOOTNOTES

[1] This reclassification was undertaken pursuant to 32 CFR § 1642.12.

[2] Although this provision would appear to preclude judicial review by habeas corpus after the registrant submitted to induction, we have already construed the statute to allow such review. *Oestereich* v. *Selective Service Bd.*, 393 U.S. 233, 235, 238 (1968).

[3] During the pendency of that appeal the Appeal Board upheld the reclassification and the local board then ordered Breen to report for induction. The induction order has been stayed pending decision in this case.

[4] The Act also provides that student deferment status may be lost under certain conditions.

"A deferment granted to any person under [this provision] shall continue until such person completes the requirements for his baccalaureate degree, fails to pursue satisfactorily a full-time course of instruction, or attains the twenty-fourth anniversary of the date of his birth, whichever occurs first." 50 U.S.C. App. § 456(h)(1) (Supp. IV). There is no contention raised here that Breen has lost his deferred status for any of these statutory reasons.

[5] The Act does allow the President to restrict student deferments on a finding that the needs of the Armed Forces require such action, 50 U.S.C. App. § 456(h)(1) (Supp. IV), but he has not made any such finding at this time.

[6] See Selective Service Act of 1948, § 6(h), 62 Stat. 604, 611–612, as amended. The regulations promulgated pursuant to this authority permitted student deferments in the discretion of the local boards with certain suggested guidelines. See 32 CFR §§ 1622.25, 1622.25(a) (1967 ed.).

[7] H.R. Rep. No. 267, 90th Cong., 1st Sess., 25–26 (1967); Conf. Rep. No. 346, 90th Cong., 1st Sess., reprinted in U.S. Code Cong. & Admin. News, 90th Cong., 1st Sess., 1352, 1356–1359 (1967); 113 Cong. Rec. 14093, 14095, 16434 (1967).

[8] The suggestion that the fleeting reference to "delinquents" in § 6(h)(1) of the Act, 50 U.S.C. App. § 456(h)(1) (Supp. IV), author-

izes delinquency inductions must be rejected for the reasons set forth in *Oestereich, supra,* at 236–237, and in *Gutknecht* v. *United States, ante,* at—.

[9] This statutory directive is implemented by 32 CFR § 1631.7.

[10] See n. 4, *supra.*

## WINNING EXAMPLE OF DETROIT POLICEMAN

Mr. GRIFFIN. Mr. President, an event occurred in Detroit the other day that raised a few eyebrows.

Graduating students at a junior high school in the inner city voted to ask a policeman, 24-year-old Paul Sanders Jr., to be their commencement speaker.

Patrolman Sanders must be a rare man indeed, when one considers that he was chosen over Detroit Tiger star Willie Horton and Wayne County Auditor Richard Austin, who came within a hairsbreadth of winning the city's recent mayoral election.

Two newspaper articles published recently in the Detroit News and the Detroit Free Press tell the story.

I recommend them as worthwhile reading, and I heartily commend Patrolman Sanders, who must be a superb law enforcement officer—in every good sense of the term.

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:

[From the Detroit (Mich.) News, Jan. 19, 1970]

HE'S A SCOOTER COP WITH A LOT OF CLASS

(By Henri E. Wittenberg)

Elmer Sanders Jr. will address the graduating class of the Longfellow Junior High School, at 12th and Buena Vista, tomorrow because the graduates like his message.

They could have picked Richard Austin, former Detroit mayoral candidate, or Willie Horton, a Tiger baseball star, but they chose Sanders, a Detroit policeman.

The students do not think it unusual to prefer Sanders. The 24-year-old scooter officer, assigned to the 10th (Livernois) Precinct, has been a public speaker for the last year, in and out of school.

Success of his talks became apparent early in December when the 132 eighth-graders selected Sanders by closed ballot.

"I am allowed to speak in various classes," he says, "and the first thing I tell the kids is I'm not a teacher, but I can tell you how to get along with others and stay out of trouble."

Sanders uses a red book called "What is the Law for Juveniles?" as his guideline. It was published as a public service of The Detroit News.

Sanders and his partner, Micah Smith, tell the youngsters everything they can think of to keep them straight, he said.

"We even explain the meaning of every part of our uniform," he said, "the badge, gun, attached radio, and how we are expected to conduct ourselves as officers.

"I talk their language and tell them of specific incidents they can relate to."

He said he warns the girls that "We have picked up some as young as 12 out on the street for accosting and soliciting."

"Sometimes," he said, "you cannot simply tell young persons to call police if they see someone break into a house, and get results."

Instead, he tells them, "If you see a man break into Mrs. Jones' house down the street, and don't report it, tomorrow it may be yours he burglarizes."

Sanders explained that when he talks to 100 or more youngsters at once, they tend to challenge him.

"But, he said, "in a class of about 35 they are beautiful and they begin to break down and really reveal their true feelings in a lot of cases.

"We even made an arrest several months ago with the help of students at Jamieson Elementary school, on Philadelphia, near Lawton.

"My partner and I were at the school during lunch period and students pointed out two men at the back door of a building with a radio and television set. It turned out they had just committed a breaking and entering and one man was a dope addict."

John Cunningham, principal of Longfellow, said he is pleased with Sanders' efforts. "I think with all of these scooter patrol officers, the fact that they are close to people is good," he said.

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[From the Detroit (Mich.) Free Press, Jan. 20, 1970]

KIDS SELECT A SCOOTER COP AS COMMENCEMENT SPEAKER

(By George Cantor)

By the time the graduating class at Longfellow Junior High was ready to vote, the list of possibilities for commencement speaker had been narowed to three.

They were a leftfielder, a former candidate for mayor and a cop.

In an upset of rather staggering proportions, Willie Horton and Richard Austin lost the election. Winning handily was Patrolman Paul Sanders Jr. of the Livernois Precinct, possibly the first Detroit policeman ever asked to address a commencement exercise.

"They told me about it two weeks ago and I really felt an inward glow," said the 24-year-old scooter patrolman Monday.

"I know I'm not anyone to look up to especially. But if these kids can make this association with me instead of with pimps or whores or wineheads, I've got to feel that maybe we're accomplishing something."

Sanders appears regularly before social studies classes in the precinct to talk about the problems of growing up in the ghetto. Since he did his growing up in the Brush-Grand Blvd. area not very long ago, his talks strike pretty close to the bone.

"Everybody always tells us to be good," said 14-year-old David Anderson, who helped prepare the list of commencement speakers. "But Officer Sanders tells us why and what can happen to you if you're not. He doesn't try to hide any facts from us."

Says Sanders: "These kids get enough sugar-coating in school. They know what the facts are and they know when you're jivin' them. You have to be dumb to figure they don't know what marijuana is and where they can get it.

"I just try and point out that most junkies die before they're 35 if they get on the hard stuff and they don't die very pretty."

Sanders has worked very seriously on the seven-minute speech he'll deliver at 10 a.m. Tuesday at the school at 13141 Twelfth.

"If one kid hears this talk and that helps him make something out of himself then that's all I need to know," he said. "I had a lot of time to think about what I wanted to do with my life while I was in Vietnam with the 101st Airborne.

"I felt the situation called for black policemen and that because I was black I could do something to stop the conflict.

"When I go into a school I want to establish most of all that I can be a policeman and a human being, too. Many of these kids never make that connection.

"I even refer to myself as a pig, just to get across how you can lose your humanity when you start name-calling."

"We never even think of him as being a policeman anymore," said Jack Tyus, another student. "The things he says would get to me even if it was a grocer saying them.'

## A CURIOUS MESSAGE FROM SWEDEN

Mr. TALMADGE. Mr. President, the Washington Evening Star of January 24 contains an excellent editorial column written by Jenkin Lloyd Jones which deals with the film "I Am Curious Yellow."

Aside from the boring and tasteless sex portrayed in this movie, Mr. Jones pointed out that it also provides a remarkable insight into the attitude of Sweden toward war, and particularly U.S. involvement against Communist aggression in Vietnam. He notes that many Swedes apparently believe that wars can be won without fighting. I would think that a nation that sat by, as did Sweden, and watched Hitler ravage its neighbors and all Europe would know better. History shows that Hitler found Sweden, not an ally certainly, but not an enemy either. Sweden now has sided with North Vietnam and has pledged loans of $40 million for the Hanoi regime. Sweden apparently has not learned after all these years what constitutes aggression and a threat to freedom.

I bring this article to the attention of the Senate and 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:

A CURIOUS MESSAGE FROM SWEDEN

The TV set in my Washington hotel room went haywire during the Oakland Raiders-Kansas City Chiefs game so I finally got around to seeing this undress movie, "I Am Curious (Yellow)." Unlike Jackie, I figure I might as well admit it. I don't have the social position to maintain.

If they award any prizes for amateurish boredom "Curious" gets a diamond tiara, for the nudity and sex are tasteless and the conversation interminable. It is really an endless home movie in which, at long intervals, a boy and a girl drop into the hay.

However, it purports to depict the swinging youth of Sweden and it appears to be aimed at their counterparts in other countries, particularly the U.S.A. So the film says three things that are interesting:

1. Military service is evil, and in case you are invaded the enemy can be adequately handled by civil disobedience and sabotage.

2. Idealistic youth cannot stomach the murdering American aggressors in Vietnam.

3. Even if Communists appear to be oppressive they are only acting that way to speed a better life for the downtrodden.

This passive resistance bit seems to be based on the naive theory that if Gandhi's followers confounded the British with it the tactic would work with anyone. They might ask the ghosts of the millions who meekly walked into the boxcars and were chuffed away to Dachau, Auschwitz and Ravensbruck. It is a tossup whether Ivan the Terrible would have laughed louder at passive resistance than Hitler or Stalin.

The conviction of many Swedes that wars can be won without fighting them may spring from the fact that their country has managed to sit out all wars for the last 156 years. Swedish self-restraint is famous.

They were careful not to annoy Hitler even after he brutally invaded and terrorized their cousins, the Danes and the Norwegians. The Swedes sold the Nazis steel and eventually agreed to transport German troops on their railways. In short, der Fuehrer found them good neighbors.

But don't get the idea that the Swedes are not capable of righteous indignation. They have exploded with fury at the evil American war in Vietnam. They have wel-

comed our military deserters. They have raised $40 million for Hanoi. Their foreign minister has marched in a parade denouncing the United States. This forthright courage is perhaps only coincidental with the fact that the U.S.A. is far away and has no intention of bothering Sweden.

Anyway, "I Am Curious," etc., has quite a sequence showing clear-eyed Swedes demonstrating before the U.S. Embassy, and displaying the placard showing the Napalmed child. But much more interesting is the interview between a round-heeled heroine and a visiting Russian poet.

The girl, through a woman interpreter, asks why the Communists haven't delivered freedom of speech, assembly and general protest, and the poet patiently explains that a degree of compulsion is necessary for humanitarian reasons.

You see, he says, the ignorant and hungry masses can't wait 300 years for the slow evolution inherent in capitalism to give them a better life. They must make the grade in 30. In order to achieve this speed some regimentation is necessary. Liberties will be returned as soon as possible.

The girl in the picture says, "I guess you're right," and the character with the long sideburns sitting in front of me turned to his companion and said, "He's right," too.

Maybe I was the only guy in the house who didn't grasp the advantages of this short-term loan of liberties for the great blessings of universal literacy and prosperity.

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## NUCLEAR FUEL—MOST ABUNDANT AND EFFICIENT SOURCE OF ENERGY

Mr. GORE. Mr. President, power or pollution, or both—that is a crucial question. A crisis of energy is around the corner.

The peaceful atom, heralded since its destructive use as mankind's greatest hope for virtually unlimited power, has the potential of dangerous and deadly environmental contamination.

Yet energy in vastly increased quantities is necessary to sustain our industrial society. Without this vast increase in energy, officials of both government and private utilities forecast dark days and darks nights, cold homes and closed factories.

Nuclear fuel is the most abundant and most efficient source of energy, yet without development of additional technological safeguards, its waste products could become at the same time mankind's most destructive pollutant. Development of safer and more efficient reactor concepts is imperative—and quickly if an energy shortage is to be avoided.

True, fossil fuels can continue as a significant source of energy. But the power needs of the near future are so great that the Chairman of the Atomic Energy Commission recently estimated that if our electric power requirements in the year 2000 were to be met solely with coal-fired installations, about 10 million tons of coal per day—involving the daily movement of 100,000 railroad cars—would be needed. And the burning of coal creates pollution in enormous volume and of dangerous content. Development of more efficient pollution abatement here is urgently needed, too.

But in the long run, our energy needs require safe utilization of nuclear fuels. Yet budgeted investment is far too little and too late.

First of all, nuclear power reactors are relatively new; for the layman, nuclear processes and byproducts are still surrounded in mystery. Next, experimental development is very costly, too costly for private undertaking; and governmental development of new concepts, particularly the fast breeder, molten salt and liquid metal types, has been tardy. Moreover, a cutback has been ordered.

Then, concern is generated because, in the public mind, nuclear operations are still associated with the awesome destructive characteristics of nuclear explosions. Thus opposition to a nuclear installation of any kind can become highly emotional.

A review of the magnitude of our future power needs underlines the need for prompt resolution of the present controversy and for measures that will bring about public acceptance of nuclear generating stations.

The electric power industry in this country now represents a capital investment of approximately $85 billion. Nationwide, the power industry is doubling in size every 10 years. In some regions, such as southern California, the demand for power is such that needs are doubling every 7 or 8 years.

In testimony before the Joint Committee on Atomic Energy last year, the Chairman of the Federal Power Commission said that our projected power needs for the next two decades might require the construction of about 40 new hydroelectric installations of 100 megawatts or more, approximately 50 new pump storage hydroelectric installations of 300 megawatts or more and over 250 coal-fired, gas-fired, oil-fired or nuclear-powered steam electric generating plants on new sites. He added that this will involve the installation in this country of nearly 1 million megawatts of new generating capacity in the 1970–90 time period.

Clearly, in terms of conservation as well as in terms of economics, we must plan for an increasingly important role for nuclear energy in meeting our power requirements. Few economically feasible hydroelectric sites remain undeveloped and there is a limit to what can be done with pump storage installations.

In eons of time, nature created our deposits of fossil fuels, and we have known for a long time that they are not inexhaustible. Needless depletion of our remaining reserves is unwise, particularly when alternate sources of energy are available. Too, as our most accessible fossil fuel deposits are depleted the cost of recovering those that remain increases.

The picture is not all dark. Indeed, no. We know what needs to be done; what we need to do is to get on with the job.

After more than a decade of development, financed in large part by Federal funds, a strong trend toward central station nuclear power had become a reality by 1965. In that year, one-fifth of all new generating capacity ordered was nuclear. In 1966 and 1967, about one-half of all civilian powerplants ordered were nuclear. In 1968, utilities announced plans for 17 nuclear power facilities and ordered nuclear reactors with a total capacity of about 15 million kilowatts. In 1969 plans for six additional nuclear powerplants were announced.

Generally, on the basis of present projections, it is anticipated that about one-half or more of all new generating capacity installed during the remainder of this century will be nuclear. That is unless this becomes impossible because of pollution danger, either real or fancied or both.

Until recently, those who were most concerned about our environmental problems had regarded nuclear power as something of a panacea. Generating plants using fossil fuels discharge pollutants into the air; nuclear plants less so. It has been estimated that the burning of coal, oil, and natural gas results in the discharge into the air of up to 6 billion tons of carbon dioxide and up to 1 million tons of carbon monoxide each year. Even modern generating plants unavoidably contribute to air pollution. A modern coal-fired generating plant of 1,000,000-kilowatt capacity, for example, will discharge into the atmosphere up to 250 tons of sulfur dioxide and up to 80 tons of nitrogen oxides each day.

As I have said, nuclear powerplants do not contribute to this kind of air pollution. Nevertheless, nuclear plants pose dangers for our environment, as do fossil plants. Indeed, there is waste from any conversion of matter to energy.

The evidence indicates that coal-fired plants may discharge radioactive materials, too; some say more than do nuclear plants. In both cases, however, the emissions are believed to be well below the safety limits that have been established. The evidence from those nuclear plants in operation indicates that such emissions are only 2 or 3 percent of what is allowable under the Federal standards. But these standards are based upon guidelines established by admittedly imperfect knowledge. True, the Federal Radiation Council and many experts regard them as being conservative. I only say that we need urgently to experiment and develop safer and more efficient techniques of generation.

Then, there is the question of thermal pollution. Cooling water is cycled through both nuclear and conventional plants. Scientists are concerned about the effect on certain forms of aquatic plant life and fish arising from the discharge of this water back into the Nation's streams and lakes. The water from a nuclear plant is somewhat warmer than is the water from a conventional plant. Studies are underway to determine methods to reduce the temperature of the recycled water, and also into the question of how to derive some beneficial use from it, warm-water-fish culture, for instance.

Then, there is an uncertainty and suspicion in public attitudes. Some citizens have a latent fear that a nuclear power station might create a dangerous explosion, and they are seemingly unimpressed with the fact that this great technological development has experienced a remarkable safety record. One experimental reactor accident at an AEC laboratory in Idaho cost the lives of three persons, but this has been the only incident resulting in a fatality in all the years of reactor development. Among our major technological achievements, only the space program can claim a record as good.

But despite the answers given to the

questions, the opposition continues and increases.

Opponents include those who are simply antitechnological. As might be expected, some opposition comes from competitive pressures that are always present in our economy. But also numbered among the opponents are some scientists who have studied the problem and who are genuinely concerned. The technical argument centers around the adequacy of the safety and radiation standards established by the AEC. The great majority of the scientists and technical experts assert that these standards provide a margin of safety that is fully adequate to protect against the hazards of a nuclear accident or adverse effect upon the environment.

But, Mr. President, the opposition to nuclear power plants involves more than just a technical argument. In interesting numbers, ordinary citizens who are unlearned in nuclear science are concerned. They want assurance of an adequate supply of electricity, but they do not want the generating plant built in their neighborhood. As I have said, there is opposition to any kind of generating facility, but because nuclear plants are relatively new and because they involve the atom, the opposition to them is more pronounced. The construction and operation of nuclear power stations require approval and licensing by Federal officials. But in addition, permits and approvals must be obtained from State and local regulatory bodies. The latter are quite naturally more directly influenced by the attitudes and the protests of the local citizens who are most immediately affected by site selection. The technical validity of protests may not be the determining factor. Aroused citizens can delay or even block construction and/or operation or dictate site selections that do not permit efficient and economic distribution of power.

Mr. President, I have been a vigorous supporter of nuclear power. In 1956 I sponsored legislation in the Senate to authorize a massive infusion of Federal resources in a program to accelerate the development and demonstrate the feasibility of nuclear power. I was convinced then, as I am now, that a substantial portion of our power requirements must be provided from this source if we are to avoid brownouts and blackouts in the years ahead. The Gore-Holifield bill that passed the Senate constituted, I believe, a contribution.

We have unfortunately proceeded at a slow pace. Substantial Government subsidies have been made available to private concerns for the development and construction of power reactors. I do not wish to be misunderstood as being critical of the work that has been done by the private sector with Government help. But our program has not gone forward as fast as it should or as fast as it could have had the Federal Government been authorized to marshal the resources of the Nation in an effort to bring into being the potential of the atom at the earliest feasible time.

We must now look to the future. We must start now from where we are. We cannot start from where we might have been.

If we are to avoid an energy crisis we cannot simply ignore or attempt to ride roughshod over the protests of those who are concerned, whether their concern be based on fact or emotion.

Atomic Energy Commission spokesmen are busily making speeches and statements to counter the fears expressed by those who are concerned. Last year the Joint Committee on Atomic Energy held extensive hearings on the environmental effects of nuclear power. But all too frequently the material presented reaches only a limited audience, and when technical in nature, does not command full public understanding and acceptance.

We must do more than merely offer reassurance. Specifically, we must intensify our research and development efforts so as to reduce even further radiation emissions, to analyze and resolve problems associated with thermal pollution and to reduce costs. If this effort is to succeed, Government must provide leadership and most of the funds.

A vision of an America with a power supply that is adequate, safe, clean, and low cost cannot be made a reality through speeches alone. It cannot be done with a drastically reduced R. & D. budget.

Much more needs to be done in the area of development of reactor concepts. Nuclear fuel, though relatively abundant, is not inexhaustible. Present day nuclear reactors do not use nuclear fuel efficiently. The 1962 report to the President pointed out that light water reactors use only 2 to 3 percent of available energy. Although current designs can undoubtedly be improved and made more efficient, the ultimate solution lies in the development of breeder reactors which may make more fuel than they consume.

The AEC is placing primary reliance—and most of its money—on its program to develop the liquid metal fast breeder reactor. This is a promising concept. But the stakes are too high to put all of our eggs, or nearly all of them, in one basket. Yet this is what the AEC has done with respect to its breeder program.

The molten salt reactor project underway at the Oak Ridge National Laboratory also shows great promise. Yet those who allocate AEC funds are apparently so enamoured with the liquid metal program that the molten salt project has been starved for funds. Last year the administration requested only $5 million for this project which is now at the point that it should move vigorously ahead. The Congress authorized and appropriated $8 million, but the administration has frozen the additional funds. Although the project has not been killed outright, the experimental reactor has been shut down for lack of funds. This is shortsighted action of the kind that may bring on the energy crisis we seek to avoid. In addition to the molten salt concept, the light water breeder program, the high-temperature gas-cooled reactor concept, and perhaps others should be given higher priorities.

## CHALLENGES OF THE 1970'S

Mr. DOLE. Mr. President, much attention has been focused recently upon the events and trends of the past decade and prospects for the 1970's. One of the most clearsighted and intelligent analyses offered the American people is that of the distinguished Senator from Kentucky (Mr. COOK). Senator COOK, speaking to the Nelson County, Ky., Jaycees, brought his keen insight and sense of proportion to bear on the turbulent and often confusing 1960's, today's dynamic happenings, and the view ahead as we turn the corner of a new decade.

An especially valuable aspect of Senator COOK's observations is the perspective he imparts to the Nixon administration's first year in office and its role in setting the national posture for the 1970's.

I commend Senator COOK's remarks to the attention of the Senate and the American people and ask unanimous consent that they be printed in the RECORD.

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

CHALLENGE OF THE 1970'S

(By Senator MARLOW W. COOK)

Life magazine, in its December 26th issue, has aptly labeled the 60's "the decade of tumult and change". This brief description of the decade is the best I have read after reviewing many magazines, periodicals and newspapers and, therefore, I have chosen to quote from it liberally in presenting a cursory review of the events of the past decade.

Life suggests, and I agree, that the past decade seems to fall into two fairly distinct parts.

In the first, there was a brisk feeling of hope, a generally optimistic and energetic shift from the calm of the late 50's. Then, in a growing swell of demands for extreme and immediate change, the second part of the decade exploded—over race, youth, violence, life-styles and, above all, over the Vietnam war.

The event which separates the decade into these two distinct parts Life contends, was not the assassination of President Kennedy which it describes as "the act of a single megalomaniac", but rather the Watts riot of 1965. It was Watts which set the tone of violence and confrontation which engulfed the last half of the decade.

The essay continues:

The tumbling years began with a new president inviting his countrymen of all ages to accept a share of the burdens of leadership. This invitation, with its eloquent appeal to idealism, reached the young of America, and they responded not only by joining the Peace Corps but by beginning to study the possibility that they had an urgent stage in the quality of American life.

This involvement and commitment, however, coupled with a realization of the defects which all of our institutions necessarily contained lead to disillusionment about and protest against those institutions unparalleled in American history.

The idealism and optimism of the early years of the decade were soon displaced by the public skepticism which marked the troubled Johnson years. Some of the movement of the Johnson years was good, especially in the civil rights field, but what accomplishments there were, were lost to the public mind as we moved ever deeper into the Vietnam quagmire.

As Life puts it, "The explosive years had arrived." New experience soon became the order of the day, the stage, the screen, the arts, the fashions, all offered innumerable fresh possibilities for shock and confrontation. The new theater became part of the new politics and candidates like Eugene McCarthy could ignore the old, traditional campaign requisites and deal directly across the generation gap. The gap itself became a

cliche and students became the tasters, seekers and upsetters for the Nation, not merely for their contemporaries.

It was against this background of violence, division, and disillusionment that a name from the past was called upon to "bring us together" to face the challenge of the 70's.

With the mandate from the American people to continue progress but at the same time to reinstate domestic tranquility, Richard Nixon set about the task of restoring the faith of the people in their elected representatives. In analyzing the philosophy of the first year of his administration, the President has said:

"We do not seek more and more of the same. We were not elected to pile new resources and manpower on the top of old programs. We were elected to initiate an era of change. We intend to begin a decade of government reform such as this nation has not witnessed in half a century."

Reform, therefore, will be the "watchword" of his administration. And the reformer recognizes that the quality of thinking which goes into a solution is often more important than the quantity of money spent on it. As the President put it on one occasion, "We cannot count on good money to bail us out of bad ideas."

This administration knows that it is not publicity but action which counts. Let us take for example a ten-day period in late November when—without fanfare:

1. The Strategic Arms Limitation Talks (SALT) opened in Helsinki;

2. A new foreign trade policy was proposed;

3. The troublesome Okinawa Reversion question was settled;

4. The treaty on the nonproliferation of nuclear weapons was ratified;

5. A new policy on the use of chemical and biological weapons was presented; and

6. Major reforms in the Selective Service system were signed into law.

All of these matters had been studied in great detail before action was taken. It has become apparent that this administration will act deliberately rather than as the former administration which had the appearance of perpetual motion but the reality of few accomplishments.

The most difficult problem of the first year of the Nixon administration has unquestionably been the state of the economy. Secretary of Commerce Maurice Stans in his year end review and outlook for 1970 claims significant progress in the fight against inflation. Throughout the year the President attempted to apply persistent but moderate policies of fiscal and monetary restraint to slow the growth rate of our overheated economy. The achievement of a slower rate of growth should assist in the next important development—the curbing of inflation.

The tighness of credit that resulted from monetary restraint applied against unusually strong credit demand drove interest rates on both short-term and long-term debt to unprecedented levels. The principal effect on economic activity was to check increases in construction expenditures and to limit sharply the number of new private housing starts, especially in single-family homes. The housing downturn was not, however, as severe as in 1966–67.

In the environment of high interest rates and relatively lower operating ratios, business plant equipment expenditures were remarkably buoyant, contributing much to the year's economic expansion. However, as we all know, the very considerable increases projected by business at the beginning of the year were not fully achieved. Strong rises occurred in both the manufacturing and nonmanufacturing sectors. This was in contrast to 1968 when manufacturing capital spending declined slightly. This persistence in expanding productive capacity can be interpreted as a response both to the need for productivity improvements and to inflationary expectations. Basically, however, most businesses were confident about the continuing well-being of the economy.

The Nation's gross national product was about $932 billion in 1969. The increase over 1968 was about $66 billion or some 2¾ per cent, as compared with a 9 per cent rise the year before. The 7¾ per cent growth can be explained largely by a 4¾ per cent rise in prices. However, while the rate of price increase was accelerating, the real growth was slowing. The 1969 increase in the physical volume of output, at less than 3 per cent, was substantially lower than the 5 per cent gain in 1968. This is, of course, a good omen for the fight against inflation.

Stans further reports that the most vigorous sector of the economy in 1969 was private domestic investment, which increased by about 11 per cent over the 1968 figure. This growth occurred despite the decline in residential construction and was most strongly marked in expenditures for new plants and equipment.

The growth rate of consumer spending eased considerably during 1969. Consumer spending had started from the relatively high level of late 1968 and in the first half of 1969 grew faster than disposable personal income. However, with the cumulative effect of the income tax surcharge and growing concern over future developments in the economy. The growth of consumer spending was reduced in the second half of the year.

The rise of Government expenditures in 1969 was mainly in the State and local sector. Federal Government purchases of goods and services were subject to a stern policy of restraint. Non-defense outlays were essentially stable during 1969 and I am especially happy to report that defense spending showed a downward movement toward year-end.

No review of the first year and discussion of the years ahead is complete without some mention of the all-pervasive subject of the Vietnam conflict. For the first time since our tragic mistake in initially involving ourselves in Southeast Asia, steps have been made to de-escalate American participation. First, the President pressed forward with the negotiations in Paris in both public and secret. At the same time, due to the frustrations encountered at the peace talks, he instituted a new policy of Vietnamization.

The effects of Vietnamization, as I said earlier, are already apparent. After seven years of growing American involvement and rising American casualties, the reverse is now true. Significant troop withdrawals have already been concluded and remaining U.S. forces have made the training of South Vietnamese soldiers, not prosecution of the war, their primary objective.

I support the President in his efforts to terminate our involvement in Southeast Asia. I have said repeatedly on numerous occasions, and repeat again today, that our vital interests are not served by participation in land wars on the Asian continent. It is my hope that the agony and frustration of this war will indelibly imprint on our minds for decades to come the lesson of Vietnam.

Finally, let me relate to you what I believe to be the central challenge of the 70's. It is inextricably intertwined with the Vietnam conflict, and it is this. It is the question of national priorities. It is providing the answer to this query, given the limited revenue available, how should we allocate our resources in order to best serve the needs of the country in the coming years?

The reason the priorities question is so closely tied to Vietnam is because the task of reordering priorities depends upon our extrication from this conflict and avoidance of military involvement on foreign soil unless such involvement can be shown to be absolutely essential to our national security.

As the 70's begin, we clearly face a greater threat from within than from without. The tumult in our cities, the violence on our campuses, and the abject poverty of many of our citizens considered along with the roughly $20 billion a year cost and the 40,000 lives we have lost in Vietnam tell us what our priorities have been in the past. Americans know where their taxes ought to be going because they are breathing foul air, fishing in polluted lakes and rivers. Attending overcrowded and inadequate schools, and languishing in insoluble traffic jams going to and from work every day.

Why do these problems continue and even grow more severe? The American people now know the answer. We have a standing Army of 3.5 million men at an annual cost of 35 billion dollars, with approximately 1.5 million of these abroad ready to plunge into local conflicts on a moment's notice.

Vietnam has shown that in many instances intervention is not only not productive, it is counter-productive. As I have said, I support the President in his efforts to end this conflict but let us all, as a people, resolve that this shall not happen again. Such involvements:

1. Do not obtain the desired results.

2. Sap our most prized resource—our youth.

3. Divert resources away from our staggering domestic problems.

4. Inevitably cause inflation and a continued weakening of our currency.

All of these facts give us an undeniable mandate to seek negotiation rather than confrontation abroad, and attention rather than neglect at home. This is the challenge of the 70's—the challenge to re-build America, not police the world.

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## DEVELOPMENT OF OCEAN RESOURCES—ADDRESS BY SENATOR SPONG

Mr. HOLLINGS. Mr. President, on January 24, 1970, the distinguished Senator from Virginia (Mr. SPONG) delivered an address before the Kiwanis Club of Norfolk, Va., relating to the development of our ocean resources and the vast potential and benefit to be derived from the sea. As Senator SPONG points out, the resources of the sea offer almost unlimited development in raw materials, food, and medicines, but that it is incumbent upon this country to undertake the responsibility for the proper development and study of these resources.

I commend Senator SPONG's remarks to the Senate and ask unanimous consent that they be printed in the RECORD.

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

SPEECH BY SENATOR WILLIAM B. SPONG, JR.

The development of our ocean resources is one of the urgent tasks facing this nation in the decade ahead.

For thousands of years, men have harvested the fruits of the sea. But only in the last decades have they come to appreciate the full potential of its vast resources and to develop the scientific knowledge and technology necessary to exploit it.

The time is at hand when those resources will be in critical demand. Thirty years from now, world population will have doubled, bringing with it a desperate search for new sources of food. Industry, with its heavy call on raw materials of all kinds, should expand at even greater rates.

This growth will be beyond anything our land resources alone can support. A turn to the oceans is inevitable, and in some fields, intensive development is already under way.

Most heavily exploited today are oil and gas which account for about 90 percent of the value of all minerals taken from the

ocean. Off-shore production has grown from 8 percent of the world total in 1960 to 17 percent today. By 1980, it is expected to represent more than a third of all production.

Oil is the leader, but it is by no means the only mineral being taken commercially from the sea.

If you own a magnesium step ladder, the odds are the metal in it was extracted from sea water. That's where the U.S. obtains most of its supply. That is true also of bromine which is used as a gasoline additive. In fact, 70 percent of the world's production of that element is recovered from sea water.

Significant quantities of sand, gravel, oyster shells and sulphur are also being mined off U.S. coasts. Elsewhere in the world, zinc, copper, silver, uranium and diamonds are beginning to be recovered from the sea in important quantities.

As impressive as some of today's ocean mining is, it barely scratches the surface of the ocean's total deposits. No one knows exactly how extensive they are, but some oceanographers and geologists have estimated the oceans may contain as much as 50 quadrillion metric tons of useable minerals.

A sizeable part of that wealth lies on the continental shelf at depths of 200 meters or less, much of it within man's reach even considering the early state of marine engineering. This underwater frontier bordering the United States totals about 930,000 square miles, more territory than was involved in either the Louisiana or Alaska purchases, and perhaps more valuable.

As might be expected the most plentiful and probably the most valuable potential resource of the sea is water. There are now in operation or under construction today some 680 desalination plants and the number is expected to increase by 25 percent a year over the next ten years. While the cost of desalted water is still too high for general use, improved technology is gradually bringing it down. Today, the price is about 85 cents per 1,000 gallons as compared to the 35 cents per 1,000 gallons for fresh water charged in the U.S.

One of the most exciting uses of sea products today is the manufacture of drugs from marine bioactive substances. For example, a poison secreted by the stonefish was discovered by doctors at the University of Southern California to reduce blood pressure in animals. Experiments are underway to see if the drug can be used to treat hypertension.

A new antibiotic was discovered after researchers in the Antarctic noted that the intestinal tracts of penguins were virtually free of bacteria. An investigation led to the krill, the penguin's main source of food, and from there to a green algae which is the krill's chief food. The antibiotic synthesized from this substance has killed virus cultures in laboratory experiments.

Another fascinating project concerns the Bonellia, a type of marine worm. Scientists have observed that young larvae which brush against their mothers are affected by a hormone which stops their growth process. Researchers are now investigating the hormone for possible applications in the control of cancers.

A vast number of other marine biochemical agents are thought to have possible uses in medicine, so many that one doctor has dubbed the ocean a sea-going drugstore. To date, however, only about one percent of these substances have been tested.

Of all the potential uses of sea products, none is of more immediate importance than the production of food, especially of animal protein which is the most basic need of food-poor countries.

Seafood, of course, is a rich source of such protein and it can be produced inexpensively and in enormous quantity. At the present time, however, only about two percent of the available supply of seafood is harvested each year.

U.S. fishermen account for about four percent of the world catch, a figure that has remained constant for 30 years. That is only a third of what the United States consumes each year, making this country one of the world's largest importers of seafood when it clearly has the potential to be one of its great exporters. Marine authorities estimate that U.S. fishermen harvest only one-tenth of the useable sea species available in its waters.

Aquaculture, or sea farming, could greatly augment the production of traditional fishing and is already the source of most of the world's oysters.

These achievements in marine development point up the tremendous economic potential of that two-thirds of the earth which lies beneath the sea. And it is only a beginning. As land resources continue to decline in relation to demand, more and more industries will find it economically feasible to reach out to the ocean for their raw materials. Ocean-related businesses and industry have one of the most promising growth prospects in the world today, even greater than the space industry.

Unlike the space program, which is essentially a Federal undertaking, the exploration and development of our oceans requires a truly national effort which will mobilize the resources of industry, the scientific community and government at all levels. Private enterprise has a key role to play in this, but it is dependent upon the support and leadership of government and science for the development of the technology and basic research which will make wide-spread commercial exploitation possible.

One of the most pressing needs today is for the development of fundamental technology—such things as producing corrosion-resistant metals, improved lighting systems and communication networks—which have application in a wide range of activities. This kind of work is the essential underpinning of progress, but for the most part it is beyond the resources of private industry to support.

Clearly, government has a role to play here as it does in underwriting basic marine research, providing maps and weather services, developing manpower resources and directing projects of national scope. Above all, government must assume the responsibility of safeguarding the resources of ocean and shore from the kind of environmental devestation that accompanied the exploitation of our land resources.

In many areas along our coasts, pollution is already a serious problem. It is estimated, for instance, that more than a tenth of the 10.7 million square miles of shellfish-producing waters bordering the United States is now unusable because of pollution. In the next decade, the amount of industrial wastes reaching the oceans is expected to increase sevenfold, resulting in the wide-spread destruction of fish and other aquatic life.

Competition among the many, often incompatible uses of the coastal region poses a serious threat to its basic ecology. Thousands of acres of tidal wetlands have already been lost to the advance of housing and industrial developments, dredging operations and garbage and trash dumps.

If we are going to preserve these valuable and perishable resources and avoid the mistakes of our land resource development, it is essential that we establish now a vigorous program for coastal zone management. At the present time, this responsibility is fragmented among 22 different Federal agencies, and more than 1,000 state, regional and local jurisdictions.

The need for a national plan of action is clear. And in the recent report of the Commission on Marine Science, Engineering and Resources, I believe we have a blueprint for making the seventies a decade of ocean development and progress.

While I do not agree with all of the Commissions' recommendations—and there are some 200 of them—I think its proposals will take us a long way toward the kind of sound marine development policy we should have. Here are some of the things it recommends:

Establish a new independent agency to coordinate and guide the national effort. It would be called appropriately the National Oceanic and Atmospheric Agency or NOAA.

Establish six national action projects on which to focus the effort of the program. These include marine test facilities and ranges, a lake restoration project, continental shelf laboratories (for which our own Virginia Institute of Marine Science at Gloucester Point would seem to be the prototype), a submerged nuclear power plant, deep exploration submersible systems and a pilot buoy network.

A concerted attack on coastal zone pollution and encouragement of a coordinated Federal-state-local coastal mangement policy.

Expenditure of about $8 billion above current outlays in the decade ahead.

This program is now before the Congress and the President. As a member of the newly created Oceanographic Subcommittee of the Senate Commerce Committee, I expect to have a great deal to do with it and I look forward to the work of the session ahead.

The nation's achievements in space have demonstrated the tremendous striking power of our science and engineering when they are focused on determined objective and infused with a sense of national commitment. To set a foot in the dust of the Sea of Tranquility, we called forth the greatest outpouring of talent and money in our peacetime history. The infinitely greater promise of exploring and developing our earth-bound seas deserves no less.

## A PROFILE OF THE MIDDLE AMERICAN

Mr. TALMADGE. Mr. President, I have just had an opportunity to read a very fine editorial column by Joe Parham, editor of the Macon, Ga., News, in which is given a profile of the so-called "silent majority" or "middle Americans."

In my judgment, Mr. Parham's article accurately reflects the thinking and characteristics of the man in the middle of America, who finds himself caught between extremes on the right or the left, and who wants nothing more than to be able to live and work, to educate his children as he sees fit, and to enjoy the fruits of his labor. And he wants everybody else to do the same.

I bring Mr. Parham's editorial to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

MIDDLE AMERICA

(By Joe Parham)

Call them what you like. Some term them the "silent majority." Others tag them the "middle Americans." The label doesn't matter. They are fed up. They are beginning to flex their muscles. And they may be overwhelming in their wrath.

What is a middle American or a member of the silent majority?

He is a guy not poor enough to need a government handout but not wealthy enough to be unconcerned about sizeable unexpected expenses. He is patriotic. He prefers "America the Beautiful" to "Sock It to Me, Baby." He stands up and takes off his hat when a lady enters the room or a band plays the "Star Spangled Banner" and if he has a hangup it's on patriotism, not the futility of life.

Call him corny if you like but he thinks a

cat is feline, pot is a vessel for cooking things in, and fix is a verb meaning to repair or mend. He is hit harder proportionately by taxes than anyone else but he has long borne this burden uncomplainingly. He holds the quaint notion that everyone who shares this wonderful country ought to pay according to his ability, but he doesn't worry too much if a bunch of weirdos shack up in a communal living experiment, so long as they don't bother their neighbors.

The sight of Old Glory puts a lump in his throat, a tear in his eye and steel in his spine. And fuzz is a fluffy lint, not officers of the law.

Sure, he goes for John Wayne more than Dustin Hoffman, for Burl Ives more than Jimi Hendrix and he'd rather see a good football game than have two tickets to "Hair" any day in the week.

He likes movies, food, housing accommodations and companions to be clean and he thinks the purpose of a university is to educate, not provide a forum for immature militants dedicated to destruction rather than improvement of a school.

Square he may be called but he regards grass as green ground-cover, put-on as something you do with a pair of pants and pop as what the weasel went. He makes the scene, all right, but it is at church, Sunday school, a civic meeting, a Little Leaguers banquet, a Boy Scout hike or the PTA. There's nothing psychedelic about him and the only swinging he ever did was in a front porch swing in his courting days.

Soul is something immortal to him, not a name for a type of food or kind of music. He gets a bigger kick out of landing astronauts on the moon than trying to burn down a town because the world owes him a living, and hasn't produced.

He prefers cook-outs to sit-ins, the pledge of Allegiance to "black power" and a home with kids playing on the lawn to a pad with a year's supply of birth control pills. The beauty of America makes him want to shout with joy and the ugliness of the Black Panthers makes him want to regurgitate in disgust.

Everything seems to be squeezing him these days: inflation, high interest rates, screwball school bussing plans, shoddy workmanship, a Supreme Court which won't let his children pray in classrooms and a government which too often seems unresponsive to his needs. He's tired of the pressure and deafened by the shouting and beginning to stir in anger.

He's too young for Medicare and too old for rock and roll. He could be a service station attendant, a small businessman, a teacher or a hard-working Negro farmer. He could wear a white collar or a blue collar. He could be anybody.

He's a big man, this middle American. Big in pride of country, big in love for America. He belongs to a big club.

Count me a member.

## TWENTIETH CENTURY HESSIANS

Mr. YOUNG of Ohio. Mr. President, Americans should know when told that 50,000 Korean soldiers and 2,000 Philippine noncombat engineers have been helping us in Vietnam the facts are that every Korean soldier was equipped, clothed, and maintained by our taxpayers at a cost of $9,000 per year each.

Unfortunately, those 2,000 noncombat engineers who are sent over by President Marcos of the Philippine Republic which was created at high cost by our country in life and treasure cost us even more. This, in addition to the cost of PX supplies grabbed in huge quantities by Filipino and Korean soldiers, most of which end up on the black market. In Tokyo, New Delhi, and Manila turbulent crowds have rioted against our Government with "Yankee go home" slogans. President Marcos, directly following his reelection, recalled the 2,000 Filipino noncombat engineers which we had been supporting.

In our War for Independence our patriots who won that war termed the Hessians and others who fought with the redcoats mercenaries. GI's term the Koreans and Filipinos mercenaries. Australia and New Zealand furnished and maintained a small number of fighting men. Because of the austerity programs recently adopted in those countries, these good fighting men are being withdrawn.

## IMPROPER BILLING TO THE MEDICARE PROGRAM

Mr. WILLIAMS of Delaware. Mr. President, yesterday, as appears in the CONGRESSIONAL RECORD on pages 1151–1153, I called attention to the fact that at the Cook County's hospital claims totaling over $1 million had been improperly billed to the medicare program. At the same time, I placed in the RECORD letters from several doctors denying that they had personally filed any claims or received the payments listed in their names. This creates a clear case of potential fraud.

Today, the Department of Health, Education, and Welfare issued a press release, further commenting upon these overpayments and outlining the steps that are now being taken to recover these overpayments.

In this press release, Commissioner Ball states that the billing practices of other teaching hospitals are being examined to determine the extent similar abuse may exist.

I ask unanimous consent that the text of the press release be printed in the RECORD.

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

[From a news release, U.S. Department of Health, Education, and Welfare, Jan. 27, 1970]

Doctors who belong to a Chicago association of physicians may be held individually responsible for claims improperly billed to the Medicare program in an amount that may total over $1 million.

Robert M. Ball, Commissioner of Social Security, disclosed this today in the case of the Associated Physicians of Cook County Hospital, a tax-exempt corporation formed by supervising physicians at one of the nation's largest charity hospitals.

There is evidence, the Commissioner said, that the association improperly submitted bills in the names of individual supervising physicians for services actually rendered only by interns or residents.

He said that in other cases there was no documentation to support bills for services to patients and that some physicians have told the Social Security Administration they had never performed any services for Medicare beneficiaries, even though the association submitted bills in their names.

Notice has been given to the association and to individual members that, in the absence of repayment from the association's assets, the individual members are personally responsible for the amounts billed in their names.

Commissioner Ball said a check of billing practices of other teaching hospitals over the last 8 months has uncovered cases of inadequate documentation resulting in the suspension of payments for some periods to 200 of the nation's 1,200 to 1,300 teaching hospitals, both large and small.

In all but 90 of these situations, payments have been resumed as a result of corrective measures designed to avoid irregularities in documentation or erroneous billings.

In all cases, steps are being taken to recover any improper payments.

Payments to the Cook County Hospital association were suspended last April, Commissioner Ball said, after its billing methods came under question and an investigation was begun to determine the total amount improperly collected from the Medicare program.

The estimate of the overpayment is based on records made available so far and compares with a total of $1.6 million for which the association has billed Medicare.

Medicare regulations provide that payments may be made to a supervising physician in a teaching hospital for the services he has personally rendered to a Medicare beneficiary. The participation by an intern or resident (for purposes of training) in the care of the patient does not prevent payment to the attending physcian who is also a teacher. Such payments may be made whether the beneficiary is the doctor's private patient and is admitted to the hospital by him or whether the patient is assigned to the doctor after coming to the hospital for admission.

In the Cook County case, however, interns and residents actually performed alone many of the services that were billed to the Medicare program in the names of supervising physicians.

Since the cost of that care is part of overall hospital costs and is already paid for under the Medicare hospital insurance plan, it cannot be legally billed again in the individual doctor's name under the Medicare doctor-bill insurance plan.

## OPPORTUNITIES IN OCEANOGRAPHIC CAREERS

Mr. PELL. Mr. President, there was recently brought to my attention the publication of a new book entitled "Opportunities in Oceanographic Careers," written by Odom Fanning, who formerly served as the public affairs officer for the National Council on Marine Resources and Engineering Development.

The book is designed to serve as a vocational guidance manual and describes in detail the wide variety of career opportunities offered in marine sciences. The book includes an estimate that oceanographic jobs in the United States will increase from today's 5,800 to 100,000 during this decade.

But Mr. Fanning makes it clear that such a substantial growth will materialize only if three related expectations are realized: First, that funding for the Sea Grant College program is increased; second, that other principal recommendations of the Commission on Marine Science, Engineering, and Resources are adopted; and, third, that the private sector will continue to find expanding markets and profit opportunities in ocean endeavors.

I am pleased by Mr. Fanning's recognition of the key role of the Sea Grant College program, of which I am proud to be the coauthor with Representative PAUL ROGERS.

There is a a growing interest today

among our young people in the broad range of careers encompassed by oceanology. This new publication, I think, offers a fine starting point for young people who are interested in exploring these career opportunities.

The interest of young people in this field serves also, I think, as a constant reminder of the responsibility we have to formulate and pursue a vigorous national program in oceanology that will bring to fulfillment the exciting prospects for the marine sciences in this decade.

## GOVERNMENT BY PROPAGANDA

Mr. FULBRIGHT. Mr. President, the lead article in Progressive magazine for January deals with the enormous propaganda effort of the Department of Defense. It is worthy of the attention of all Senators.

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:

GOVERNMENT BY PROPAGANDA

Those young Americans who count themselves among the vocal minority that is less than content with the war in Vietnam and other aspects of American foreign policy can look forward to quick relief in the new year. Their doubts will be dispelled and their enthusiasm kindled by no less a personage than Colonel Michael Collins, the command pilot of Apollo 11, whom President Nixon has designated to be his Assistant Secretary of State for Public Affairs. Under the distinguished astronaut's direction, the State Department says, the Bureau of Public Affairs "will place increased emphasis on enhancement of its contacts with the youth of the country in recognition of the unprecedented attention young people have directed to the nation's foreign policies."

Colonel Collins, whose complex duties in the space program have apparently left him with ample time to ponder the intricacies of the Vietnam question, says domestic dissenters "have oversimplified the conflict." He plans to set the record straight, using some of the skills he acquired at Houston. "If we can talk very clearly from a distance of a million miles in the space program," he asserts, "I would hope that some of that expertise and technique might be carried over toward opening up the lines of communication which we presently find somewhat constricted, particularly in regard to the youth of America."

We suspect Colonel Collins is taking on an assignment that will prove even tougher—and considerably less rewarding—than flying to the moon. But we will have much help in his new job. In signing on with the Federal government's huge and growing propaganda apparatus, the astronaut is joining an effort almost as elaborate as the one he leaves behind. The obsession with media and manipulation that characterized President Nixon's 1968 campaign (and that was so graphically detailed in Joe McGinniss' revealing book, *The Selling of the President*), is rapidly being translated into highest national policy. The real significance of Vice President Agnew's famous speeches attacking the news media, we believe, was that they marked the beginning of a bare-knuckled campaign to establish the Administration's propaganda as the truth, the whole truth, and to make it clear that any who have the temerity to challenge the official line will risk public obloquy, if not censorship and repression. This, it seems clear, is what Administration spokesmen mean when they talk of the need for having the nation "speak with one voice."

Signs of the new brainwashing campaign abound at every hand. In Washington an Army Major, James N. Rowe, who spent five years as a prisoner of the Vietcong, has been put to work on Capitol Hill, with the Pentagon's authorization and blessing, as a roving lobbyist for the war. His prime function appears to be to make joint radio and television appearances with hawkish Congressmen, in the course of which he praises their position and attacks the patriotism of Congressional doves. As Representative Charles Wilson, California Democrat, recently pointed out, Major Rowe's activities constitute an "intrusion of the military into politics [that] portends difficult and dangerous days ahead. This intrusion comes at a time when the Administration seeks to stifle dissent as well as to polarize and isolate individuals who are in disagreement with the President's Vietnam policy."

Abroad as well as at home, the propaganda machinery is moving into high gear. Under the direction of Frank J. Shakespeare Jr., an ultra-conservative who suggested not long ago that television networks ought to consider "a man's ideology" before hiring him for news work, the U.S. Information Agency has dropped all pretense to objectivity in presenting the news. The agency's proudest recent production is *The Silent Majority*, a fifteen-minute film designed to persuade audiences in 104 foreign countries that almost all Americans share the President's "certainty of the need for an honorable solution of the Vietnam war." The carefully doctored script features the finding of Dr. George Gallup, the pollster, of widespread support for the President's November 3 Vietnam speech, and omits Dr. Gallup's finding that this support is contingent on the assumption that American troops will be rapidly withdrawn from Vietnam. A more ambitious USIA production on Vietnam, ninety minutes long and in full color, is now in production at a cost of $200,000.

These efforts are strictly small potatoes, however, compared to the huge and costly propaganda operations maintained by the nation's military establishment to beguile and bemuse the American people—at their own expense. The gargantuan scope of these operations was revealed last month by Senator J. W. Fulbright of Arkansas, the Chairman of the Senate Foreign Relations Committee, in a series of Senate speeches that received altogether too little public attention. In the past decade, Senator Fulbright reported, the Pentagon's budget for "public relations and public information" has multiplied tenfold and now stands at the staggering total of $27.9 million—a conservative figure, as the Senator noted, since it omits such costly overhead items as the cost of military aircraft used on propaganda missions.

In the Defense Department and in each of the armed services, an army of publicists totaling at least 2,800 civilians and military men—again the estimate is conservative—is employed to peddle the Pentagon's views to the public. Their work, Senator Fulbright reported, includes such enterprises as these:

A continuing program of high-flying junkets for journalists and prominent businessmen, politicians, and civic leaders, designed to make friends and influence people in behalf of the military point of view.

A daily Dial-a-Handout service through which any citizen can hear the latest Pentagon news release by calling OXford 5-6201.

A constant stream of packaged radio and television programs and films disseminated to the media and the public free of charge. "According to information supplied me," Senator Fulbright said, "official film produced by the military departments and released last year to the media totaled 35,420 feet and was included in 284 separate newsfilm stories."

A speakers' bureau that dispatches thousands of military officers around the country to sell the Pentagon line to Rotary luncheons, PTA meetings, businessmen's conventions, labor conferences and almost every other conceivable type of public gathering. General William C. Westmoreland averages six speeches a month—"quite a schedule," the Senator observed, "for a professional soldier whose mission was to act as Chief of Staff of the Army."

A series of touring Army exhibits that were viewed by some 13.5 million Americans in one six-month period and garnered, according to official reports, "508 minutes of television coverage. . . , well over 3,000 minutes on the radio and more than 4,000 column inches of news coverage in local newspapers."

The Pentagon's propaganda apparatus functions not only in behalf of the total military establishment, but permits each service to wage its own competitive propaganda drive at public expense. Thus the Army states that the goals of its information program are to "develop public esteem and respect for the Army and Army personnel; gain public understanding and support of the Army's role in a sound national military program; inspire public confidence in the Army's ability to accomplish its mission now and in the future." Among the items the Navy chooses to emphasize are "the need for modern ships, aircraft, and equipment throughout the Navy" and "the challenge of the continued growth of Soviet sea power and its expanding worldwide operations." The Air Force sees it as its objective to "promote awareness, understanding and appreciation" of the notion that "clearly superior U.S. aerospace forces capable of defeating the enemy offer the surest means of deterring global war." Though President Nixon has announced that his defense goal is "sufficiency," the Air Force propaganda theme still stresses the need for "maintaining superiority."

The public, in brief, pays two ways: It pays not only for the vast overkill arsenal maintained by the armed services, but for the propaganda programs designed to persuade it that the arsenal is needed. It also pays for being sold the Pentagon's paranoid view of world affairs.

"Taxpayers are at a decided disadvantage at best in questioning programs their Government would thrust upon them, Senator Fulbright pointed out. "When unlimited resources are available to a Government agency for selling purposes, the public does not stand a chance. Today the Defense Department is engaged in a vast effort to sell the Administration's Vietnam policy to the public, as it did to sell the Vietnam policy of the previous Administration. This is only one step removed from using the public relations resources of the military establishment to rid the Congress of those who question executive branch policies. If the present trend continues, '1984' may arrive long before the next fifteen years have gone by."

In one of his attacks on the networks and the press, Vice President Agnew referred to a "small group of men" who shape public opinion in America. Such a group exists, it seems clear—but in the Government, not in the media. And it isn't small.

## A PRAYERFUL TRIBUTE TO THE STATE OF GEORGIA

Mr. TALMADGE. Mr. President, last Sunday Dean Francis B. Sayre, Jr., of the Washington Cathedral, paid a prayerful tribute to the State of Georgia, for which I know all Georgians are grateful.

It has been a practice of Dean Sayre to so honor the individual States on or

as near thereto the date that that State ratified the U.S. Constitution. Dean Sayre has close family ties to Georgia in that his mother was born in Gainesville.

His prayer for Georgia was beautiful and inspirational, and I ask unanimous consent that it be printed in the RECORD.

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

A PRAYER FOR GEORGIA

(By the Very Reverend Francis B. Sayre, Jr.)

Cherish, Lord, the hardy spirit of Thy servants whose lives are rooted in the tawny earth of Georgia. Nurture in them the precious fibre of freedom wrested by their fathers from the upland clearings and work-worn fields. Visit now upon the sons, in their towns and cities and burgeoning affairs, such fresh vision of Thy destiny that they may ever be knit together in fruitful life and liberty, planting deep the seed of courage by their abounding streams, and winning Thy blessing upon the goodly land; through Jesus Christ our Lord. Amen.

## AMERICA'S FRIENDSHIP FOR ISRAEL IS NONNEGOTIABLE

Mr. MONTOYA. Mr. President, I have watched recent American Middle East policy with more than a little dismay. Especially was I disappointed by recent statements made by Secretary of State Rogers, which seemed to be a most significant erosion of America's traditional position of strong support for this tiny democracy. As of this morning, President Nixon has formally reaffirmed our country's support for Israel, promising that she will be able to obtain arms she requires here. I welcome that statement by the President, and fervently hope that such a commitment will be lived up to.

Once again, France, thwarted in her childish, 19th century desire to play the posturing role of a great power, has roiled the trouble waters of this ever volatile area. Traditionally she has fallen back upon a drive to assert herself in the Mediterranean when she fails elsewhere, as has been the case recently. Obsessed with dislike and envy of the United States and simple greed, she has thrust herself into the vacuum of the Middle East, seeking to broaden her power and widen her share of profit from arms sales there. It is a fact that Egypt played a major role in negotiating the major arms sale just announced between France and Libya.

France hid the truth from her own people as well as from the rest of the world on the sale of Mirages. Libya has not enough pilots to fly even half of them, much less the entire lot. It is also obvious that France will further exacerbate this situation, adding her contribution to what the Soviet Union has already poured into Arab arsenals.

It is absolutely inconceivable to me how, in light of such accumulated evidence, this country can allow, even for a moment, any shadow of a doubt to creep into the minds of our friends and enemies about our intentions toward and relations with Israel. The Soviet-backed and Communist-influenced Arab regimes have aimed insult and injury at the United States with growing ferocity and disregard for truth. Bristling with Russian weapons, they have hurled themselves again and again at minuscule Israel. Frankly, I have been thrilled to see how she has responded and triumphed, almost as if a biblical tale was being reenacted. It has been to our own credit that we have aided and assisted her to help herself.

Israel remembers Czechoslovakia in 1938 and 1968. She knows there are modern Neville Chamberlains who would sell her out as the Czechs were. She looks at Biafra, realizing full well what happens to those who place an abundance of trust in world good will, international morality, and public opinion. Far better that she should keep her powder dry.

The ring of enemies slavering for her life is tight around her. Dozens of nations have made millions homeless, yet only Israel is told she must take back any and all refugees. Only Israel must win a war and beg for peace talks on a face-to-face basis with her foes. And always there are those who echo shrill accusations of those who wish to see Hitler's job finished by Nasser. To them, any honest man can only show contempt. Therefore, I doubly welcome President Nixon's statement yesterday. It is the antithesis of Secretary Rogers' recent speech, which edged America uncomfortably close to endorsement of Communist goals of Israeli extinction. Every American conscience recoils in distaste from such an endorsement.

Mr. President, it is the height of folly to feel that by siding with Israel's enemies, we shall win friends in the Arab world. No matter how pro-Arab our policy might be, Arab triumph would be accompanied by an almost hysterical defiance of America and the entire western world. A victorious Nasser would run roughshod over the Middle East, acting as Russia's agent and communism's champion. It is in America's interest to help Israel remain strong, and we need not promise troops, for Israel does not want them, and has never asked for them.

Why should we open the Suez Canal to Soviet vessels carrying equipment to North Vietnam? Why should we participate in so-called four power talks which aim at deciding the fate of a country which is excluded from such intimate discussions? How can a nation like France, actively working for Israel's destruction, be included in such talks, where she will only espouse the Arab cause?

It was a sad day indeed when we began to turn our back on our only stanch friend in that area of the world. It is degrading for America to sidle up to tinpot dictators and whine for their favor in the name of "evenhandedness." I fervently hope President Nixon will follow up his reversal of Secretary Rogers' previous statement with tangible aid to Israel. She should be allowed to obtain the arms she requires in order to maintain her position and right to exist.

## THE PRESIDENT'S VETO OF THE LABOR-HEW APPROPRIATION BILL

Mr. INOUYE. Mr. President, our President, in his message vetoing the HEW appropriations measure last night stated:

> The issue is not whether some of us are for education and health, and others against it.

That, however, is precisely the issue—it is one of priorities.

This Congress has made net reductions of some $7.5 billion in the President's budget requests. We cut back on 11 of the 14 spending bills to come before us in our effort to hold down Government expenditures and help fight inflation. It is obvious the Congress has exceeded the President's performance in this area.

In 1969, my State of Hawaii received $21,753,891 in Federal aid to education. This year the President proposed this be cut back to $13,694,288 for my State, despite increased student enrollments and increased education costs. Congress appropriated $21,046,106 for my State, which the President has now vetoed. This can surely not be considered a spendthrift gesture. The situation is similar in other States.

The President vetoed this measure on two basic counts—both of which are groundless.

He rejected it first on the grounds that it is inflationary. But in fact these funds have already been spent or at least earmarked and encumbered.

Does the President suggest that we now fire some of our teachers? Does he suggest that we return instructional materials to the supplier?

The issue at stake is whether the Federal Government is going to pay its share of this year's education bill, or whether this administration will renege on its commitment and shift an increasing share of the burden onto our already overburdened State and local governments.

By this veto President Nixon has just increased this year's taxes of the people of Hawaii by over $7 million for education alone.

The President's second justification goes to the very heart of our educational system. In attacking the purposes for which these funds are to be spent he assumes greater expertise in his office, and in the Bureau of the Budget, in determining education priorities than exist in either the U.S. Office of Education or our State and local boards of education. This lack of faith in our traditional education decisionmaking process is both undeserved and unfortunate.

I believe our State education authorities are fully as competent—indeed more competent—in making such decisions as either Mr. Nixon or Budget Director Mayo, as the President so adequately demonstrated last night.

## UKRAINIAN INDEPENDENCE DAY

Mr. PROXMIRE. Mr. President, I dedicate my remarks on human rights today to the 52d anniversary of the proclamation of the "free and sovereign" Ukrainian Republic. On January 22, 1918, the Ukrainian Central Rada proclaimed the independence of the Ukrainian Republic.

Fifty-two years after its independence proclamation, the Ukraine Republic is

no longer free; it is no longer independent. For long years the Ukraine fought for its independence and finally achieved it in the breakup of the Czarist Russian Empire. A short 2 years after it had won its freedom, though, the Ukraine found its independence crushed in the expansion of the Russian Communist Empire.

Officially the Ukraine is one of the "sovereign and equal constituent republics" of the Soviet Union. In theory it is an independent state and a member of the United Nations. But the so-called Ukrainian Government in Kiev is little more than a puppet government imposed on the Ukrainian people by the Communist Party of the U.S.S.R.

In reality the Ukraine is little more than a colony of the Soviet Union. Under the Russian Communists, Ukrainian patriots have been killed, exiled, or otherwise intimidated and repressed. Ukrainian nationalism has been effectively stifled; Ukrainian culture crippled.

UKRAINIAN INDEPENDENCE DAY

But the spirit of a free and independent Ukraine is far from extinct. In Wisconsin we have thousands of Ukrainians; some born in the Ukraine and many native born American citizens. For us the free Ukrainians in our midst have always been a source of inspiration for the ideals of freedom and independence—ideals which are particularly important to all citizens of Wisconsin.

The effort to secure human rights is essentially an attempt to secure for each individual the greatest possible amount of freedom and self-expression. In commemorating the independence of the Ukraine, I would like to recall some thoughts expressed by the Ukrainian Congress Committee of America when it said:

> Although the true Ukrainian state has been destroyed, the Ukrainian National Revolution lives on in the hearts and minds of the Ukrainian people.

To this I would like to add that it also lives on in the hearts and minds of the American people.

## PROFANITY ON TELEVISION NEWSCASTS

Mr. TALMADGE. Mr. President, I have received numerous complaints regarding a CBS television newscast of Monday, January 5, 6:30 p.m. eastern standard time, on which I understand extreme profanity was used. I did not happen to see this particular program, but judging from the angry correspondence that I have received and the way it has been conveyed to me, this kind of broadcasting is not necessary to news reporting. In the interest of commonsense and good taste, neither is it to be condoned by the Federal Communications Commission, the individual stations, nor by the viewing public.

I have written the FCC to join my constituents in this protest and to attempt to secure a transcript of that particular broadcast, in order that I might ascertain the context in which the alleged profanity was employed.

I was very much pleased to hear FCC Chairman Dean Burch declare on a news program last Sunday night that television stations especially ought to be more circumspect in broadcasting news material of dubious value and questionable taste, particularly when the inclusion of such material adds nothing to the import of the news other than sensation.

The Laurens County News, of Dublin, Ga., on January 7, 1970, published a very fine editorial entitled "Mom, I Heard It on CBS News," which discusses this particular program and the overall problem in forceful and eloquent terms. 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:

MOM, I HEARD IT ON CBS NEWS

We practically knew it was going to happen sooner or later, but we had no idea the time was ripe. We didn't even expect to see it ourselves because in our business we usually hear about what happened on TV "last night" from others—very seldom do we have the opportunity to watch the evening news on TV.

It was unmistakable. If you were watching you might have thought you misinderstood the first time, but there was no doubt when it occurred repetitiously again.

On Monday evening's CBS News with Walter Cronkite not only on one, but on two separate occasions, the most profane words we have ever heard were broadcast into the living rooms of listeners throughout the United States. The true character of CBS finally unveiled itself when subjects who used God's name in a most vain manner were chosen above (what we believe to be) thousands of others whose news is of much greater value than that reported by CBS.

An apology from Mr. Cronkite was forthcoming at the close of Tuesday night's news cast. But since the incidents were purposely included in Monday's news cast, we wonder if the apology is genuine. Therefore, we find it somewhat difficult to forgive Mr. Cronkite for the obtrusive language used on his news program.

In his apology he noted that the profanity was included only to dramatize the nature of the incidents. It is quite obvious that the networks are becoming more dramatic and less objective in their news reporting. However, we failed to see the drama in the incidents in question. It appeared to us to be nothing more than an irreverent, disrespectful, and downright blasphemous act of CBS news directors who have evidently lost all sense of values.

While it is practically impossible to shelter children from all the profanity being spoken by those whose vocabulary is no better than the news subjects of CBS, parents who attempt to do so can at least provide a wholesome atmosphere in their homes, even if it means viewer censorship of entire TV programs. Mr Cronkite must not be aware that his program can be tuned out just as easily as the Smothers Brothers' program, or he may be forgetting (he probably didn't know before Monday night) that the number of persons who vigorously disapproved the profanity far exceeds the number who condoned it.

We do not lay all the blame for Monday night's indignities at the feet of CBS officials even though the perpetrations received their stamp of approval. The public has been soothed by the doctrine of gradualism which has brought about vulgarity, obscenity, pornography, and comparable moral offenses from high places as well as the news media. These offenses have been accepted as being too mild to speak out against, so the cumulative total of the advances from one offense to another has resulted in the extreme which occurred Monday night. However, it was only a few degrees worse than the status quo.

So how can one fully blame CBS for trying to extend the status quo to the acceptance of using God's name in vain? They have been constantly extending it in that direction for several years now.

If you have been successful in sheltering your child from profanity and you hear him repeat the words, don't be surprised when he answers your question "Where did you hear that?" with "Mom, I heard it on CBS News."

This creates a terrible dilemma. Do you accept this degree of profanity in your living room, or do you throw away your TV set? If you reach a satisfactory conclusion, let us know. We find ourselves in the same predicament.

## FOREIGN POLICY MESSAGE AND POSTURE STATEMENT

Mr. FULBRIGHT. Mr. President, I am pleased that the President plans to submit a message on foreign policy to Congress. I am also pleased that the Department of State, at the urging of the Committee on Foreign Relations, has decided to submit an annual foreign affairs posture statement to Congress. I am confident that both of these innovations will contribute a great deal to public discussion of foreign policy issues in the coming years.

For a number of years the Department of Defense has submitted an annual posture statement to Congress, a statement which dwelled heavily on foreign policy matters which fall primarily within the province of the Department of State. I found it difficult to understand why the Department having primary responsibility would be content to allow the Department of Defense to usurp its prerogatives and warp further the demarcation line between foreign policy and defense matters. I hope that the State Department's decision signals a general determination to restore the Department to its proper role within the executive branch in the foreign policymaking process.

I ask unanimous consent that the correspondence between the committee and the Department of State about a posture statement be printed in the RECORD.

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

MAY 22, 1969.

Hon. WILLIAM P. ROGERS,
*Secretary of State,*
*Washington, D.C.*

DEAR MR. SECRETARY: I am sure you are familiar with the annual posture statement submitted to the Congress by the Secretary of Defense. As you know, by tradition, the Secretary of State appears before the Foreign Relations Committee early each session for a briefing on the world situation. This one meeting does not provide the Committee with as much detailed information on the world situation as is desirable. I believe that the Committee would benefit greatly from a detailed posture statement from the Secretary of State comparable to that submitted by the Secretary of Defense. The Committee would, of course, have no objection to this statement being made available to other interested Congressional committees. I sug-

gest that you submit classified and unclassified versions of the statement.

Sincerely yours,

J. W. FULBRIGHT,
*Chairman.*

P.S.: I believe this would be mutually beneficial.

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THE SECRETARY OF STATE,
*Washington, June 23, 1969.*

Hon. J. W. FULBRIGHT,
*Chairman, Committee on Foreign Relations, U.S. Senate.*

DEAR MR. CHAIRMAN: Thank you for your letter of May 22 raising the possibility of my presenting to the Committee at the beginning of each session of Congress a detailed foreign policy review with classified and unclassified sections.

I understand that such a project has been considered in this Department over the last few years but for one reason or another has never been carried forward. My initial reaction to your suggestion is a favorable one, but before reaching a final decision I would like to explore a little further how such a statement would be prepared and what it would contain. This exploration is now under way with the thought that, if we do supply such a statement, the first one would be sent to your Committee soon after the Congress reconvenes this coming January.

I will be in touch with you again after we have studied the question further.

With best regards,

Sincerely,

WILLIAM P. ROGERS.

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SEPTEMBER 10, 1969.

Hon. WILLIAM P. ROGERS,
*Secretary of State,*
*Washington, D.C.*

DEAR MR. SECRETARY: It has occurred to me on several occasions during recent Senate debate on the military authorization bill that an annual detailed foreign policy posture statement similar to that submitted annually by the Secretary of Defense would be most helpful.

You indicated in your letter of June 23 that the Department was exploring the desirability of providing the Committee with such statements at the beginning of each session of Congress. I have been wondering how the project is coming along.

Sincerely yours,

J. W. FULBRIGHT,
*Chairman.*

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SEPTEMBER 19, 1969.

Hon. J. W. FULBRIGHT,
*Chairman, Committee on Foreign Relations, U.S. Senate.*

DEAR MR. CHAIRMAN: Thank you for your letter of September 10 to the Secretary, referring to your previous correspondence about the possibility of an annual foreign policy review statement.

Unfortunately, the Secretary did not have an opportunity to focus on your letter prior to his departure for New York. This matter has been under active consideration in the Department and some preliminary work has been done; however, it has not yet reached the point where it could be presented to the Secretary for a final decision.

I know he is very much interested in this, however, and will be giving it attention during the coming weeks.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.

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DECEMBER 31, 1969.

Hon. H. G. TORBERT, Jr.,
*Acting Assistant Secretary for Congressional Relations, Department of State, Washington, D.C.*

DEAR TULLY: Senator Fulbright is out of town for a few days, but when he returns I am sure one of his first questions will be whether the Department has reached a decision on presenting an annual foreign policy posture statement to the Committee. You will recall that this subject was dealt with in an exchange of letters and I believe the Secretary and the Chairman discussed it on several occasions—the general idea being that the annual posture statements of the Department of Defense use, as take off points, a number of foreign policy assertions.

Sincerely yours,

CARL MARCY.

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DEPARTMENT OF STATE,
*Washington, D.C., January 8, 1970.*

Mr. CARL MARCY,
*Chief of Staff, Committee on Foreign Relations, U.S. Senate.*

DEAR CARL: I received your inquiry of December 31 about the Department's plans regarding an annual foreign policy statement. The Secretary has decided to make a foreign policy report and work on it is well under way. We hope to have it available early in the session and I cannot yet give you a firm date.

Sincerely yours,

H. G. TORBERT, Jr.,
*Acting Assistant Secretary for Congressional Relations.*

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## GEOPOLITICAL REALITIES IN THE MIDDLE EAST

Mr. HARRIS. Mr. President, last Sunday evening, January 25, 1970, I had the honor of meeting with and addressing the National Emergency Conference on Peace in the Middle East, here in Washington.

I took that opportunity to call attention to some new and disturbing geopolitical realities which now confront us in the Middle East. I stated that our Government should stand by Israel and extend her the credit and military equipment which are necessary for her continued existence.

I ask unanimous consent that my remarks be printed in the RECORD.

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

ADDRESS BY SENATOR FRED R. HARRIS, CHAIRMAN, DEMOCRATIC NATIONAL COMMITTEE, TO THE NATIONAL EMERGENCY CONFERENCE ON PEACE IN THE MIDDLE EAST

The fact that you have called this conference—the fact that you have used the words "national emergency" in describing its purpose—these facts demonstrate clearly the deep concern which exists about the crisis in the Middle East, about the future of the State of Israel, and about the evolution of the policies of the United States Government toward these problems.

The wisdom of your calling this meeting is pointed up by the need and renewed publicity focus for the problems of the Middle East which you have stimulated and the fresh statement you have evoked from the President of the United States; and that is all to the good.

Most Americans support Israel in her struggle for peace because we rightly identify strongly with Israel's principles, her beliefs, and her commitments.

We believe, as do the Israelis, in the dignity of man and in the equality of all men before the law. We believe in democracy, and we are committed to making democracy work. And we believe in cooperation—where neighbors work together to achieve harmony with their environment.

Israel has much to tell us about the conservation of human and material resources. I speak of basic principles, as well as of innovation and new techniques.

I emphasize these fundamental matters because they are relevant to the issue which brings you together and which concerns us all about the Middle East today.

That issue, and it is the principal issue, is how we can help to bring Arabs and Israelis to a real peace which will unite these peoples in true cooperation.

The people of the Middle East must have a real peace, not the illusion of peace. This is the all-important issue which must engage our policymakers, if there is to be progress toward the solution of the many problems of the area, most of which flow from conflict.

Our goal must be more than a mere suspension of acrimony and attack and retaliation between Arabs and Israelis. It must be a positive commitment to respectful diplomatic and human relations, to free trade between neighbors and to an end to the resource-sapping, mutually-exhausting escalation of the arms race. This one thing is clear: there can be no real peace except with Arab recognition of Israel's right to live. The Quakers have an apt saying: "There is no way to peace; peace is the way."

We know, therefore, that there must be agreement between the parties whose interests are most directly involved: Israel and the Arab States.

The United States, the Soviet Union, France and Great Britain can discuss these matters, but they cannot dispose of them.

When in 1967 Israel won her military victory, President Johnson spoke for most Americans when he declared that President Nasser was responsible for that war, that the time had come to end these periodic convulsions, and that once and for all the parties to the conflict must become the parties to a settlement.

For two years our Government adhered formally to this fundamental position, resisting the attempts of the Soviet Union and France to force Israel to make territorial decisions without a peace settlement.

The Arabs have consistently refused negotiations, recognition and peace with Israel. Throughout this period the Arabs have seemed to cling to the hope that the United States would eventually agree to and even help fashion a Big Power compromise which would at least save them from having to work out a peace with Israel.

As a United States Senator, I am greatly concerned over what is happening now in the Middle East and about what may have been happening to United States policy. The current situation has far-reaching significance for United States interests—in the Middle East, in the Mediterranean, in NATO, as well as in Europe.

Many serious Americans—myself included—have questioned how vital Vietnam is to over-all American interests. Whether or not that question is open to debate, I submit that the American stake in the future of the State of Israel is not debatable. The future of Israel is of vital importance to the United States and has broad, far-reaching implications for the future of American influence, not only in the Middle East but in the Mediterranean and throughout Europe.

Let us consider the map and the geopolitical realities with which we are confronted:

Item: The Soviet Fleet is in the Eastern Mediterranean. The Soviets have no jet-launching carriers, but air cover for the Fleet is being provided by Soviet planes with Egyptian markings, operating from bases in the United Arab Republic.

Item: Libya, always regarded as a buffer between the countries of the Maghreb and the chaotic politics of the East, is now under Egyptian influence. There are Egyptian troops in residence, and every Ministry of the Libyan Government is reportedly receiving assistance from the estimated 1,500 Egyptian technicians now in Libya.

Item: The French have made a fundamental shift in policy—and have concluded a very substantial arms deal with Libya. There is not a single Libyan pilot now trained to fly the 100 modern jet fighters France has provided. Egypt already has qualified jet pilots, and there is hardly a doubt that the United Arab Republic will inevitably have the benefit of these arms.

Item: Wheelus Air Force Base, which we built and are now evacuating, is of great importance. It can be used to provide security for Egyptian planes as well as for training Libyan and Egyptian pilots.

Thus, the current crisis and maneuvering in the Middle East has significance for the United States far beyond the question of helping to preserve a small, friendly country because we will feel badly if it goes under. If the policies of this Administration in the Middle East and North Africa have been mistaken or unclear; if, as Abba Eban said last Wednesday, the Soviets are in fact outwitting us and thereby progressively making a reality of Russian dreams of hegemony that go back to the Tsars—if these things are true, it is even clearer that our policy toward Israel is not a question of any narrow or special interest here in the United States, for the entire nation has a stake in the outcome.

In the face of the many unresolved, very serious questions about Russian activities in the Middle East, about French activities there and in North Africa, and about the spread of Egyptian influence northward, all of us have been rightly concerned about the Secretary of State's recent description of present United States policy as "balanced," which sounded to too many ears like the discredited Dulles policy of "impartial friendship" to all.

You have received a new but not fully reassuring statement from President Nixon. Action now must follow the words to make clear that our traditional policy toward Israel is the same as it was when President Kennedy said:

"Israel is the bright light now shining in the Middle East. We, and ultimately Israel's neighbors, have much to learn from this center of democratic illumination, of unprecedented economic development, of human pioneering and intelligence and perseverance."

All that Israel is asking from us today is credit. Not gifts, not technical assistance, not soldiers to fight her battles—but financial help in the form of loans and the military equipment necessary for her continued existence. Israel is and has been a powerful ally for us in the Middle East and a key factor in American hopes for a permanent peace. As AFL–CIO President George Meany said on December 30:

"The road to lasting peace in the Middle East lies at the bargaining table, with the Arab nations on one side and the Israelis on the other."

Only the Israelis and their Arab neighbors can make the accommodations necessary to a lasting settlement. It is not in the national interest of the United States to try—unasked—to negotiate for the Israelis, or for the Arab nations.

Israelis have said that the peoples of the Middle East should not be the victim of power politics. They have good reason for their fears. They have a long history, and their memories feed their apprehensions.

Perhaps the Arab leaders who hold power today will one day recognize the need to broaden their horizons, to abandon their hatreds, to ask their people to join them in re-examining their anti-Israel doctrine. If this is too much to ask of them, then perhaps new leaders may come who will. It is not for us to say.

But it is for us to say that we will not be the architect of a settlement which settles nothing, but rather tends toward yet another round of war. We must be inflexible in this righteous cause—the cause of peace. It is for us to say with firm conviction that our own interests and commitments of morality bind us to Israel, to this firm friend.

These are my concerns with the apparent evolution of Administration policy in the Middle East, and they are growing concerns. "Emergency" is a fitting word for you to use. We cannot afford changes in our long-standing policy without facing up to the serious questions at issue, or without providing the American people with detailed answers to these questions. Perhaps nobody now has all these answers, but the effort to find them is an effort that must be made and that should preoccupy us all. For again, as John Kennedy so eloquently put it:

"As we observe the inspiring experiences of Israel, we know that we must make an effort—and that we can once again demonstrate that 'rain follows the plow.'"

## DEPARTMENT OF DEFENSE AND ADDITIONAL CONSTRUCTION PROJECTS

Mr. WILLIAMS of Delaware. Mr. President, existing law provides that the Department of Defense must notify Congress prior to the approval of additional construction projects or major additions to facilities at military installations. Such acquisitions or additions normally are paid for out of the military construction appropriations.

The Comptroller General in report No. B–140389, submitted to the Congress under date of January 21, 1970, calls our attention to the manner in which the Department of Defense under Mr. McNamara violated this rule or law, and at five installations new buildings costing approximately $31 million were built by the Air Force and the Navy without obtaining the required prior congressional approval.

This was accomplished by negotiating with the contractor to build the installations and amortize them over a 5-year period, adding the amortization or costs to the overhead charges as a part of other Government contracts. In this manner the contractor would be reimbursed and the Government would get the new facilities without the necessity of seeking prior congressional approval.

Under this highly questionable procedure during the fiscal years 1965 through 1968 Government facilities costing approximately $23 million were constructed at Fort Worth, Tex., to support the F–111 aircraft program. Under the arrangements General Dynamics, the prime contractor, provided the initial financing of this new construction and then recouped the costs by padding overhead charges of Defense supply contracts for the F–111 plane contract. This was spread over an approximate 5-year period. This method of padding overhead expenses as agreed to by the Air Force officials would account for some of the overruns of the F–111.

Since the beginning of fiscal year 1966 a similar arrangement for major new facility improvements has been negotiated with the Grumman Aircraft Engineering Corp. at the Bethpage and Calverton locations, and the estimated costs of these improvements are $4,256,000 and $1,035,000, respectively.

Again in this instance Grumman provided the funds for the construction and is to recover the costs over a period of years by padding the overhead charges on existing Government contracts.

The General Electric Co., operating the Navy's Industrial Reserve Ordnance Plant at Pittsfield, Mass., was likewise authorized to incur costs of approximately $1 million for the construction of additional office space. Again an agreement was negotiated allowing the contractor to amortize the cost of these new facilities over a 5-year period and then include the costs as additional overhead expenses on other Government contracts.

This is a highly irregular procedure, and not only does it circumvent congressional authority but such negotiated contracts open the door for widespread abuse. If overhead expenses of Government contracts can be padded by millions under an arrangement between Defense officials and the contractors it raises questions as to whether such overhead expenses are really audited and if audited why the auditors did not discover and report these padded overhead expense accounts.

If in private industry a corporation built a new building and amortized the costs over a period of 5 years and then tried to write this off by padding its overhead expenses the Department of Justice would take prompt action. Such a practice is no less reprehensible when approved by a Government agency. I join the Comptroller General in recommending that this practice as initiated under Mr. McNamara be stopped immediately.

I ask unanimous consent that excerpts from the Comptroller General's report outlining in greater detail the manner in which the cost of these new buildings were covered up be printed in the RECORD.

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

ACQUISITION OF ADDITIONAL FACILITIES AT AIR FORCE PLANT NO. 4

During fiscal years 1965 through 1968 Government-owned facilities costing about $23 million were constructed at Air Force Plant No. 4, Fort Worth, Texas, to support the F–111 aircraft program. However, the Air Force aircraft procurement and research and development budget requests for fiscal years 1965 through 1968 did not provide for acquisition or construction of these brick and mortar industrial facilities. General Dynamics provided the initial financing of this construction and will recoup the costs through overhead charges against Defense supply contracts over an approximate 5-year period. The pay-back period was agreed to by Air Force officials.

The picture on page 8 illustrates two of the facilities constructed at Plant No. 4. The flight-line facilities in the foreground cost about $2.7 million, and the engineering and administrative office building in the background cost about $8.8 million. Three other facilities are shown on page 9. They are adjacent to each other but constructed as separate projects. The building on the left is a chemical processing building costing about $2.1 million; the center building is a raw materials storage building costing about $1.9 million; and the building on the right is a general warehouse building costing about $2.8 million. Other facilities acquired at Air Force Plant No. 4 are listed in appendix I to this report.

BACKGROUND ON AIR FORCE MANAGEMENT AND USE OF PLANT NO. 4

Air Force Procurement Instruction, section XIII, which implements the ASPR, prescribes the procedures to be followed by Air Force components in programming, budgeting, and financing facilities expansions. Fund requirements to support industrial facility projects are established on an annual program basis. Budget estimates, based on firm or anticipated requirements, are developed by the Air Force Systems Command (AFSC) divisions and are submitted for inclusion in the annual Presidential Budget. Facility requirements relating to aircraft procurement programs are included in the Air Force's annual "Aircraft Procurement Program Request" and are identifiable as a separate program within the overall program request.

During its occupancy of Air Force Plant No. 4, General Dynamics has been authorized to acquire additional facilities, with Air Force approval, under various cost-reimbursement facility contracts. The cost of Government-owned facilities at Air Force Plant No. 4 amounted to about $163 million as of March 31, 1968. Currently, Plant No. 4 is being used primarily for production of F–111 aircraft.

CHRONOLOGY OF EVENTS LEADING TO ACQUISITION OF FACILITIES WITH INITIAL CONTRACTOR FINANCING

General Dynamics' September 1962 proposal pertaining to additional facilities required for the F–111 airplane program, which was submitted to the Air Force stated:

"An analysis of task and facilities required to produce WS 324A has been made. It is concluded from this study that the design presently envisioned, which in no way has been compromised for lack of modern equipment, does not require more advanced facilities than those developed and installed for projects now in production at Air Force Plant No. 4. Present facilities are adequate and can be used in WS 324A program without interfering with the work being performed on other Government contracts. No additional Government-funded capital facilities will be required at Air Force Plant No. 4."

During the early part of the research and development phase of the F–111 program, however, General Dynamics requested approval from the Air Force to construct a new paint facility at an estimated cost of about $700,000. General Dynamics proposed to finance this facility with corporate funds and to recover its cost through overhead charges to all Government contracts during the anticipated remaining life of the contract. At that time, the question of whether the Air Force should provide additional facilities at Air Force Plant No. 4 was discussed within the Air Force.

In May 1964 Headquarters, United States Air Force (USAF), advised the cognizant facility groups at AFSC and Aeronautical Systems Division (ASD) that, in accordance with basic F–111 program agreements between the Air Force and General Dynamics, there would be no direct funding of facilities expansions by the Air Force to support the F–111 research and development program. However, Headquarters, USAF, did not object to the method proposed by General Dynamics for acquiring and financing the new paint facility.

The new paint facility was completed in June 1965 at a cost of about $650,000. The Air Force also authorized construction of an antenna range facility to support the RDT&E phase of the F–111 program. This facility was completed in September 1965 at a cost of about $140,000 and was financed in the same manner at the paint facility. A cost recovery (amortization) period of 55 months on the paint facility and 52 months on the antenna range facility was established on the basis of the anticipated remaining life of the contract at the time each project was completed.

In March 1965, the contractor furnished the Air Force with a forecast of additional facilities (expansions) which would be needed to support the production phase of the F–111 program. This forecast indicated that additional facilities estimated to cost $6.3 million would be required during the fiscal year 1966–68 period.

Subsequently General Dynamics formalized its forecast and developed facilities Program Plan CPP–12–006A, dated November 22, 1965. The contractor again proposed providing the initial financing of the construction projects and recovering costs through overhead charges over a 5-year period under its supply contracts. The proposal was contingent, however, on the Government's providing in the F–111 production contract a special cost recovery clause for facilities, to become effective in the event that the production program did not materialize as planned or if it were terminated.

In December 1965, ASD requested approval from higher headquarters to incorporate the special facility cost recovery clause in the F–111 production contract. In January 1966, Headquarters, USAF, approved the proposed clause, with certain changes, and it was incorporated in contract AF 33(657)–13403 as Part XIX, "Cost Recovery for Contractor Provided Facilities," to the contract schedule.

Part XIX was written to cover the $6.3 million worth of facilities as shown in General Dynamics' facilities program plan CPP 12–006A, dated November 22, 1965. Part XIX stated, however, that an increase in airplane quantities and production rates and the contemplated airplane configuration changes had not been incorporated and had provided for revision at a later date to include the effect of these changes on facilities requirements.

In a letter to AFSC in March 1966, ASD submitted a proposal for constructing additional manufacturing space at the Fort Worth plant with the costs to be initially financed by General Dynamics. ASD noted that it had the authority to permit General Dynamics to install facilities on Government-owned land at no direct cost to the Government but that it did not want this authority exercised without the knowledge and concurrence of the highest interested level. ASD requested either that funds be provided for the facilities as part of the Air Force industrial facilities program or that higher headquarters concur in the proposed method of financing.

In April 1966, AFSC concurred in the proposed financing method and authorized General Dynamics to proceed with the project. AFSC noted that the method of financing was consistent with Air Force policy—that no facilities would be provided by the Air Force for the F–111 program—and was based upon the contractor's original proposed financing method and authorized not require additional capital facilities except for modernization of equipment. AFSC advised ASD that future construction projects, as proposed in General Dynamics' facility program plan CPP 12–006A, should be accomplished in a like manner.

In a letter to the Air Force in February 1967, General Dynamics noted that the facilities plan dated November 22, 1965, which was incorporated in part XIX, covered only about $6.3 million worth of facilities construction whereas a revision to the facilities plan in January 1967 provided for about $26.7 million for new construction. The contractor noted also that part XIX provided for revision to show such changes and, pending the negotiation of the adjustments to the F–111 program price to reflect the revised mix of airplanes, requested the Air Force's acceptance of the revised facilities plan to be sure that there would be no misunderstanding.

The Air Force, in a letter dated April 25, 1967, advised General Dynamics that the revised CPP 12–006A had been approved except for the fiscal year 1968 requirements and that it was contemplated that these requirements would also be approved. The Air Force suggested that, in the interest of minimizing paper work, its letter be used as contractual authority to operate in accordance with the revised facilities plan until the fiscal year 1968 requirements were formally approved. The Air Force advised General Dynamics that the revised facilities plan could be incorporated in the contract at that time.

Generally, part XIX provided, with respect to facilities construction, that, in the event contract AF 33(657)13403 was terminated, the Government would pay the contractor that portion of the facilities construction cost which had not been recovered through overhead. This had the effect of shifting any financial risk associated with the facilities construction to the Government.

As shown in appendix I, all but two of the facilities construction projects proposed for the F–111 program had been completed or were under construction as of September 1968, at an estimated cost of about $23 million. A project for additional flight-line facilities ($1.3 million) and a project for a new maintenance building ($360,000) had been proposed by General Dynamics. Even though the Air Force will pay for the facilities constructed over a period of about 5 years, title to the facilities vests in the Government upon affixation to the realty.

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ACQUISITION OF ADDITIONAL FACILITIES AT AIR FORCE PLANT NO. 75

Work at Plant No. 75, Seattle, Washington, is primarily related to the Minuteman program. A project funded by The Boeing Company, estimated to cost about $911,000 (actual cost was about $763,000), was approved by the Space and Missile Systems Organization of AFSC in August 1967. The project consisted of alterations estimated to cost about $800,000 to one Government-owned building and the construction of two additional buildings on Government-owned land. A picture of one of the new buildings, a material-cutting facility, estimated to cost about $100,000 is shown on page 15. The Government has title to the buildings and Boeing will recover substantially all of its costs over a 4-year period through overhead charges against Government contracts.

The contractor classified the project as nonservable, meaning that removal would cause substantial loss or damage to the premises. Air Force officials at Plant No. 75 classified the work as a major project. A major project is defined as all work of a capital nature which materially affects the structure, capacity, or capability of the real property.

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ACQUISITION OF ADDITIONAL FACILITIES AT NAVY WEAPONS INDUSTRIAL RESERVE PLANTS, NEW YORK

The Grumman Aircraft Engineering Corporation utilizes Government-owned real property at Bethpage, Long Island, under a facilities contract and at Calverton, Long Island, under a lease agreement in connection with its Government aerospace work.

Since the beginning of fiscal year 1966, major new facility improvements have been completed or are under construction at the Bethpage and Calverton locations and the estimated costs of these improvements are $4,256,000 and $1,035,000, respectively. Grumman initially provided the funds for this construction and is recovering the cost over a period of years by means of overhead charges to Government contracts. For fiscal

years 1966 and 1967, approximately 49 percent of the Government contracts were production contracts and 51 percent were research and development contracts.

An example of the type of improvement to Government's owned facilities is the Flow Coat Building addition to an existing Government-owned building (Plant 3) at Bethpage. Construction started in February 1966, and the total cost was $856,000. The Government obtained title to the one-story building, which is 120 feet wide and 280 feet long. All aluminum and titanium parts that are to be chem-milled go through the chem-mill clean line and the flow coat room prior to chem-milling. The Flow Coat Building also provides for the honeycomb final panel and cleaning and sonic test for all programs requiring honeycomb bonding. See pages 17 and 18 for pictures of this facility. Other facility acquisitions at Bethpage and Calverton are listed in appendix II to this report.

The basis for the Navy's acquisition of industrial facilities seems to be the Secretary of the Navy Instruction 4860.41 dated May 15, 1958. Naval Air Systems Command Instruction 4862.2 dated April 25, 1968, which implements the Secretary's instruction, allows contractors to finance leasehold improvements to Government-owned realty provided that (1) the amount charged to Government contracts does not exceed those amounts equal to acceptable depreciation methods, (2) the estimated useful life is determined without regard to the period of the lease, (3) in the event of termination of the right to use the Government property, or termination of any related supply contracts, or subcontracts, the Government shall not be charged directly or indirectly for any unamortized portion of the cost of the improvements, and (4) title to all improvements will vest in the Government upon completion of the leasehold improvements.

Grumman also has under construction contractor-funded leasehold improvements to Government-owned facilities. As of November 30, 1968, the final cost for these projects was estimated at $823,000, of which $155,000 was for Bethpage and $668,000 was for Calverton. Costs incurred to November 30, 1968, were $235,000.

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ACQUISITION OF ADDITIONAL FACILITIES AT NAVY INDUSTRIAL RESERVE ORDNANCE PLANT

The General Electric Company operates the Navy's Industrial Reserve Ordnance Plant which is made up of three main buildings at Pittsfield, Massaschusetts. Since 1963, the buildings have been used primarily in the development and manufacture of highly sophisticated fire control and guidance systems for the Polaris/Poseidon program under Navy contracts.

Since January 1, 1966, the Navy has acquired $1.7 million worth of facilities through rearrangement and improvement projects. Officials of the Naval Ordnance Systems Command and the Strategic Systems Project Office informed us that none of these acquisitions were included in their appropriation requests for facilities.

For example, during 1966 the Naval Ordnance Systems Command entered into two agreements which permitted General Electric to incur costs of almost $1 million for the construction of a second-level of finished office space within the buildings. These agreements allowed the contractor to amortize the cost over a 5-year period by including the costs as overhead expenses in Government contract proposals for supplies and services. The primary reason for constructing these offices was that they were required for personnel connected with the Polaris/Poseidon program.

## NOMINATION OF JUDGE G. HARROLD CARSWELL TO THE SUPREME COURT

Mr. TALMADGE. Mr. President, the Georgia State Senate, now in session in Atlanta, has transmitted to me a copy of a resolution adopted by that body on January 21, urging the confirmation of the nomination of Judge G. Harrold Carswell to the Supreme Court of the United States.

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

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

A RESOLUTION

Commending President Richard M. Nixon for nominating the Honorable G. Harrold Carswell to the Supreme Court of the United States, and urging Senators Russell and Talmadge to confirm the nomination; and for other purposes.

Whereas, President Richard M. Nixon has appointed the Honorable G. Harrold Carswell to the Supreme Court of the United States; and

Whereas, in addition to possessing the finest legal and personal capabilities and qualities, the Honorable G. Harrold Carswell has many ties with the State of Georgia; he was born in Irwinton, Georgia and he attended the public schools in Irwinton, Bainbridge and Atlanta before entering the University of Georgia and graduating from Mercer University's Walter F. George School of Law in Macon in 1948; and

Whereas, his father—George Henry Carswell—was a member of the Georgia General Assembly for more than 30 years and at one time was President of the Senate; he was also Georgia's Secretary of State from 1928 to 1931, before his unsuccessful campaign for Governor against Senator Richard B. Russell; and

Whereas, it is only fitting and proper that President Nixon be commended for his excellent choice, and that Senator Richard B. Russell and Senator Herman E. Talmadge be urged to confirm the nomination of the Honorable G. Harrold Carswell to the Supreme Court of the United States.

Now, therefore, be it resolved by the Senate of Georgia that this Body hereby commends President Richard M. Nixon for his excellent choice in nominating the Honorable G. Harrold Carswell to the Supreme Court of the United States.

Be it further resolved that this Body urges Senator Richard B. Russell and Senator Herman E. Talmadge to confirm the nomination of the Honorable G. Harrold Carswell.

Be it further resolved that the Secretary of the Senate transmit a copy of this Resolution to President Richard M. Nixon, Senator Richard B. Russell, Senator Herman E. Talmadge and the Honorable G. Harrold Carswell.

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## ARREST OF LEADERS OF SAIGON STUDENT UNION

Mr. FULBRIGHT. Mr. President, I have received a letter from Mr. Charles F. Palmer, president of the U.S. National Student Association, concerning the arrest by the Thieu government of 15 leaders of the Saigon Student Union, an organization which had recently expressed publicly its support for the peace efforts of American students.

I have asked the Department of State for a full report on the incident. In view of the general public interest in the political situation in Vietnam, I believe that this incident will be of interest to Senators and other readers of the RECORD. I ask unanimous consent that the letter and related material from Mr. Palmer and my letter to Secretary Rogers about the matter be printed in the RECORD at this point.

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

U.S. NATIONAL STUDENT ASSOCIATION,
*Washington, D.C., January 7, 1970.*

HON. J. WILLIAM FULBRIGHT,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR FULBRIGHT: On November 10th I released to the press a letter I had received from Nguyen Van Quy, the President of the Saigon Student Union, expressing support for the peace efforts of American students. At that time, we contacted members of your staff and those of several other members of the Congress, in an effort to get assurances for the safety of these brave students. We were given commitments that you and the others would do everything in your power to insure their safety.

On December 27th Nguyen Van Quy and fourteen other leaders of the Saigon Student Union were arrested at a student song performance. The terms of their arrests are still unclear, as is their present whereabouts. In the opinion of the people we have contacted in Vietnam, as well as the experts in this country, they were arrested for their criticism of the Thieu government.

Yesterday I received the attached communications from Saigon. I think it is self-explanatory. These students are in tremendous danger if something is not done soon to guarantee their safety.

I am therefore requesting that you issue a strong statement protesting the actions of the Thieu government in arresting these students, and that you do everything you can to raise the issue publicly. Second, I would like to request that you hold hearings on the treatment of students and other dissenting groups in Vietnam.

Finally, I cannot stress too much how important it is that you act quickly. These students have done a courageous thing, something which I doubt either of us would do. They are now suffering the consequences. Please act.

Sincerely,

CHARLES F. PALMER,
*President.*

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SAIGON STUDENT UNION,
*October 11, 1969.*

THE PRESIDENT,
*U.S. National Student Association,*
*Washington, D.C.*

MR. PRESIDENT: For the purpose of furthering understanding among the students around the world we would be delighted if you would assist us in getting our sincere greetings to the students and people of the United States.

We profoundly admire and are greatly affected by your sincere love of peace and your great efforts in that struggle. The demands of American students and people are also the deepest, most sincere and demanded aspirations of ourselves. They have long been nourished in all Vietnamese students and people.

In comparison with other countries of the world our Viet Nam, our beloved country, is a small, but its suffering has been great. Our history is one of continuous struggle of

will for us to defend ourselves for our own salvation and survival. Our ancestors were successively killed during a thousand years of resisting the yoke of slavery and intentions of the Chinese dynasties. In contemporary times our compatriots fought a war of one hundred years, so cruel, so brutal, for independence from French colonialists and militarists.

Looking back on the history of our people we are frightened by the sufferings and disasters that our small people has endured. Our ancestors participated in a heroic struggle and they were victorious, magnificent, miraculous, yet the suffering and difficulties were also great. Our history of struggle for independence has been one of raising our voices to condemn aggressors and express a desire to live in peace and rebuild our poor and small country.

Our people, however, receive only more and more suffering. Our country is divided. Our fatherland is completely destroyed. Our brothers and our friends are dying violently. The numbers of dead and wounded increase each day and reach toward a million people with a population only one-tenth of yours. In addition to our losses hundreds of thousands of American youths are dead and wounded in our country. We would like to share in the concern of American students and people and assure you that, like yourselves, we are appalled.

Mr. President and dear American students:

For the sake of the survival of the Vietnamese people we are eager for peace, a peace that will stop the daily killing in our beloved homeland.

In the spirit of independence, equality, the ideals of democracy and freedom felt around the world, we sincerely hope that the right to self determination of the people of Viet Nam will be respected, without pressure, influence from anywhere under any form. Struggling for that purpose is to strengthen the ideals of justice and reason.

Again we say we respect and are affected by your will for peace and the will of all students and people around the world for peace, independence and freedom. We admire your efforts. We sincerely thank the American students and people who pursue peace for Viet Nam. From this side of the Pacific we anxiously join your spirit for a quick return of peace in this country and to appease humanity's yearning that all people around the world have peace and prosperity.

Sincerely yours,

NGUYEN VAN QUY.

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PROCLAMATION OF THE COUNCIL OF REPRESENTATIVES OF SAIGON STUDENTS

On December 27, 1969 at 19:30 at the temporary headquarters of the Student Union following the musical performance of the Saigon students, the following students: Nguyen Van Quy, Chairman, Executive Committee, Saigon Student Union. Huynh Tan Mam, Vice Chairman for Internal Affairs, Saigon Student Union and Chairman of Ex. Comm., College of Medicine and Dentistry.

Doan Van Toai, Vice Chairman of Sgn. Student Union for External Affairs.

Nguyen Khac Do, Vice Chairman of Sgn. Student Union for planning.

Nguyen Van Thang, Secretary General, Saigon Student Union.

Nguyen Dinh Mai, Chairman of Ex. Comm., College of Medicine and Denistry, 68–69, Adviser to Ex. Comm. of Saigon Student Union.

Vo Ba Tong, Secretary of the Interfaculty Comm.

Truong Quoc Khanh, Executive Comm. Member.

Nguyen Kim Ngan, Representative of Buddhist Students at Faculty of Letters.

One girl student from Le Van Duyet High School and three others whose names we don't yet know, were arrested by the government forces.

Considering that:

1. the performance of the popular music by the Saigon students was of a completely cultural character.

2. the arrest of the representatives of the students at the campus headquatrers is an act attempting to violate the autonomy of the University.

3. the arrest of citizens without justification is an anti-constitutional act.

4. terrorizing and beating the student Nguyen Van Thang offends the rights of the individual and humanity.

Before these points the Council of Representatives of Students:

1. Requests the government to immediately release the above students.

2. Calls to all people in and out of the country to immediately intervene because of the unjustified arrests.

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TELEGRAM

From: Nguyen Hoang Truc, vice secretary general, Saigon Student Union and Editor in Chief of Sinh Vien—45 Cuong De, Saigon. To: Charles Palmer, President, U.S. National Student Association, 2115 —— Street NW, Washington, D.C. 20008

On the eve of student song performance organized by Saigon Student Union December 27, 1969 at the campus of Saigon University, 14 Cuong De Street, Saigon. After dispersing more than 1000 students and spectators the police intruded into the university buildings and beat and arrested without reason the student President Nguyen Van Quy, the Vice Presidents Thoai and Nam, the Secretary General Nguyen Van Thang, and all other members of the Student Executive Committee and student musicians, singers, and some of the audience coming late. This act of intruding the university campus and the use of beatings and arrests of the representatives of the 30,000 students of Saigon violated the South Vietnamese constitution, violated the democratic principles and human rights. These things offend the honor and fundamental rights of the Vietnamese students and students around the world. We expressly inform you so you can inform to all American students and students around the world and to the American people to denounce these police violent and inhuman acts to repress all expressions and activities of Vietnamese students. Please inform all other national student unions that we cannot physically reach them because of severe government censorship and control. In the spirit of student international solidarity we ask you to intervene through the American embassy in Saigon and the U.S. Government to get the South Vietnamese government to immediately release the student representatives and other people arrested with them on the night of December 27. Great trust in you and please accept our sincere salutations to all American students.

Sincerely yours,

NGUYEN HOANG TRUC.

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LETTER OF PROTEST

Buddhist Student Association, Saigon, Considering that:

The autonomy of the University is approved by the Constitution of the Republic of Viet Nam.

In a democratic country, the government must have the duty to assist, to encourage, and to protect the rights and activities of the youth and students.

The government rudely interfered into the Agricultural College to arrest the Executive Committee of the Saigon Student Union, the group which formally represents over 30,000 Saigon students, on the evening of December 27, 1969 which is anti-constitutional, a betrayal of democracy, a repression of the youth and students and strangles the faithful voice of the youth of Viet Nam.

The Saigon Buddhist Student Association formally:

1. Opposes the deceitful violation of the autonomy of the University and illegal detention of the youth and student leaders on the eve of December 27.

2. Demands that the government must immediately give freedom to all the people arrested on the eve of December 27, 1969.

3. Calls to all groups, parties, religions, and constituents within and outside the country to raise their voices to oppose and to intervene so that the arrested youth and students can immediately return to the family of youth and students.

BUDDHIST STUDENT ASSOCIATION.

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JANUARY 13, 1970.

Hon. WILLIAM P. ROGERS,
*Secretary of State,*
*Washington, D.C.*

DEAR MR. SECRETARY: I am enclosing a copy of a letter and related material from Mr. Charles F. Palmer, President of the United States National Student Association concerning the arrest of a number of student leaders in Saigon.

I would appreciate your having the appropriate officials of the Department investigate this incident as soon as possible and provide me with a report indicating what steps, if any, our government has taken or plans to take to assist the students involved.

Sincerely yours,

J. W. FULBRIGHT,
*Chairman.*

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## WICKER COLUMN NAILS APPROPRIATIONS, VETO INCONSISTENCIES IN LABOR-HEW BILL

Mr. PROXMIRE. Mr. President, today's New York Times contains a column written by Tom Wicker, which discusses President Nixon's veto of the Labor-Health, Education, and Welfare appropriations bill.

Mr. Wicker points out that Nixon's decision to label the Labor-HEW bill as inflationary was peculiar, to say the least, in view of the fact that the same Congress "that added the $1.3 billion reduced all the fiscal 1970 appropriations bills by a net of about $5.6 billion, including a cut of more than $5 billion in the Pentagon appropriation." And Mr. Wicker raised the rhetorical question:

Who is vetoing the SST?

But far from endorsing the Labor-HEW bill in its entirety, Mr. Wicker goes on to discuss the absurdity of providing $400 million more than the President requested for impacted area aid. The article points out, as I have argued more than once on the floor of the Senate, that this impact aid is nothing more nor less than political pork. It goes to 375 of 435 congressional districts without regard to need. Thus it benefits from great political muscle while suffering from educational anemia insofar as benefits to those who most require help are concerned.

Had Congress elected not to boost impact aid by $400 million, the Wicker article points out, President Nixon's justification for vetoing the Labor-HEW bill would have been reduced by one-third, for this is the amount by which impact aid increased the budget overage. Yet now the President's representatives are assuring congressional colleagues that impact aid above and beyond the President's original budget request will be

forthcoming from the White House despite congressional approval of the veto.

Tom Wicker's article, in short, presents a picture of political dissimulation both on the Hill and in the White House. It is a disquieting comment, but I believe it deserves the attention of Senators. 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:

IN THE NATION: THE EDUCATION BOONDOGGLE

(By Tom Wicker)

WASHINGTON, January 26.—"I am afraid," said a Democratic head-counter recently, "that we have enough votes to override."

He was referring, naturally, to the H.E.W. appropriations bill, which President Nixon has decided to veto; and he meant that it looked to him as if the Democratic Congress could and would pass it even over the veto. The question was whether or not it would be good politics to do so.

The measure contains $1.3 billion more than Mr. Nixon had asked for; hence, he has labeled it inflationary. This is a peculiarly Nixonian way of looking at it because the same Congress that added the $1.3 billion reduced all the fiscal 1970 aprpopriations bills by a net of about $5.6 billion, including a cut of more than $5 billion in the Pentagon appropriation.

It is not yet clear what will happen on the revenue side of the budget, although the Administration still is shooting for a surplus. The $1.3 billion in additional education funds conceivably could result in a small deficit over-all, but not many economists would maintain that a billion dollars either way will have much inflationary or deflationary impact in a $200-billion budget and a trillion-dollar economy.

Given Mr. Nixon's dominance of the airwaves, however, and the obvious public concern over high prices, high interest rates and high taxes, the Democrats may have a hard time convincing anyone other than the so-called education lobby and the convinced liberals, that they, and not the President, are acting responsibly.

PROBLEM FOR DEMOCRATS

About all the Democrats can do is to make their usual claim that they care more about social issues than the Republicans do. But not only is there no Democratic leader as imposing as a President to make the claim; there also is some question whether that kind of thing wins as many votes as it once did. There is the likelihood, too, that to the extent Mr. Nixon is persuasive in calling the H.E.W. bill inflationary, even some supporters of education expenditures may conclude that this is a time to cut back.

One particular aspect of the measure illustrates best the political fraudulence on both sides of the argument. This is the $600 million included in the Democratic bill for the program ungrammatically called "impacted aid"—that is, Federal assistance to certain school districts to help them bear the impact of the children of Federal employes on their educational costs.

Every President since Dwight Eisenhower has recognized this as what H.E.W. Secretary Robert Finch recently called a "direct boondoggle," but nothing has been done because it benefits without any restriction 375 of the 435 Congressional districts—including some of the wealthiest areas of the country. Montgomery County, Md., a Washington suburb, got $5.8 million from this program last year, although its median household income is almost twice the national average.

Mr. Nixon asked in his budget for only $202 million for impact-aid. By holding the appropriation for it to something like that figure, the Democratic Congress could have reduced by about a third the overage that Mr. Nixon objects to as inflationary. That would have weakened the case for a veto and protected the more vital programs covered by the bill.

Mr. Nixon's agents are now busily assuring members of Congress that if they vote to sustain the veto of the whole appropriation, the President will consent to a separate bill that would continue the impact-aid pork barrel at a level about $400 million.

RIDICULOUS IS THE WORD

The whole thing is a ridiculous way to do business with anything so important—and at the moment so beset with difficulties—as the American education system. It is ridiculous that seven months into the fiscal year, when it is already time to start work on next year's appropriation, this one has not yet been made. It is ridiculous that the most heavily burdened political office in the world does not have the right of item veto. It is ridiculous that the greatest nation in history finances its highest purposes piecemeal and without any real comparison of the values involved. (Who is vetoing the SST? And who votes $600 million for the impact-aid boondoggle and only $717 million for elementary and secondary schools?)

And the most ridiculous thing of all is that the public that suffers insists so little on sensible change.

## UNIFORM ACCOUNTING PROCEDURES

Mr. BROOKE. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial published in today's New York Times concerning uniform methods of accounting for defense contractors. Last week, the General Accounting Office issued its report on this subject which indicated that the application of uniform standards is feasible and that uniform machinery should be developed.

This subject is extremely important in light of recent cost overruns which have occurred in large military procurement contracts. The Committee on Banking and Currency will be considering the subject issue shortly. I anticipate that the problems alludcd to, in the editorial, will be addressed in sufficient detail so that sound legislative action may be taken this year.

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

SECURITY FOR WHOM?

Almost exactly 90 per cent of the contracts let by the Department of Defense are nonbid, negotiated contracts which guarantee the contractor a profit over and above costs. The various contractors follow various methods of calculating their costs and, since there is no uniform accounting procedure, there is no effective governmental audit of these contracts.

Some contractors have been detected padding expenses in order to further increase their profits. Is it any wonder that defense costs have risen all out of proportion to the nation's security requirements—from only $13 billion before the Korean War, to $50 billion before the Vietnam war and to $80 billion today?

The recommendation of the General Accounting Office that all defense contractors follow uniform accounting procedures should be translated into law. To bring some reason into an irrational, runaway defense budget, Congress will have to arm itself with the expert knowledge required to weigh, to question and to challenge the proposals of the military-industrial complex for launching new weapons systems. As it is, Congress is almost wholly defenseless against the assertions by interested parties that any new weapon is essential to American survival.

The relationship between the weapons manufacturer and the military establishment has been, as some critics have charged, an unhealthily cozy one. The military may dream up the need for a weapon and then the manufacturer tools up to supply the need—at a profit. Or the manufacturer may dream up the idea for a weapon, suggest the need to the military and then tool up to supply it—at a profit. This mutually beneficial, backscratching arrangement excludes any effective check on the arms race.

Several possible checks have been suggested: expansion of the House Appropriations Committee to include staff experts on military matters; setting up a separate research think-tank operation, along the lines of the legislative reference service, which would be available to any member of Congress; establishing a new wing of the General Accounting Office to conduct effectiveness studies of weapons systems and make expert analyses of military proposals.

The subcommittee of the Joint Economic Committee now looking into defense spending, with Senator Proxmire serving ably as chairman, can be counted on to come up with its own recommendation. The nation must have an accurate audit of military spending to prevent profit-gouging, wasteful cost overruns and plain chicanery. It must also have some independent, expert opinion on whether proposed new weapons systems will really contribute to its security or only to that of the defense-related industry slated to get a contract.

## IMPORT SHORTAGES AND THE PRICE OF OIL

Mr. McINTYRE. Mr. President, I understand that a meeting is being held tomorrow morning at the Department of the Interior with Assistant Secretary Dole to examine steps to be taken to head off the threatened oil shortage in the Northeastern United States.

As many Senators know, we in New England and throughout the Northeast have experienced this problem before; in fact, this is the third time in the last 4 years that heating oil supplies have become tight, transportation gotten snarled, and the threat of a shortage has loomed. Two years ago, in February 1968, Secretary Udall took swift action to head off a crisis by assigning emergency quotas to the Oil Appeals Board which were immediately allocated to east coast independent deepwater terminal operators.

I hope that as a result of tomorrow's meeting the administration will take similar action, and take it quickly.

Even more important, I hope that the administration will recognize the current crisis as one more reason for adopting substantial changes in the oil import program designed to assure sufficient supplies of low-cost heating oil to the benefit of consumers and to assure competition in the home heating oil markets of the Northeast.

In addition to removing the threat of recurrent shortage, such revisions can mark a major step forward in the fight against inflation.

At the same time, I should like to comment on one other matter. Yesterday, the distinguished junior Senator from Wyoming (Mr. HANSEN) made some remarks on the floor of the Senate regard-

ing oil imports and their impact on New England consumers.

In the course of his comments, he referred to a "New England Senator" who had raised questions on this subject. I believe that that "New England Senator" is myself, since I recently sent a letter to my friend from Wyoming setting forth questions on this issue.

So that Senators and others who read the RECORD may have the benefit of those questions, I ask unanimous consent to have printed in the RECORD the letter I sent on January 21 to the distinguished Senator from Wyoming.

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

JANUARY 21, 1970.

Hon. CLIFFORD P. HANSEN,
*U.S. Senate,*
*Washington, D.C.*

DEAR CLIFF: I note that on January 15, you made a statement in Wyoming criticizing a statement of January 12 in which I drew attention to the fact that the tariff plan reportedly proposed by the Task Force on Oil Import Control would, in its present form, bring little relief to the consumers of our Nation.

Cliff, I have some questions in my mind which I think we need to seek answers to in order that we may understand each other better.

(1) You say that "it is incredible" that I, or anyone else, "should be considering using imports to lower the domestic price of any commodity by any amount." You also say that "the Federal Government under both Democrats and Republicans has so far avoided wage and price control except as war-time emergency measures."

(a) Do you believe Government programs which establish a *floor* on prices to be Government control of *prices?*

(b) If the Government can take action to establish a floor on prices, why can't it take action to adjust that floor, up or down?

(c) Am I correct in assuming that you are against any regulation by the Government of the prices of commodities?

(d) If this is true, what do you conceive to be the purpose *and effect* of the Oil Import Program?

(e) What do you believe to be the purpose *and effect* of the State market pro-rationing system, which is tied to demand?

(f) Does the import program or the pro-rationing system have any effect on prices?

(g) Assuming that all analysts are correct in saying that the purpose of State pro-rationing is to set prices, shouldn't this job be done by the Federal Government, rather than only two states, Texas and Louisiana?

(h) Do you agree with the position taken by Assistant Attorney General McLaren in a letter of December 31, 1969, to Senator Proxmire that there is no competition in setting oil prices because of state market pro-rationing systems and the posted price system of the major oil companies?

(i) Doesn't any import quota system have an effect on prices?

(2) You report that "oil product prices have remained remarkably stable during the inflation of recent years and now average less at $3.88 per barrel than the 1957–59 weighted wholesale average of $3.99 for the four principal products—gasoline, home heating oil, kerosene and residual."

My understanding is, however, that oil prices were at abnormally high levels during the 1957–59 period due to the Suez crisis of 1956. Therefore, I have measured the changes in oil prices over the past five years, years when the inflation in our country has become more intense. It would be helpful to me if you could provide information as you see it, on:

(a) The domestic price of crude oil in each of the years 1965–69 with a comparison of those prices with world crude oil prices;

(b) The wholesale and retail prices of the four principal products you outlined above—gasoline, home heating oil, kerosene and residual—for each product in each of the years 1965–69.

(3) You and I share a deep concern about prices, and because of this how do you view the impact on our economy of a one cent increase in the retail price of gasoline? A one cent increase in the retail price of home heating (No. 2 fuel) oil?

(4) You say that "4 out of 10 barrels" of New England oil products are imported now. My understanding is that the 40% figure applies to the entire East Coast and not New England. Your figures may also include a decontrolled product, residual fuel oil. I wonder if you have figures for controlled products for New England alone.

(5) I note from the recent study of the Office of Emergency Preparedness that in 1969 the people of Wyoming bore the highest per capita burden of any State in added expenses due to the Oil Import Program—$62.00. The people of my State paid a per capita burden of $42.09 and nationwide the per capita burden was $26.16.

(a) Do you believe that these burdens are justified?

(b) Do you believe that petroleum imports from secure sources such as Canada, which would not affect our security and would certainly lower costs in your State, should be allowed free access to our markets?

(c) If such imports would lower prices to consumers, help in the fight against inflation, and not affect security, would you object?

Cliff, I realize these questions may be somewhat lengthy but I ask them in all sincerity in an attempt on my part to obtain the fullest possible understanding of the oil problems. Oil is such a serious matter in New England particularly for heating during our bitter cold winters, that I am sure you will understand my abiding interest.

Sincerely,

THOMAS J. MCINTYRE,
*U.S. Senator.*

## PROBLEMS OF AMERICAN TOBACCO FARMER

Mr. BAKER. Mr. President, in the recent controversy over cigarette smoking and health, one important consideration has been too often overlooked—the situation of tobacco farmers whose principal source of income, indeed for many the only source, is their tobacco crop.

Last Sunday, in the Washington Post, an article written by William Greider, dealt extensively with the problems confronting the American tobacco farmer. 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 Washington Post, Jan. 25, 1970]

A NEW LEAF FOR THE SOUTH

(By William Greider)

LOUISVILLE, KY.—In the huge tobacco warehouse, where sunlight filters through the row of skylights and the chill air has the bouquet of a fine old humidor, W. B. Norton measures up as a man of quality.

Norton is a farmer from Breckenridge County in western Kentucky, a lean and handsome man at 52, wearing olive-green coveralls and a new hunter's cap. The last of his burley tobacco crop has just been unloaded from his stake truck and prepared for sale on the auction house floor.

As Norton hands down the long sticks strung with the reddish brown leaf, the grader and the packer can tell what sort of a man he is. The "hands" of cured tobacco leaves, which they stack on flat wicker baskets, have a neat and finished look, the right color and texture, and good weight, too.

If Americans quit smoking, as the federal government and countless health experts have urged them to do, men like Norton will pay the price. For more than 600,000 farm families, tobacco is the principal source of income—for many of them, the only source. They will also lose something of themselves, the specialized knowledge of a crop which is their only career and inheritance.

The farmers have not received much attention in the long debate over smoking and health. Since the Surgeon General's report of 1964, the giant cigarette companies have played the role of defender of the industry and have served as villain for the reformers.

But the companies are in good shape for the future, even if they lose ground in the battle for public opinion. They are investing in other enterprises, like razor blades, frozen foods and beer. They can benefit from the prospect of new techniques for making cigarettes with less tobacco—which promise more grief for the people who grow the crop.

"I don't expect it's actually killing any more people than whiskey or air pollution," Norton said defensively, though he neither smokes nor chews himself. "I always say I grow it for people foolish enough to use it."

The man from the warehouse scales came over with the receipt and the total weight looked good. Norton and his wife grew about 3,700 pounds of burley on each acre, the kind of high yield that is commonplace today with chemical fertilizers and pesticides but was unheard of when he was a boy helping his father.

Even so, 1969 was a bad crop for Norton, just as it is for most farmers in the eight-state burley belt. He calculated out loud that his income will probably be off almost $1,000. That is a lot of money in Breckinridge County, Ky.

"It just can't hold up," Norton said wearily. "The consumption isn't holding steady and we're growing more and more tobacco every year. Unless we cut it down, the government is going to drop the program. These city congressmen don't give a damn for us. And I don't believe the government is going to keep buying tobacco they don't need."

MORE FOR THE POOL

The "program" is the government's tobacco price-support system, which for 30 years has brought price stability to tobacco markets historically so chaotic that there were once barn-burning insurrections among discontented farmers. This year, burley farmers like Norton began wondering about whether the program can survive.

When the burley markets opened in late November, everyone expected an exceptional year. (This tobacco variety makes up about 35 percent of cigarette blends and is grown in Kentucky, Tennessee and six other states.) By Christmas, they were gloomy and distressed. Burley prices were averaging only $69.73 per 100 pounds of tobacco a drop of $4.35 from the previous crop.

More alarming, a record amount of burley—27 per cent of the crop—was being passed over by the buyers from the cigarette companies and thus was purchased by the government-financed price-support "pool." Only 4.8 per cent of the crop was taken by the pool at the same point in the previous season.

The ominous assumption of many farmers and farm experts is that the companies are taking a businesslike hedge against the uncertainties of the future. Since tobacco normally is aged several years before use, the companies can let the surplus sit in the government pool until they need it. Then they can buy it from the "pool" at the bargain

interest rate of 3½ per cent—much more cheaply than at current interest rates in the commercial money market.

Besides, the companies just might not need the tobacco at all—if sales continue to decline and if new manufacturing methods reduce the amount of tobacco needed for each cigarette. While they ponder the implications, the burley farmers are waiting to hear from the U.S. Department of Agriculture about the acreage allotments for the next season. The general fear is that allotments will be cut at least 10 per cent.

In the other major tobacco belt, the coastal states from Virginia to Florida where they grow bright leaf, flue-cured tobacco, the growers have already taken a 5 per cent cut in their production quotas for 1970. Despite the good prices and stable market that flue-cured tobacco enjoyed last year, farmers there are also apprehensive about the future.

"It's just about as painful as cancer," said Bill Lewis, the county extension agent of Wilson County, N.C., unmindful of the irony in his figure of speech. "If you knew that in a certain number of years ahead of you, that circumstances were going to destroy your ability to make a living, why, nobody likes to be beat if he's got anything in him."

So the consequences of the smoking-and-health issue are beginning to come home. No one can say precisely what the outcome will be, partly because the economic and social conditions vary so widely through the tobacco states. In the burley belt, for instance, more than 55 per cent of the farmers have tobacco allotments of only one-half acre or less, a tiny plot which produces as much as $1,000 or $1,200 a year—the only cash that many hillside farmers in eastern Kentucky and Tennessee see all year long.

In the Carolinas and the other flue-cured states, tobacco farms generally are larger and more often are in the hands of a commercial operator, but the potential for social fallout is just as great. The harvesting of the bright leaf, flue-cured variety (which makes up about 50 per cent of cigarettes) requires more labor, and a vast army of field hands—most of them black—are still tied to the crop.

If the current projections hold true, the economic squeeze is likely to produce a gradual kind of agony, especially painful for the thousands who already live on the tattered edge of subsistence agriculture. For the nation, it could mean new waves of dispossessed mountaineers or black farmhands following the migratory path to the cities.

Russ Stinnett, a middle-aged farmer from western Kentucky, expressed the anxiety of plain country people in the understated manner they favor: "You take tobacco away from these people and you'll hit 'em a pretty good lick."

"PUFFED" TOBACCO

Besides the erratic behavior of this winter's burley market, there are other indicators of trouble ahead.

Per capita consumption of cigarettes was down in 1969 for the third year. There was a modest drop in U.S. sales, the second year they had gone down. For the first time, there was a 3 per cent decline in cigarette manufacturing in the first nine months of 1969.

The tobacco growers are more disturbed, however, by the reduced amounts of burley and flue-cured tobaccos being used in domestic cigarette production. Burley's use was down almost 6 per cent last year and flue-cured has also slipped gradually over the past five years. Maryland-grown tobacco, which makes up a small but vital fraction of U.S. blends, has not suffered from this trend. The impact on flue-cured growers is cushioned because so much of their crop is exported.

Among other factors, the growers blame the consumer's shift to filter brands, stimulated by what tobacco people commonly call "the health scare." Filters may offer smokers the hope that less tar and nicotine means less risk of lung cancer, but to the tobacco farmer filters mean a cigarette that requires slightly less tobacco to fill it.

Until recently, agricultural economists in both tobacco belts generally assumed that, if these trends persisted, it would mean steady consumption of tobacco for the next decade or, at worst, a modest decline. That, by itself, would squeeze out thousands of farmers as operating costs continue to rise and the market remains stagnant.

But now the economists, not to mention the farmers, are shuddering at the possibility that tobacco use will shrink drastically, by as much as 40 to 50 per cent, even if cigarette sales stay even. That prospect has been raised by two new techniques—"puffed" and "freeze-dried" tobacco—now under development. Both processes expand the volume of tobacco.

A secondary virtue for the manufacturers is that a cigarette with half as much tobacco also produces half as much tar and nicotine, which might cool off the health critics. When North Carolina farmers discovered with alarm that their own state university was developing the "freeze-dried" process, Gov. Bob Scott mentioned that benefit to comfort them.

The governor also suggested that the new process might lead to greater use of flue-cured tobacco in the blends—meaning less burley. Burley growers, on the other hand, used to be smug about "the health scare" on the theory that cigarette smokers would turn to pipe tobacco, which relies heavily on burley. But consumption of pipe tobacco has decreased, too (only chewing tobacco was up in 1969; snuff held even).

FARMERS FIGHT BACK

As the rivalry between the two major varieties suggests, the people of the tobacco states react in different ways to the new pressures created by the public health issue.

Wishful thinking still predominates—the hope that the American Cancer Society will lose interest in its "I Quit" crusade or, alternatively, that the research labs will develop the "safe cigarette."

In Kentucky this winter, farmers decided to fight back in their own way. At auction houses across the state, farmers are chipping in $1 each to finance a lawsuit in U.S. District Court in Lexington against the three national television networks.

The eight farmers who are plaintiffs claim they have been damaged by the antismoking commercials aired by the TV networks—both because farm real estate with tobacco allotments has declined in value and because tobacco prices have dropped. The farmers' lawyer, Robert Odear, would like to silence the more provocative ads, like the one that shows a smoker's head rolling off.

"It's never been proved that cigarettes are killers," Odear said. "If they say that cigarette smoking might be injurious, we don't challenge that. But when they come out with a flat-footed statement, it's ridiculous."

"The big companies used to do the battling," said State Sen. Tom Harris, who runs a burley warehouse at Carrollton, Ky. "Now the people are scared and they're mad. They want to see what they can do."

W. B. Norton, a prudent man, is trying to get into hogs, though he knows he can never raise enough pork on his 400-acre farm to equal the cash income he gets from a couple of acres of tobacco. Others, less resourceful or less realistic, are not turning in other directions. Tobacco is what they learned from their daddies and what they are teaching their sons.

One replacement crop which the farmers in central Kentucky could easily grow, if it were legal, is marijuana. Across the Bluegrass, farmers joke about its competition with tobacco. Before tobacco took over, the principal crop in the region was Indian hemp—the same plant but grown for rope, not smoking.

What the farmers call "volunteer hemp" still flourishes uncultivated along fences and creek beds. The sheriff of one central Kentucky county caught some young people harvesting it on his own farm.

The farmers talk more earnestly about other crops, ranging from cucumbers to soybeans to blueberries, but the economics of shifting are not inviting. "I'm sure we can increase these things, but they are not going to pick up the slack for tobacco," said Charles Gulley, county extension agent for Fayette County, the prosperous Bluegrass farmland of horses and tobacco surrounding Lexington.

WORTHY OF DU PONT

Over in North Carolina, the landscape is different. There the flue-cured growers have actually been "diversifying" for the past decade, not because of the health issue but because mechanization and the dwindling pool of cheap field labor are squeezing profits in tobacco.

Eastward from Raleigh the rolling terrain and red clay of the Piedmont turn down to the flat fields and dark loam of the coastal plain, the most productive tobacco country in the world. In Wilson County, North Carolina's largest flue-cured market, the tall, funny-looking flue-curing barns stand in clusters of five or six. Rows of collard greens grow beside the tenant cabins where the black people live.

"There is no panacea," said Bill Lewis, Wilson County's extension agent. "If there were any other crop good enough to replace tobacco, Wilson County farmers wouldn't be the only ones growing it. They'd be growing it in Washington, D.C."

As their adviser, Lewis is understandably proud of how Wilson County farmers have branched out in the last 10 years, a trend typical of North Carolina as a whole. The local incomes from sweet potatoes, hogs, cucumbers, eggs and milk have increased dramatically.

Yet tobacco still means about $20 million a year to the county. "Even DuPont or General Motors would look at $20 million, wouldn't they?" Lewis said.

Down the state-maintained highway a few miles, at the Evansdale crossroads, the white farmers in their bib overalls gather on a Saturday afternoon around the stove in Earl Jones' store. The talk runs to the great upheavals of the times, the steady exodus of black folks, the minimum-wage law and school integration, the new harvesting machinery that replaces labor with capital, the textile mills that draw away field hands.

"I know this," the storekeeper said. "You're gonna have to get big or get out." When labor got scarce last year, Earl Jones had to get out.

"Everything's against tobacco, that's for certain," Jones said. "There's not one bright thing about it."

"I had 50 crops, I reckon that's enough," said John Grimsley, who is 65 and owns a brick house and is ready to retire. "It's about gone to hell, though."

In Grimsley's times, the changing economics of agriculture, the awakening of Southern Negroes and companion forces have reduced the number of Wilson County farmers from 4,300 to around 1,400. Bill Lewis figures that the number of farm operators will drop to 500 in the years ahead.

From the perspective of Wilson County, the "health scare" is just one more calamity.

From the perspective of Washington, the problems may seem less calamitous. But the government will have to deal with these

economic adjustments, if only because the tobacco price-support programs cannot function smoothly if the supply-and-demand relationship changes radically.

Right now, the government-financed surplus stocks of tobacco total just under one billion pounds, worth more than $700 million. If tobacco consumption continues onward and upward, the government will be repaid for that investment. If it turns down, the government could be stuck.

SHAKING FARMERS OUT

Some cigarette critics have already proposed that the tobacco programs be phased out on the grounds that the government cannot logically declare cigarettes to be a health hazard, then turn around and provide price supports for the crop. That sentiment is likely to gain strength if tobacco surpluses keep building—yet farmers cannot endure repeated reductions in their allotments to compensate for reduced consumption.

The tobacco economists insist that, if the government programs were eliminated abruptly, the main benefits would go to the cigarette companies and the larger growers.

Milton Shuffett, a University of Kentucky economist, estimates that burley farmers, once free of the government acreage restrictions, would grow too much tobacco and prices would tumble at least 25 per cent the first season. The larger growers might survive several years of poor prices, but thousands of small farmers would be "shaken out" of the tobacco economy.

The problem is how to revise the government programs to allow for an orderly reduction in the amount of tobacco produced and in the number of farmers who produce it. The first tentative proposals are beginning to surface.

In North Carolina, for instance, the Farm Bureau has suggested government payments for farmers who want to retire their allotments. The allotments have become part of farm real estate values—estimated at $4,000 to $6,000 an acre—and they are not easily abandoned, even for farmers who want to quit.

And last week, a congressman from the mountains of southeastern Kentucky, Rep. Tim Lee Carter, came forward with his own version of a "soil bank" program for retiring burley acreage. "It may cost quite a bit of money," Carter said, "but we've got to do something."

In the burley belt, the problems of adjustment are much more complex because the farmers are sharply divided along economic classes. Right now, the burley program protects the little guy, the scrub farm in the mountains which by regulation cannot be cut below the minimum allotment of one-half acre. That means the well-to-do farms of the Bluegrass, with larger tobacco acreage, more capital resources and more productive land, take the brunt of the allotment cuts, a situation that penalizes economic efficiency.

So some hard choices are involved concerning who gets hurt and who survives. Does the government seek economically viable farm units? Or the social objective of maintaining income for the rural poor and stemming emigration?

"If the objective was to maintain the subsistence farm," explained University of Kentucky economist John Stovall, "you could design the program to do that. It's a question of how you weigh the dollar taken from the rich man against the dollar taken from a poor man."

## RAIL FREIGHT PROBLEM IN SOUTHERN NEW ENGLAND

Mr. PELL. Mr. President, in recent years I have talked extensively about the problems associated with rail passenger service. I wish I could say that I have been more concerned about passenger service than with freight service because fewer problems are associated with freight service. However, as Dr. Roy G. Poulsen of the University of Rhode Islands notes in a recent article in the Traffic Quarterly, this is not the situation, for there are some indications that New England is deteriorating.

According to Dr. Poulsen's article, between 1960 and 1967 freight revenues of rail freight service in southern New England have been declining while the net operating deficit has been increasing. Between 1960 and 1965, the tractive effort of the New Haven Railroad fell from 28,342,000 pounds to 18,724,000 pounds and freight car capacity from 468,265 tons to 311,662 tons.

Dr. Poulsen cites two key reasons for the decline of freight service; first, the short freight runs in an area where light industry does not utilize completely the freight cars which service them; and second, the increase in land value of rail properties has increased their property tax burden, a burden not shared by the competing trucking and airline industry.

In order to relieve the tax burden on the railroad and provide assistance which is similar to that given to trucking and the airline industry, Dr. Poulsen suggests that the Department of Transportation take three steps as part of a national demonstration project to improve the condition of rail freight service:

First, assume responsibility for the installation, operation, and maintenance of the New Haven signal system;

Second, take over, operate, maintain, design and construct passenger and freight terminals for the New Haven; and

Third, acquire the New Haven right of way for inclusion in the interstate highway system and lease this property back to the railroad.

I believe the study undertaken by Dr. Poulsen has important national significance as a possible harbinger of what may be new emerging national problems with rail freight service. I ask unanimous consent that the text of Dr. Poulsen's study be printed in the RECORD.

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

[From Traffic Quarterly, October 1969]

SOUTHERN NEW ENGLAND AND THE FREIGHT SERVICE OF THE NEW HAVEN REGION OF THE PENN CENTRAL

(By Roy G. Poulsen)

(Dr. Poulsen is the Director, Research Center in Business and Economics, and Professor of Finance in the College of Business Administration at the University of Rhode Island. He has recently completed several special studies for federal and state agencies on subjects related to employment of the handicapped, the Rhode Island Revenue System, and an economic profile of the legal profession in Rhode Island. Articles by the author on urban transportation, New England power economics, and urban economic problems have appeared in the Journal of Land Economics, among other publications.)

The people who live south and west of Providence, Rhode Island, have probably been more aware than city dwellers of the labors of the New Haven Railroad (now the New Haven Region of the Penn Central Railroad). When the wind is right or in the stillness of the night, they can hear the melodious sound of the locomotive whistles as they pass the many highway crossings in the rural parts of Rhode Island and Connecticut. Carl Sandburg gave expression to the work of the railroads in one of his poems which begins:

Box cars run by a mile long,
And I wonder what they say to each other
When they stop a mile long on a sidetrack.
Maybe their chatter goes:
I came from Fargo with a load of wheat up to the danger line.
I came from Omaha with a load of shorthorns and they splintered my boards.
I came from Detroit heavy with a load of flivvers.
I carried apples from the Hood River last year and this year bunches of bananas from Florida; they look for me with watermelons from Mississippi next year.

This article seeks to point out the need southern New England has for continued rail freight service and to propose a means for coming to grips with the ills of the New Haven Region, an illness which afflicts other railroads, though to a lesser extent. A look at some of the measures of well-being of a railroad brings out the decline of the NHRR. While the total tractive effort and the aggregate capacity of freight cars of the New York Central Railroad remained almost unchanged between 1960 and 1965, the NHRR declined in both categories. Tractive effort fell from 28,342,000 pounds to 18,724,000 pounds and freight car capacity from 468,265 tons to 311,662 tons. Freight revenues on the Central increased 2.4 percent while there was a 9.6 percent decline on the NHRR.[1]

Reference to a recent study provides a rundown of the special problems confronting the NHRR and the other railroads serving New England. These include a large proportion of passenger business, diversified freight traffic, a large amount of terminal traffic, an unbalanced movement of freight with terminations far exceeding goods originating in the region, relatively short hauls, and low density of freight traffic.[2]

With more than its share of these problems, the New Haven Railroad went into receivership in 1961. Thereafter, the railroad was under the jurisdiction of a federal court and was operated by three court-appointed trustees, until it was absorbed by the Penn Central on January 1, 1969. Despite extensive efforts to pare losses, the trustees were not successful and, in a political-economic move, petitioned for total abandonment of passenger service in 1966. The 1967 financial statement (Table I) which is typical of recent years provides the economic reasons for the trustees' petition. Note the current ratio, 0.71:1, of assets to liabilities.[3]

While other states are served by two, three, or more railroads, Rhode Island and Connecticut have been heavily dependent on the freight service of the Penn Central, New Haven Region. Figure 1 depicts the rail lines of the New Haven and the Central Vermont serving these two states. NHRR freight service was based on the Harlem River and Maybrook terminals with entry to New England via the Shore Line and Danbury. Following Penn Central takeover, the service to the region began to be based on the seventy-track electronic freight classification yard (Perlman Yard) at Selkirk, just south of Albany, New York. The service is built around eight new high-speed freights with major connections for southern New England at Springfield, Worcester, and Boston.[4]

Footnotes at end of article.

TABLE I.—*New Haven Railroad current position as of Dec. 31, 1967*

| ASSETS | 1967 |
|---|---|
| Current assets: | |
| Cash | $2,346,436 |
| Temporary cash investments | 3,487,327 |
| Special deposits | 223,410 |
| Accounts and balance receivable | 7,627,887 |
| Accrued accounts receivable | 1,616,710 |
| Other current assets | 3,810,396 |
| Material and supplies | 1,118,760 |
| Total current assets | 20,231,326 |
| **LIABILITIES** | |
| Current liabilities: | |
| Accounts and wages payable | $8,740,372 |
| Miscellaneous accounts payable | 1,617,219 |
| Interest matured | 192,269 |
| Matured dividends unpaid | 9,695 |
| Accrued accounts payable | 13,609,858 |
| Accrued tax liability | 1,883,277 |
| Accrued items | 134,052 |
| Other current liabilities | 2,328,981 |
| Total current liabilities | 28,515,723 |

*Moody's Transportation Journal*, September 1968, p. 676.

Superimposed on the map are the highway routes which serve competitive transport modes: truck, bus, and car. The New England Thruway running east from New York City and the Connecticut Turnpike closely parallel the New Haven tracks. The 1959–1960 completion of these connections coincided with a sizeable fall-off in rail passenger and freight demand. The more recent construction with 90/10 money of Interstate 91 north along the Connecticut River and Interstate 95 easterly to Providence and Boston, has not aided the plight of the railroad. Both of these routes also are near or within sight of the New Haven tracks.

TABLE II.—NEW YORK NEW HAVEN & HARTFORD RAILROAD CO.

| Year | Gross freight revenues | Total freight expenses [1] | Net railway operating deficit |
|---|---|---|---|
| 1960 | $73,864,080 | $77,160,900 | $(3,296,820) |
| 1961 | 70,146,492 | 77,347,736 | (7,201,234) |
| 1962 | 70,269,815 | 70,749,738 | (594,923) |
| 1963 | 66,106,809 | 67,630,929 | (1,524,120) |
| 1964 | 66,685,989 | 73,218,058 | (6,532,069) |
| 1965 | 67,064,827 | 73,113,871 | (6,049,044) |
| 1966 | 69,989,783 | 74,267,547 | (4,277,764) |
| 1967 | 65,967,789 | 75,819,558 | (9,851,769) |

[1] Includes operating expenses, taxes, and rental.

Source: Planning and Research Department, New York, New Haven & Hartford Railroad Co.

A dramatic improvement in highway travel time occurred following the opening of the Connecticut Turnpike and the other new roads, with motor carriers the major commercial beneficiaries. After midnight, vehicle use of the turnpike and the New England Thruway connection into New York City is almost exclusively a freight operation at road speeds of 60–70 mph. When the flexibility of the truck in point-to-point service is added to the improved speed made possible by the new highways, the competitive disadvantage imposed on the railroad by the highways is evident.

Judge Anderson, Justice of the United States Court of Appeals and responsible for the bankrupt railroad, stated especially well the plight of the New Haven when he noted that "a train proceeding from New York to Boston has truck competition on one side, sea borne competition on the other and air competition overhead. All of these other forms of transportation directly or indirectly are subsidized. Meanwhile the railroad has to maintain the tracks, roadbed and other facilities."[5]

Historically, railroads have used profits from freight service to offset losses sustained from passenger service. The New Haven used this procedure to carry its deficit passenger operation until its freight profits became less than its passenger losses. When this occurred, conditions of course became untendable and bankruptcy followed the next year. Table II provides information on the rail freight deficit between 1960 and 1967.[6] The freight deficit in the last four years averaged $6.7 millions.

Among the factors which served to fuel the deficit are the following:

1. Slow growth of the type of industry which generates rail freight vs. rapid growth of the type of industry which generates demand for truck or air freight.

2. Continued movement of industrial plants out of city centers to locations on the new beltways.

3. Short hauling and the empty boxcar dilemma.

As to the first factor, southern New England industry is mainly in the "light" category. Steel mills, coal mines, automobile assembly plants are not part of the local industrial scene. Instead, the area abounds in light manufacturing and service industries. The inputs used call for modest rail service while the outputs can be shipped largely without dependence on rail freight. Some southern New England firms have been able to adopt air freight as their complete mode of shipment. Furthermore, New England utilities lead the United States in the use of nuclear energy for electric power production, a dependence which will grow in the next decade with the construction of some dozen new nuclear electric installations. This innovation will further cut into the railroad coal-carrying business.[7]

Footnotes at end of article.

TABLE III—FREIGHT CARS HANDLED BY THE RAILROAD AT RHODE ISLAND AND CONNECTICUT STATIONS, 1965–1967

| Station | 1965 Inbound | 1965 Outbound | 1965 Total | 1966 Inbound | 1966 Outbound | 1966 Total | 1967 Inbound | 1967 Outbound | 1967 Total |
|---|---|---|---|---|---|---|---|---|---|
| Rhode Island: | | | | | | | | | |
| Cranston | 1,640 | 756 | 2,396 | 2,234 | 557 | 2,791 | 1,550 | 674 | 2,224 |
| Darlington | 2,730 | 604 | 3,334 | 2,032 | 680 | 2,712 | 2,075 | 822 | 2,897 |
| Harbor Junction | 2,420 | 344 | 2,764 | 2,829 | 615 | 3,444 | 2,349 | 640 | 2,989 |
| Newport | 694 | 96 | 790 | 1,161 | 140 | 1,301 | 1,408 | 116 | 1,524 |
| Olneyville | 2,790 | 440 | 3,230 | 2,695 | 501 | 3,197 | 2,112 | 749 | 2,861 |
| Pawtucket | 1,204 | 327 | 1,531 | 1,412 | 317 | 1,729 | 1,266 | 412 | 1,678 |
| Phillipsdale | 4,070 | 2,190 | 6,260 | 6,399 | 2,014 | 8,413 | 3,224 | 1,874 | 5,098 |
| Providence | 6,985 | 1,427 | 8,412 | 8,468 | 1,662 | 10,130 | 7,124 | 1,822 | 8,946 |
| Saylesville | 2,723 | 240 | 2,963 | 3,058 | 300 | 3,358 | 2,494 | 427 | 2,921 |
| South Providence | 1,501 | 0 | 1,501 | 1,835 | 126 | 1,961 | 1,729 | 170 | 1,899 |
| Valley Falls | 2,220 | 1,144 | 3,364 | 3,993 | 1,346 | 5,339 | 2,547 | 1,609 | 4,156 |
| West Warwick | 1,455 | 80 | 1,535 | 1,937 | 84 | 2,021 | 1,918 | 261 | 2,179 |
| Warren | 912 | 418 | 1,330 | 1,123 | 471 | 1,594 | 1,158 | 361 | 1,519 |
| Woonsocket | 1,602 | 538 | 2,140 | 986 | 277 | 1,263 | 1,579 | 447 | 2,026 |
| All other stations | 5,272 | 4,191 | 9,463 | 10,496 | 5,323 | 15,819 | 4,668 | 2,271 | 6,939 |
| Total Freight | 38,218 | 12,795 | 51,013 | 50,659 | 14,413 | 65,072 | 37,201 | 12,294 | 49,495 |
| Connecticut: | | | | | | | | | |
| Stamford | 2,274 | 842 | 3,116 | 2,204 | 891 | 3,095 | 1,772 | 920 | 2,692 |
| Bridgeport | 17,365 | 2,632 | 19,997 | 18,676 | 2,870 | 21,546 | 11,783 | 2,807 | 14,590 |
| New Milford | 5,154 | 4,026 | 9,180 | 5,261 | 9,370 | 14,631 | 5,321 | 4,949 | 10,270 |
| Shelton | 1,433 | 3,737 | 5,170 | 1,463 | 4,196 | 5,659 | 1,321 | 3,547 | 4,868 |
| Naugatuck | 3,803 | 2,869 | 6,672 | 3,605 | 2,782 | 6,387 | 3,348 | 2,463 | 5,816 |
| Waterbury | 9,029 | 1,166 | 10,195 | 9,892 | 1,498 | 11,390 | 7,866 | 1,256 | 9,122 |
| New Haven | 22,472 | 23,237 | 45,709 | 23,020 | 24,167 | 47,187 | 14,288 | 16,152 | 30,440 |
| Wallingford | 2,900 | 466 | 3,366 | 3,325 | 835 | 4,160 | 2,795 | 529 | 3,324 |
| Hartford | 14,305 | 2,742 | 17,047 | 13,848 | 2,257 | 16,105 | 13,799 | 3,204 | 17,003 |
| Middletown | 13,137 | 787 | 13,924 | 14,380 | 706 | 15,086 | 14,934 | 723 | 15,657 |
| New Britain | 2,630 | 2,824 | 5,454 | 2,642 | 2,377 | 5,109 | 2,484 | 1,882 | 4,366 |
| East Hartford | 11,657 | 283 | 11,940 | 10,853 | 674 | 11,527 | 10,620 | 908 | 11,528 |
| Manchester | 3,117 | 148 | 3,265 | 3,018 | 66 | 3,084 | 2,676 | 45 | 2,721 |
| Midway | 8,147 | 447 | 8,594 | 6,859 | 349 | 7,208 | 4,423 | 320 | 4,743 |
| All other stations | 55,093 | 19,667 | 74,762 | 68,440 | 21,697 | 90,137 | 47,918 | 17,059 | 64,977 |
| Total freight | 172,518 | 65,873 | 238,391 | 187,486 | 74,735 | 262,221 | 145,348 | 56,769 | 202,117 |

*Source:* Department of Business Regulation, State of Rhode Island, for Rhode Island, and New York, New Haven and Hartford Railroad Co., Planning and Research Department, July 1968, for Connecticut.

The second factor, relocation of industrial plants or the location of new plants on beltways or interstate highways, is not unique to southern New England. However, for a railroad largely dependent on freight business from and to older industrial plants, this locational change has caused a shift of new and old freight business to the highway motor carriers who can directly service the new plant locations. Although the New Haven has operated a motor carrier trucking subsidiary, the New England Transportation Company, it was devoted until recent years in the main to carrying railroad LCL traffic and did little to sell its services to general shippers. Of late, the motor carrier has been trying to win a larger share of the highway freight but is handicapped in this effort by the usual problems of the oligopolist trying to win a share of a market, as well as by a basic handicap—that of serving only the area which is served by the railroad. This puts it at a competitive disadvantage with the more far-ranging motor carriers, less limited as to geographic area served. As a result, the motor carrier suffered losses ranging from $454,000 in 1961 to $109,000 in 1965.[8]

Third, while freight traffic on all Class I railroads in the United States averaged over 460 miles in 1965, the average for the New Haven was about 150 miles.[9] With southern New England cities lying but 15–20 miles from one another, each with terminal expenses as well as intermediate line expenses for picking up and dropping cars, expenses which western railroads can spread over three times as many miles must be recovered by the New Haven in the much smaller distance. This coupled with the terminal character of much of southern New England freight and the "light" character of southern New England industries results in an empty boxcar problem. That is, for every five loaded cars received, three cars have been hauled out empty.[10]

Despite these adverse factors, the number of freight cars handled in Rhode Island and Connecticut by the railroad between 1965 and 1967 has averaged 289,436.[11] Table III lists the cars handled each year at selected Rhode Island and Connecticut freight stations. A further analysis of the usage of Rhode Island rail freight service is shown in Table IV. The 29 Rhode Island companies listed had use for over 29,000 freight cars in 1966. The commodities received or shipped included such items as toys, flour, foodstuffs, sand, wire, etc.

A look at successive balance sheets shows the railroad liquidity has fallen away, despite infusions of funds from outside, as well as from internal sources by the sell-off of fixed assets and the use of the proceeds to pay for current expenses.[12] From a cash position of $6,901,206 in 1960, the railroad reached a low of $3,076,000 in October 1967. The trustees at that time estimated that there was enough liquidity remaining to allow operations until early 1968. Fortunately, additional funds were received from the Penn Central in early 1968, thus allowing service to be continued.

TABLE IV—SELECTED LIST OF RHODE ISLAND SHIPPERS VIA NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY 1965-66

| Company | Location | Commodity | Number of cars handled 1965 | 1966 |
|---|---|---|---|---|
| U.S. Navy | Davisville | U.S. navy supplies | 1,482 | 5,728 |
| Corning Glass Works | Valley Falls | Glass | 1,993 | 2,315 |
| Whitehead Bros | Providence | Foundry supplies | 1,997 | 2,002 |
| Washburn Wire | Phillipsdale | Iron and steel | 2,198 | 1,986 |
| A & P stores | Providence | Foodstuffs | 1,876 | 1,503 |
| Calore's Express | Olneyville | Freight forwarders | 1,132 | 1,212 |
| Providence Journal Co | Providence | Paper | 1,074 | 1,186 |
| Thompson-Apex Co | Pawtucket | Chemicals and plastics | 776 | 1,002 |
| Kaiser Aluminum & Chemicals | Bristol | Aluminum and wire | 710 | 988 |
| First National Stores | Phillipsdale | Foodstuffs | 1,101 | 945 |
| Roger Williams Grocery Co | Berkley | do | 644 | 790 |
| Almac's, Inc | Phillipsdale | do | 740 | 726 |
| Hassenfeld Bros., Inc | Pawtucket | Toys | 718 | 715 |
| Narragansett Brewery Co | Cranston | Malt, beer | 721 | 702 |
| Bird & Son | Phillipsdale | Paper and roofing materials | 933 | 701 |
| Grinnell Corp | Providence and Cranston | Iron pipe fittings and sprinklers | 843 | 668 |
| Kennecott | | Copper | 682 | 656 |
| Atlas Terminal Co | Providence | Foodstuffs | 672 | 614 |
| Wakefield Branch Co | Wakefield | Fuel oil | 562 | 604 |
| Glens-Falls Cement | | Cement | 677 | 590 |
| Owens-Corning Fiberglas Co | Cumberland | Glass | 543 | 583 |
| Newman Crosby Steel Co | Pawtucket | Iron and steel | 451 | 487 |
| Gravure | | Paper | 312 | 452 |
| Texaco, Inc | Providence | Petroleum | 437 | 481 |
| Ward Baking Co | do | Flour | 479 | 431 |
| Livermore & Knight Co | Pawtucket | Paper | 537 | 381 |
| U.S. Navy | Newport | U.S. Navy supplies | 451 | 374 |
| Ace Warehouse Co. of Rhode Island | Providence | Foodstuffs | 385 | 329 |
| American Insulated Wire Corp | Pawtucket | Iron, wire, and steel | 181 | 255 |
| Total for 29 companies | | | 25,307 | 29,406 |

Source: Rhode Island Division of Public Utilities.

Where did the money go? As with any business, it was expended for wages, supplies, power, repairs, taxes, etc. Unfortunately, in the New Haven case these outlays exceeded the revenues from operations. Of particular significance for this analysis were the amounts expended for maintenance of right-of-way and the signal system. In recent years expenditures have been about $14,000,000 for right-of-way and $10,000,000 for the signal system.[13]

THE PROPERTY HEAVY RAILROAD CONDITION

Railroads in general are "property heavy." A recent study points out that property taxes have absorbed nearly 3.5 percent of rail operating revenues, but only 0.4 percent for motor carriers and 0.2 percent for air carriers.[14] The property tax plight of the railroads was borne out at the 1967 meetings of the National Tax Association. While a whole afternoon session was spent discussing various aspects of railroad property tax problems, no sessions were devoted to the property tax problems of the trucking or airline industries. Although the New Haven Railroad was relieved of property tax payments in Rhode Island and Connecticut because of its mortal economic illness, it did pay for many years at a level similar to that described above.

However, other current costs are also implied in the "property heavy" designation. These include expenses incurred for the replacement of ties, new ballast, snow removal, maintenance of switches and the signal system, etc. A specific expenditure item, that for cross ties, is shown below.[15]

| Year | Cross ties replaced | Cost per tie | Total |
|---|---|---|---|
| 1956 | 100,367 | $3.76 | $337,380 |
| 1960 | 106,359 | 3.87 | 411,609 |
| 1963 | 86,761 | 3.85 | 334,030 |
| 1964 | 84,465 | 3.77 | 318,433 |
| 1965 | 87,191 | 3.98 | 347,020 |
| 1966 | 97,974 | 4.97 | 486,931 |
| 1967 | 50,543 | 5.04 | 254,736 |

During this same span of time, the cost of new rails for replacement of track rose from $99.61/ton in 1957 to 127.93/ton in 1967.[16] These are costs which competitive transportation firms bear in lighter degree or not at all. Freed of these costs, the NHRR could be operated in the black. That the New Haven has not been so favored is written in the red-figure deficit reports of the trustees in bankruptcy.

The important point to recognize is the concern expressed for continued rail freight service. The Connecticut appraisal is expressed in a recent report as follows:

If rail service were discontinued in Connecticut, there would be deleterious effects on present industrial firms and potential industries. Present heavy users of rail transportation do so because of lower cost or better service to them. If this service were withdrawn, they would be faced with higher transportation costs or inferior service which would presumably raise prices of their products to consumers, or else force them out of business at that location if they were unable to meet the competition of out-of-state plants.

Abandonment of rail lines not only would hurt Connecticut's existing heavy industry, but would also inhibit the future growth of the state's economy. Even though we recognize that motor truck distribution for distances up to 200 miles is now a predominant factor, any new industry which relies to any degree on rail transportation for raw materials or component parts could select a myriad of points in Massachusetts and New York from which to serve Connecticut rather than a Connecticut location from which to serve Massachusetts and New York.[17]

In Rhode Island the situation is quite similar. Conversations held by personnel of the Division of Public Utilities with large Rhode Island users of the New Haven, left the impression that such firms would be forced to reconsider their position in the state if the railroad freight service were to cease.[18]

PROPOSALS FOR A VIABLE RAILROAD

Railroads all over the country are rushing to invest in non-railroad ventures following the path blazed by the Chicago and Northwestern Railway with its Northwest Industries Corporation. This conglomerate business now includes chemicals, wearing apparel (Fruit of the Loom), electrical components, and insulated wire and steel (Lone Star Steel). Although non-rail income continued to advance, the $9.9 million deficit from railroad operations reduced per share earnings in 1967 by $9.13.[19]

Penn Central, another conglomerate, fared somewhat better on rail operations. However, of the $3.11 per share earned in 1967, only $0.67 came from rail operations. A similar story is seen in the case of non-rail income of the Santa Fe ($28 millions), Northern Pacific ($24.5 millions), and Southern Pacific ($57 millions).[20]

The New Haven had few of these non-rail sources of income to fall back on to buoy its income position. However, in a sense the plight of the New Haven as a railroad was the plight of all railroad operations. In the

Footnotes at end of article.

long run, the local problem may become more widespread. Even now several other smaller lines are almost ready to go the bankruptcy route.

How can the situation be remedied? It is the author's contention that a large part of the problem could be resolved if the New Haven (and other railroads) were made "property light." Relieved of the heavy burden for the right-of-way (in ties alone the New Haven has in place over 9,600,000 with a total replacement cost of $48,384,800), the signal system, and freight and passenger terminals, the railroad would be viable.

In testimony before the Interstate Commerce Commission relating to the petition to discontinue all passenger service, the author noted some of the public aids to other modes of transportation. In discussing air travel it was pointed out that:

Through all the state airports in Rhode Island in fiscal 1965, there passed about 400,000 scheduled airline passengers. This brings one to a consideration of the sort of financial support provided a major competitor of the railroad by the state, federal and local governments. In fiscal year 1965, the Rhode Island Division of Aeronautics had 131 employees with personnel payments by the state in the amount of about $665,000. The overall financial picture of the state airports in fiscal 1965 was: [21]

| | |
|---|---|
| State funds available | $911,463 |
| Revenue collections | −350,000 |
| State expenditures in excess of revenues | 561,463 |

Thus for the 400,000 passengers, the state spent about $1.40 per passenger. These figures are for operating expenses only and take no account of the capital outlays for buildings and other facilities. In addition, some 2,463 airport acres are under state jurisdiction and so have been free of the burden of local property taxes.

At the federal level, further financial support is provided the air traveller in the form of the federal airways system. Although the Rhode Island share of the total support is not available, a look at the overall federal commitment to the Federal Aviation Agency (FAA) for fiscal 1965 shows that expenditures for personnel compensation alone exceeded $400,000,000.[22] Other expenditures amounted to approximately $137,000,000 for a total of $537,000,000.[23] According to FAA estimates these charges should be allocated amongst beneficiaries in these shares:

| | Million |
|---|---|
| Military (29 percent) | $156 |
| General aviation (26 percent) | 139 |
| Airlines (45 percent) | 242 |

From the aviation fuel tax and the passenger excises, about $165,000,000 was paid to the federal government or about $77,000,000 less than the amount chargeable to airlines according to this allocation.

A start toward a solution to the New Haven Region problems, as well as toward improved rail freight service, could be accomplished by bringing the same kinds of government support to the rail operation as have long been afforded competitive modes of transportation. In this respect, the railroad signal system is analogous to the air traffic control system and the stated FAA responsibility for "installing and operating aids to air navigation and traffic control." To this end, it is proposed that the Department of Transportation (DOT) be empowered to assume the responsibility for the installation, operation, and maintenance of the New Haven signal system, thus relieving the railroad of the expenses associated with these activities.

Second, the Department of Transportation would take over all New Haven passenger and freight terminals and be responsible, as the FAA is for air facilities, for their "operation, maintenance, design and construction."

The third and final proposal would entirely free the railroad and the industry of its "property heavy" disadvantage. This proposal would have the New Haven right-of-way purchased for inclusion as a part of the interstate highway system and leased back to the railroad. Charges to the railroad could take the form of locomotive registration fees or a tax on diesel fuel, or both. Such charges would place the railroad in a position similar to that of interstate truck and bus operators who do not build or own their rights-of-way. Furthermore, federal support of a 90/10 variety would allow the state highway departments to undertake to improve the right-of-way so that it would be ready to serve the high-speed passenger equipment as well as a speedier freight service.

Oddly enough, these proposals, to bring to the New Haven and other railroads the same advantages afforded competitive modes of transportation, have not been expressed or advanced by railroad officials. A former president of the New Haven came close when he said: "You can't fight 90/10 money." However, the long-term insistence of the railroad industry to prove its good citizenship by paying its way via taxes in the face of the public support provided its competitors, appears to have been an unrealistic and unfortunate stance.

It appears doubtful that railroad operations in the Northeast corridor will remain viable in the face of rising land and real estate assessments in this densely populated part of the country. As the values rise, so will the local property taxes charged the railroads, thus giving further advantage to the buses and trucks using highways upon which no property taxes are payable. To allow those involved to take advantage of the basic efficiencies of the railroads, a quantum change in the way the railroad industry is viewed seems to be necessary. To begin the implementation of such changes by giving as much public support to the New Haven Region of the Penn Central as that provided rail competitors, seems an especially good choice.

FOOTNOTES

[1] Data compiled for author by the Bureau of Railway Economics, American Association of Railroads, Washington, D.C.

[2] Martin L. Lindahl, *The New England Railroads*, Boston, The New England Economic Research Foundation, 1965, pp. 164–169.

[3] The long-sought absorption of the NHRR by the Penn Central suffered delay after delay. In July 1968 a further postponement occurred when a special federal court asked the ICC to review the price for the NHRR saying the original ICC price of $125 million was "too low." Also the total cost to the Penn Central of $159 million was said to be "too low." (*Christian Science Monitor*, July 12, 1968, p. 11.) For an extended discussion of the merger proposal, see James R. Nelson, *Railroad Mergers and the New England Economy*, Boston, The New England Economic Research Foundation, 1966.

[4] Discussion by author with Penn Central officials June 27, 1969 and Penn Central press release dated April 2, 1969. Connecticut is also served by the Central Vermont Railroad with a single-track line north from New London via Norwich and Willimantic to Montreal.

[5] U.S. District Court, District of Connecticut, In the Matter of the New York, New Haven, and Hartford Railroad, Debtor, *Memorandum of Decision re Petition per Order No. 278*, February 1965.

[6] Even with complete discontinuance of passenger service the railroad would still operate in the red.

[7] Roy G. Poulsen, "New England Power Economics," *Journal of Land Economics*, University of Wisconsin, August 1965 and February 1967. Also, unpublished paper presented to Regional Science Association in Cambridge, Massachusetts, April 1966.

[8] Statement to author by New Haven Railroad Marketing Department. Also undated report titled: "A Review of the New Haven Railroad Trusteeship," p. 12.

[9] Lindahl, *op, cit.*, p. 38.

[10] *Ibid.*, pp. 32–35.

[11] Of interest to southern New England residents in the middle of the eastern megalopolis is the highway truckload equivalent of the rail freight service: almost 870,000 additional truckloads per year on the highways.

[12] This is comparable to the homeowner paying some of his current bills by selling off part of his land or furniture each year.

[13] *Moody's Transportation Journal*, 1967, pp. 888–892.

[14] Dick Netzer, *Economics of the Property Tax*, Washington, The Brookings Institution, 1966, p. 73.

[15] *Moody's, op. cit.*, 1968, p. 673.

[16] *Ibid.*

[17] *Transportation, An Analysis of the Transportation of Goods and People by Rail, Highway, Water, Air, and Pipeline in Connecticut*, Hartford, Connecticut, Connecticut Development Commission, 1964, p. 13.

[18] Other reasons relate to the megalopolis character of the Northeast and the recognition of current and greater air and road transport congestion in the next decade.

[19] *Wall Street Journal*, July 18, 1968, p. 27.

[20] *Ibid.*

[21] State of Rhode Island and Providence Plantations, *1966 Budget*, pp. 90–91.

[22] It is interesting to compare the number of federal civilian personnel employed by the Federal Aviation Agency (41,097) with that of the Interstate Commerce Commission (2,430). The air controllers' "illness" and slowdown of traffic at air terminals in the summers of 1968 and 1969 bring out another interesting piece of information—that 14,000 air traffic controllers are employed by the federal government. Further, the Air Transport Association of America says "the Government must increase its expenditures for air safety . . . by $150 millions a year over the next several years if the problems of congestion and delay are to be solved." *The National Observer*, July 22, 1968, p. 4 and *The New York Times*, June 20, 1969, p. 1.

[23] *The Budget of the United States Government*, Fiscal year ending June 30, 1966, U.S.G.P.O., Washington, D.C., p. 750.

## EVANGELISM AND THE COMING WORLD PEACE—ADDRESS BY SENATOR HATFIELD

Mr. SCHWEIKER. Mr. President, on September 12, 1969, the distinguished senior Senator from Oregon (Mr. HATFIELD) delivered a speech before the U.S. Congress on Evangelism in Minneapolis, Minn. I hope that Senators will take time to consider his remarks. I ask unanimous consent that the text of Senator HATFIELD's remarks be printed in the RECORD at this point.

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

EVANGELISM AND COMING WORLD PEACE

Last December I had the privilege of visiting India. There are grave problems facing that land, which holds one-fifth of humanity. One particular area of the country is plagued by a minor, yet serious revolutionary movement. This is in the northwestern frontier region, where members of the Naga tribes have been in rebellion against

the central government. When I went on to visit Thailand, I then became more thoroughly informed about the insurgency that threatens the northeastern section of that country.

I was fascinated to learn that both of these areas had experienced the extensive influence of Christian missionaries. In my judgment, this is perhaps more than coincidental.

The Christian message of salvation includes the truth that all men are equal and valuable in God's eyes. Old customs, social mores and class distinction are dispelled. The gods that freeze men in cycles of superstition, fear, and resignation to fate are destroyed. Man is offered the possibility of new life—with social and spiritual dimensions. So when societal patterns of oppression and inequity continue, isn't it plausible that revolutionary pressures claiming allegiance to human dignity and equality may be related to the influence of the Good News?

As I began thinking about my topic for this Congress—"Evangelism and Coming World Peace"—I remembered these reflections from my visit to India. The relation between evangelism and peace in the world, I concluded, is far more complex and stimulating than many of us would like to believe.

Recently I was told of another incident that also prompted reflection about the impact of Christ's message and the problems of world peace. A young official in our government told me of his experiences dealing with the Nigerian-Biafran conflict. He was participating in negotiation to break the deadlock between these adversaries over arranging for relief supplies to reach starving elements of the Biafran population. Recently, he returned from the area after speaking with key officials from both sides as well as those trying to administer the meager air-relief effort that is being conducted. The primary obstacle to achieving greater relief efforts, in his judgment, went beyond the tangled political and diplomatic complexities. Fundamentally, he said, the problem rested with the stubborn, unreasonable intransigence and prideful resistance that personally characterized key individual leaders on each side of these warring factions. Shortly before leaving, my friend, who is a Christian, was discussing the relief problem with an African Bishop who had major responsibility for coordinating the effort. After exploring at great length possible solutions, all which were futile, and unable to break the political deadlock, my friend finally mentioned that there were some people in America who were working for another approach to the situation. They were praying that the pride and selfish resistance of the key leaders might be overcome; that they might have a change of heart, and reach some reconciliation on at least arrangements to feed innocent starving people.

The Bishop at first was somewhat taken back. Having been working for months with the political complexities of this matter, it seemed utterly naive that prayer might actually be beneficial in a concrete way. But after some thought, he admitted that he wouldn't be a Bishop if he didn't believe people could be changed. Faced with such a complete diplomatic impasse, prayer (as well as action) aimed at changing the personal attitudes of those involved seemed just as feasible as any other solution.

In different ways, these incidents raise provocative thoughts about evangelism and world peace; they also prompt questions about the true meaning of peace. What do we mean—and what does our Faith teach—about this issue?

I. THE DIMENSIONS OF PEACE

Some academic strategists and national security advisers avoid even speaking about terms as vague and idyllic as "world peace." Rather, they would like to increase the probability of a world "that minimizes the incentives for armed, violent solutions to conflict situations." In other words, this means that if there is anything one can call peace, it means the absence of war or violent conflict. This, I suspect, is the notion many of us share about the meaning of peace. We also hear of how the "balance of power" is the guarantee of peace. The United States and the Soviet Union together possess explosive power equivalent to 15 tons of TNT for every person on the earth. Yet, many postulate that such a "'balance of power"—or "balance of terror," to be more precise—is the only trustworthy condition of peace.

But there is not true peace when the threat of instant annihilation hangs over the head of the majority of mankind. There is no peace when fear of destruction, rather than hope for reconciliation, is the only force restraining the use of our arsenals of nuclear devastation. I reject the simplistic notion that peace is the absence of conflict. Peace is not merely stability or order. Rather, peace is fulfillment, harmony, satisfaction, understanding, and well-being.

As long as there is deprivation, suffering, alienation, self-seeking, exploitation . . . there is no real peace.

Peace can come only when needs—physical and spiritual—are fulfilled; for us peace means far more than simply avoiding conflict.

In the Old Testament, the Hebrew word for peace is "Shalom." The full meaning is actually "wholeness, soundness, completeness."

Peace is a wholistic concept. It entails the fulfillment of needs, whether this be within a nation or within an individual. It has both a political and spiritual dimension, and an inner and outer component. A true understanding of peace includes harmony between nations, reconciliation between people, and the well-being of individuals.

Too often we speak of world peace as though it were completely unrelated to peace within nations, within communities, within families, and within individuals.

It is inconsistent, for example, for a citizen to urge warring nations to make peace if he lives in hostility toward his neighbors. It seems unreasonable to protest against violence in Vietnam by employing violent tactics here at home. And it is hypocritical for a Christian to claim he has the peace of God in his heart if he remains oblivious to the violence and destruction in the world.

For a nation or an individual, peace becomes a form of relationship; it is a continuing attitude and activity, not a static condition. Fundamentally, peace is achieved by creative love—love that senses needs and possibilities in another that are not realized, and seeks their fulfillment in order to create "wholeness, soundness, and completeness."

II. THE OBSTACLES TO PEACE

When I discuss these matters with some of my fellow Christians, they will often claim that the reason we have no peace in the world is because of man's sin. As long as sin abounds, there will be "wars and rumors of wars," they say. I, of course, do not dispute the reality of man's selfish and sinful nature. But I do take issue with those who reject any responsibility for overcoming the obstacles to peace simply because sin is a reality. That was not the way of Christ. He has not told us evil will ultimately triumph, and that we should resign ourselves to such a fate. Rather, He asks that we follow Him into the midst of man's turbulent world with His reconciling and redeeming love. Recognizing the existence of sin does not eliminate our mandate to act as peacemakers.

Deprivation, suffering, hunger, alienation from God and man, lack of dignity, oppression—these beguile the world's hope for true peace. These are the obstacles to peace. True, they are perpetrated by sin—the sin of those who, absorbed by their wealth, power, privilege, and supposed self-righteousness are blind to the responsibility of meeting these needs. Such sin is too often our own.

Christ calls us to witness to His love through our lives. That witness involves ministering to man whenever and wherever he is in need.

Christ's description of the Good Samaritan provides us with valuable insights into our responsibilities as Christians. After telling of the necessity to love one's neighbor, Christ was asked "Who is my neighbor?" The story of the Good Samaritan follows, in which the victim of this incident was a complete stranger to those who passed by without stopping to help, as well as to the Good Samaritan. Notice that the persons in this story are not individually identified; there is no indication of who it was that was robbed and injured. The point is that one's neighbor is *anyone* in need. We cannot choose our charities. When confronted with simple human need, we are called to act—and to love. As we heal wounds, we nurture peace.

We all know of those who suffer from deep personal needs—meaninglessness, emptiness, futility, estrangement, alienation, and lack of love. These needs, when unfulfilled, will frustrate peace. They will create envy, bitterness and discord in families and between friends; they will sustain anxiety, turmoil, and despair at the core of one's life. Here is where the obstacles to peace have their beginning—in the individual life that lacks fulfillment.

Helmut Thielicke has written: It is possible to have Christian ideas without actually believing, and to be taken up with the social teachings of Christianity without becoming engaged personally. Then these ideas lose their connection with the Lord of Christendom and degenerate into ideologies, namely into instrumentalities of power and world mastery. Thus, it is possible for Christianity to become merely a pervasive atmosphere, a climate of social order, while faith dwindles away and the matter of *salvation* is forgotten.

The love of Christ brings inner, personal peace. The gift of His Spirit is the true resource for wholeness of personality. Thus, the task of peacemaking includes the call to evangelism.

Peace, however, is also frustrated by unjust social conditions. In the communities where we live, there are those who suffer from impoverishment, through no fault of their own, despite the prosperity of our land. 29 million Americans live in the conditions of poverty. And although those who are non-white comprise only 11% of our population, they comprise over 30% of the poor in our land. Millions of blacks and minorities have been the victims of racism, have been denied dignity and justice, and are overwhelmed with hopelessness and despair. These deprivations are the power adversaries of peace. We may attempt to enforce stability—or "law and order"—through the use of force, but we will never have peace in our land until we repent from this sin, correct such injustice, and fulfill these needs.

Communications have transformed our world into one neighborhood. Today more than ever before in history, our neighbor includes anyone who lives with us on this globe. Consider the condition of our world; but rather than looking at ourselves from a limited terrestrial perspective, let us remove ourselves from the confines of our earthly environment. Picture our planet from outside of ourselves—from outer space. Look back on this blue, beautiful sphere floating through space. And then consider that the inhabitants of that planet spend 15 times more money on creating weapons to destroy each other than on efforts to cooperate together for social and economic improvement. Yet, 10,000 of its citizens die each day be-

cause they do not have enough to eat. Two out of every three children suffer from malnutrition. Nevertheless, the average diet in one portion of that globe contains about 5 times more protein than the average diet of the remaining portion. 80% of that planet's wealth is controlled by only 20% of its inhabitants. The total wealth of those "developed" parts of this world is broken down to an average of $2,107 for each inhabitant; yet, the total wealth of the remainder of the world equals only $182 for each person.

That is how we look from outside ourselves. And our Creator views His world from this perspective.

As long as such an unjust distribution of the world's resources persists and continues to grow, as it is at present, we can never expect to be granted true peace on earth.

A fundamental obstacle to peace, then, is the deprivation of mankind, both individually and corporately. There can be no peace within man, peace in his family, peace within our communities, and peace in the world until we seek to fulfill the total needs of mankind. The call to evangelize is a call to proclaim and to love; it is a call to respond to these needs, and it involves us totally in the mandate of peacemaking.

Peace remains illusive as long as man continues to suffer; but peace is also destroyed when one man seeks to dominate another—when men and nations seek selfish, lustful goals.

We must not overlook the reality that peace is frustrated by self-assertiveness, pride, paternalism, and brutality. These are also the obstacles to peace.

Living in a country that we somehow feel bears God's seal of approval, many of us as evangelicals tend to discover these foes of peace only in other people and nations. But Christ warns us about criticizing the speck in our brothers' eye when we ignore the plank in our own.

In all candor, it is my conviction that this is precisely the case with our involvement in the Vietnam war.

Let us face this matter honestly. Any discussion of peace today cannot ignore the gravest, most destructive event that presently keeps our world seething in violence and our nation seething in unrest. It is my conviction that peace will not come to Vietnam as long as we persist in applying military solutions to fundamentally social, political, and cultural problems.

We intervened in what was essentially a civil war, in my judgment, having its origins in the desire of the Vietnamese people to rid their country of foreign domination and bring themselves independence and dignity. This cause has been constantly frustrated, in ancient history by the Chinese, and in modern history by the French, the Japanese, the French again, and now by our own involvement. But such a nationalistic determination can never be quelled by bombs and bullets. By interpreting the war as an ideological struggle, we have lost sight of the human dimensions of the conflict—of the passion, will, and suffering of individuals which lies at the roots of this war.

We have failed to understand the Vietnamese people and to sense their true needs. And once having imposed military measures which have escalated the violence, we have resisted any change in our action, and any admission of our misunderstanding.

The war will cost us about $30 billion this year, one out of every five tax dollars. Currently, we spend this at the rate of about $950 per second. Most tragic, as of two weeks ago this war has claimed the lives of 38,313 Americans, 95,961 South Vietnamese, and 541,847 "enemy" Vietnamese. Through our effort, then, more than half a million Vietnamese have died because somehow, we believe they individually are our enemy, and a threat to our nation. We continue to measure our success of these efforts by the brutalizing nomenclature of "kill-ratios"—by comparing how many of the enemy are killed for every American that dies. Christian compassion, I believe, cannot remain quiet when the basic value and dignity of human life is depreciated in such a manner. This war has been brought into each one of our homes. Living in our comfort-laden sanctuaries, we are spectators to this hatred, slaughter, and death. Gradually, we become insensitized to it all; the nerves of compassion that once caused us such anguish so easily become numb.

For almost a year and a half now we have been involved in talks at Paris; yet we seek to "save face" and speak of "negotiating from strength." We have sought in vain so far for some position or formula that would avoid any admission of our misjudgment or blame for the extent and duration of the war. And during that time, more than 15,000 American lives have been lost.

We are told, though, that one must fight fire with fire. We can never take risks for peace, it is said, because the enemy might be preparing for another offensive, or be taking advantage of our lack of resolve. So there is never any respite from the bombing (we have changed the location but not the intensity), and the fighting and the killing.

Yet, we believe our nation embodies great ideals; that our vision is grand and our historic purposes noble. I agree. Much has been given to us. But therefore, in the words of the Scripture, much is required.

Why should we—a nation founded by those seeking a New World blessed by God—now be bound by "an eye for an eye, a tooth for a tooth"? Do the fruits of the Spirit—love, joy, peace, patience, kindness, generosity . . . and self-control—do these have any relevance to the concrete realities we face?

Pride, self-righteousness, and brutality often do prohibit peace. For individuals as well as nations, needs cannot be fulfilled, and peace cannot be experienced, until man and nations repent, receive forgiveness, and become reconciled.

As the Lord said to Solomon, "if my people who are called by my name humble themselves, and pray and seek my face, and turn from their wicked ways, then I will hear from heaven, and will forgive their sin and heal their land." (II Chronicles 7:14)

### III. GOD'S STRATEGY OF PEACE

We must always remember that regardless of the circumstances the world is in, history remains under God's sovereignty. In Ephesians Paul writes that God "purposes in his sovereign will that all human history shall be consummated in Christ, that everything that exists in Heaven or earth shall find its perfection and fulfillment in him." (Ephesians 1:9, 10, Phillips)

God's entrance into history through Christ has revolutionary implications for our attitudes toward our fellow man. Again in Ephesians, "He has made a unity of the conflicting elements of Jew and gentile by breaking down the barrier which lay between us. He . . . made in himself out of the two, Jew and gentile, one new man, thus producing peace. For he reconciled both to God by the sacrifice of one body on the cross, and by this act made utterly irrelevant the antagonism between them. Then he came and told both you who were far from God and us who were near that the war was over." (Ephesians 2:14-17, Phillips)

In God's eyes, then, every individual is of the most infinite value. God does not judge people as Americans or Russians or Chinese; he does not categorize them according to nationalistic, political, or ideological labels. Christ has broken through those barriers. God views each person as His creation—as unique and as infinitely valuable to Him, so valuable that He gave His son for each of them.

God's purpose is to bring all creation into unity through Christ

In the Old Testament, the vision of God's final peace is clear. In Isaiah, for instance, as well as in Micah, we are told of the day when nations "shall beat their swords into plowshares, and their spears into pruning hooks; nation shall not lift up sword against nation, neither shall they learn war any more." (Isaiah 2:4, Micah 4:3) God's strategy is to bring this to pass; we do not know the time, but we know that He controls history and is moving it toward this end. It is true that formidable adversaries face the realization of God's peace and purpose in the world. ("For we wrestle not against flesh and blood, but against principalities, powers and rulers of darkness."—Ephesians 6:12) Yet we know that God's power, which raised Christ from the dead, has put Him at "a place that is infinitely superior to any conceivable command, authority, power or control, and which carries with it a name far beyond any name that could ever be used in this world or the world to come. God has placed everything under the power of Christ . . ." (Ephesians 1:21-22, Phillips) Although we will find trouble and turmoil in the world, yet we know that Christ has overcome the world.

I make no claim to be a theologian. But there is one example used in theological circles that clarifies this point with me. It is a comparison of present history with the time between D-Day and V-Day during the war. We know that God has entered into history and accomplished His work of redemption. And we know that God's ultimate control and victory over history is assured. We have His promise to establish a new heaven and a new earth. He has won the final victory, but it is not yet accomplished. It is as though we are between D-Day and V-Day.

Although our final victory at the end of history is certain, we must be involved in the skirmishes and battles that are yet necessary before God's triumph is fully manifested. Thus, we do not simply sit on the beach, knowing that we will ultimately win, but we move forth into battle. God is constantly at work in our world to accomplish His ultimate will. We must be obedient to His call.

### IV. OUR MISSION OF PEACE

Our evangelical responsibility is to bear witness to the love of God through Christ. This is a mission of peace, and we are under the call of God to fulfill it. In this task, we must not be bound by rigid categories of what is a spiritual message and what is a social action. We cannot build a complete barrier between theological issues and social questions. We must not make the mistake of believing that the Good News we proclaim has no relevance to our attitudes and actions toward political as well as personal problems in our homes, our nation, and our world. For too long the artificial polarization between those who preach the truth of individual conversion and the activists who proclaim some form of a "social gospel" has prohibited a full understanding of the Gospel's meaning in our world. Christ calls us to express His love through all that we do. We are to meet the needs of others—spiritual and physical. Whether we are relating to one another the reality of Christ's life or giving a cup of cold water in his name, we are bearing witness to that love.

Our task requires personal involvement in the world. We cannot abdicate our personal responsibility to an institutional response. Unfortunately our tendency too often is to seek escape from personal involvement in problems confronting us by endorsing institutional solutions to them. We give money to the church's missionary fund, we donate clothes to the street mission, and we contribute faithfully to worthy causes, believing that these are the only avenues for us to carry out God's work. Yet, what is most needed is individual, personal involvement. We must make our lives relevant to others; we must involve ourselves personally in sit-

uations where we demonstrate the concern and compassion Christ imparts to us. We must engage ourselves personally in sharing with others our experience of God's love.

Just as our religious institutions cannot become a substitute for our personal responsibility to minister to human needs, they also cannot provide any insulated shelter from the trauma of the world. The church was never meant to be a fortress that protected its members from the perils of the outside world. Rather, the church is nothing more than those believers who gather to strengthen and encourage one another for their involvement within the world.

That, of course, includes churchly responsibilities of preaching, edifying, and instructing. But evangelism—our message and mission as Christians—is primarily an individual, rather than an institutional responsibility.

But how does this responsibility for carrying forth the message of Christ's life and earnestly seeking God's peace for the world become relevant at some point in each of our lives? What is it that we can do?

Our faith calls us to seek God's will for man and for the world. As such, we must look at our own country—look at the values that are guiding our culture and ask whether they are true to God's will and purpose. If not, they must be challenged with a prophetic word, and Christians must witness to the need for national repentance; that is, to turn from present ways unto the "way of the Lord."

In our democracy, the values and commitments of the nation rest fundamentally with the people. The corporate effect of the people's thoughts and actions eventually has its influence upon the shape of our society.

For we who are Christians, then, it is our basic responsibility to express the values and truths that we have acquired through our faith. Further, we must attempt to implant them within the lives of others.

Therefore, one of the urgent avenues for personal action is to influence public attitudes and values.

Public opinion drove a President out of office last year; the attitudes of the people in our democracy can change the course of our country.

So we must be diligent and responsible in the expression of our views regarding the state of our nation. We must attempt to mold public attitudes so they will become attuned to God's purposes. The leaven of the Kingdom of God must continually make its entry into the life of our nation; it can do so only through the witness of our lives.

When we, as evangelicals, look at the state of our nation, how should we react? What should our attitude be toward a people who are absorbed by materialism, controlled by greed, and motivated by the pursuit of selfish and corporate gain, with little regard to the value and quality of human life? How should we judge the way our nation uses its resources?

Since World War II, for instance, we have spent over $1 trillion for military purposes—for weapons, soldiers, and the machinery of war. Today, about $67 out of each $100 of our government's tax revenues are given to the purposes of war—past, present, and future. Comparatively, we spend only $2.50 for all our efforts to assist the impoverished millions of the world. We witness the decay of our cities and the inhumane life that millions must endure. Yet, only about $1.84 of every 100 tax dollars are devoted to community development and housing. Recently, it was calculated that the people of New York City pay more money in federal taxes for national defense than they spend on the welfare of their own city. Yet, what poses the greatest threat to our country? Nationalistic rebellions against corrupt governments in distant lands? Or the unrest and hopelessness found in the heart of Harlem?

We are called to be stewards of our resources. Are we, as a nation, utilizing our abundance in a way that pleases God and seeks His purposes for mankind?

When we, as evangelicals, conclude that our nation is not following God's way, then we must speak out. That must be part of our witness. And that is where each of us can express his personal responsibility.

The nation of Israel experienced situations similar to that of our own land. In their quest for stability and power, they were often tempted to trust in their military power as the ultimate source of their security. Hosea warned prophetically against this danger: "Because you have trusted in your chariots and the multitude of your warriors, therefore shall the tumult arise among your people." (Hosea 10:13–14)

The question is not whether we should have an army, but rather, it is whether our trust rests solely in our military power as a means of insuring our security and peace. The Scripture does not condone such a trust.

You and I are confronted personally with this issue. Where is our trust? Do we believe that our military might is the final guarantee of our peace? Does our personal trust fundamentally rest in our chariots and warriors, or do we really believe that peace is a gift granted by God, and not a utopia insured with our armed might?

Our individual convictions on this matter, as Christians and citizens, will have an effect on our nation's destiny.

Our point of individual involvement, then, can begin with an evaluation of our own attitudes and values concerning the Christian commission to seek peace. We must look within ourselves and see if we truly possess God's inner peace. We must look to our families, and to those close to us, and ask if we are pursuing God's peace in all these relationships. We must look to our communities; what are we doing about the frustrated needs of many who inhabit them? We must look to our country; are we as a people truly seeking God's path to peace? How are we involved in speaking forth our convictions, and causing our nation to change its course? Finally, we must look to the world; what have we done to alleviate the human misery and cultural chasms that destroy the foundations of any lasting peace?

Our personal involvement, then, must be characterized by an examination of our own thinking in light of God's purposes, relevant action to bring peace to those situations of conflict that touch our lives, and the proclamation of God's redemptive love.

Changes in people will have to occur if we are to discover any true peace. People must allow God to transform their values, their attitudes, and their purpose in life. This, in part, is the meaning of conversion. The life which becomes oriented around the person of Christ is radically re-created. He is no longer in complete bondage to his selfish goals. The focus of his life is seeking to do God's will. God's Spirit injects new life—Christ's life. Thus, values, attitudes and purposes become reformulated. The world is visualized through its Creator's perspective, and His peace is sought.

Thus, the mission of peace cannot be severed from the task of evangelism. Seeking peace requires witnessing to God's will, judging nations, orienting one's life to the purposes of His peace, influencing the thinking of the public, action in love towards our neighbors, and proclaiming the power of Christ to remake human life according to the "fulness of Christ."

Today our situation is much like that which faced the primitive church. As a small band, they faced a pagan world. But they did not choose to remain in Jerusalem, fortifying themselves against their enemies. They became the church dispersed, the church on mission. Brave small bands infiltrated all levels of society throughout the known world. The impact was revolutionary, changing the entire course of civilization as the message of Christ's life spread throughout the Roman Empire.

Today we also must leave our institutional seclusion and go forth into the midst of the world's suffering and turmoil. We go with love to bring peace. We cannot be bound by our institutions, our organizations, and our comforts—all those things that serve as spiritual security blankets. We must seek to bring fulfillment to every need—to bring peace to every conflict.

Peace will not come to earth until the total needs of mankind are met. Changed lives must implement the mission of peace through the changing of society.

We cannot protect the status quo. We know that peace is not static. The Christian must realize that the impact of his message challenges and questions things as they are, and claims that new life is possible.

So we go forth into the world seeing new possibilities—grasping God's vision of what He can do. We have the certain hope that He can impart new life—new life to individuals, to nations, and to all creation. That hope is based in the Risen Christ. All history is consummated in Him. He is our Peace.

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## COST OVERRUNS OF $20.9 BILLION REPORTED ON 38 WEAPONS SYSTEMS

Mr. PROXMIRE. Mr. President, yesterday I pointed out in a speech in the Senate that the General Accounting Office had identified overruns of at least $20.9 billion on 38 major weapons systems in testimony before my Subcommittee on Economy in Government last December 29. The majority leader, the distinguished Senator from Montana (Mr. MANSFIELD), urged that I place the data in the CONGRESSIONAL RECORD in order that Senators and the public in general might have access to it.

First let me say a word about what the information is. Under repeated pressures from my committee and others, the Defense Department instituted what is called a selected acquisition reporting system—SAR. In its testimony the General Accounting Office reported to us on the adequacies and deficiencies of the system as well as providing to us the latest data then available.

The reporting covers only those weapons systems where the cost of R.D.T. & E.—research and development in laymen terms—exceeds $25 million or where the cost of the system is $100 million or more.

Second, while the Defense Department and GAO examined some 57 systems, the cost estimates are for only those 38 where the data was available for both the original planning estimate and the current estimate. This reduced the number from 57 to 38 where the data was sufficient for the Department of Defense and the General Accounting Office to report on the cost overrun.

Third, the data, even on this basis, is

a gross underestimate of the cost increases for reasons which I will go into shortly.

But even on this limited basis, the GAO reported that the cost overrun on 38 major weapons systems was $20.9 billion or almost 50 percent above the initial estimates.

I ask unanimous consent that appendix I and appendix II from the General Accounting Office testimony be printed at this point in the RECORD.

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

COST ESTIMATES FOR SELECTED SYSTEMS

[In millions]

| Service and number of systems | Planning estimate (1) | Contract definition (2) | Initial planning cost or contract definition adjusted for change in quantities [1] (3) | Current estimate total program (4) |
|---|---|---|---|---|
| Engineering and/or operational systems development: | | | | |
| Army (8) | $5,914.2 | $6,087.7 | $7,679.9 | $8,651.2 |
| Navy (22) | 18,042.4 | 21,437.4 | 23,220.3 | 28,758.8 |
| Air Force (8) | 18,009.9 | 22,309.6 | 18,166.8 | 25,475.9 |
| Total (38) | 41,966.5 | 49,834.7 | 49,067.0 | 62,885.9 |

| Service and number of systems | Planning estimate (1) | Contract definition (2) | Initial planning cost or contract definition adjusted for change in quantities [1] (3) | Current estimate total program (4) |
|---|---|---|---|---|
| | Cols. 1 through 4 | Cols. 2 through 4 | Cols. 3 through 4 | |
| Cost growth: | | | | |
| Army: | | | | |
| Dollars | $2,737.0 | $2,563.5 | | $971.3 |
| Percentage | 46.28 | 42.11 | | 12.65 |
| Navy: | | | | |
| Dollars | $10,716.4 | $7,321.4 | | $5,538.5 |
| Percentage | 59.40 | 34.15 | | 23.85 |
| Air Force: | | | | |
| Dollars | $7,466.0 | $3,166.3 | | $7,309.1 |
| Percentage | 41.45 | 14.64 | | 40.23 |
| Total: | | | | |
| Dollars | $20,919.4 | $13,051.2 | | $13,818.9 |
| Percentage | 49.85 | 26.19 | | 28.16 |

[1] The SAR refers to this as "Planned Costs at Current Quantities."

SCHEDULE OF PROGRAM COST DATA APPEARING ON JUNE 30, 1969 SAR'S [1] AND ARRANGED BY ACQUISITION PHASE AND MILITARY SERVICE

[In millions]

| | Planning estimate | Contract definition | Initial planning cost or contract definition adjusted for change in quantities | Current estimate total program |
|---|---|---|---|---|
| Concept formulation ( ), none of the 57 systems are in this phase as of Dec. 23, 1969 | | | | |
| Contract definition (7): | | | | |
| Army, Navy: | | | | |
| DD-963 | $1,396.55 | (2) | $1,737.55 | $3,350.3 |
| CVA-69 | 519.00 | (2) | 519.00 | |
| DXGN | 726.60 | (2) | | 4,750.09 |
| Air Force: | | | | |
| B-1 | 8,800.00 | (2) | 8,800.00 | 8,800.00 |
| F-15 | 6,039.00 | (2) | 6,039.00 | 7,700.00 |
| AWACS | 2,652.70 | (2) | 2,652.70 | 2,652.70 |
| RF-111D | 579.40 | | 542.10 | 895.70 |
| Engineering and/or operational systems development (50): | | | | |
| Army: | | | | |
| Dragon | 381.30 | $425.50 | 464.40 | 832.90 |
| Shillelagh | 373.10 | 373.10 | 380.30 | 573.20 |
| AH-1G | 49.80 | 70.70 | 466.20 | 561.00 |
| Safeguard | 4,185.00 | 4,185.00 | 4,185.00 | 4,185.00 |
| Gama goat | 69.10 | 168.10 | 369.20 | 373.60 |
| Sheridan tank | 388.70 | 398.10 | 548.00 | 689.60 |
| Cheyenne | 125.90 | 125.90 | 125.90 | [3] 203.90 |
| UH-1H | 341.30 | 341.30 | 1,140.90 | 1,235.40 |
| TOW [4] | 410.40 | | 366.80 | 944.70 |
| Sheridan ammo [4] [5] | 370.10 | | | 489.00 |
| CH-47 helicopter [4] | | | | 1,323.70 |
| Kabce [4] | 543.80 | | 421.90 | 472.30 |
| SAM-D [4] | 4,816.50 | 3,910.00 | | 3,372.10 |
| Navy: | | | | |
| P-3C | 1,294.20 | 1,294.20 | 2,265.30 | 2,261.70 |
| AN/BQQ-2 | 126.90 | 179.00 | 178.50 | 269.90 |
| Sparrow E | 687.20 | 740.70 | 265.60 | 258.10 |
| Sparrow F | 139.80 | 387.10 | 246.30 | 425.90 |
| Phoenix | 370.80 | 469.00 | 529.60 | 1,022.30 |
| Mark 46-Mod 1 | $347.00 | $1,033.60 | $1,021.60 | $1,039.90 |
| Mark 48-Mod 0 | 682.40 | 700.30 | 715.30 | 3,890.70 |
| EA-6B | 689.70 | 817.70 | 793.70 | 1,034.90 |
| Walleye II | 345.30 | 345.00 | 123.90 | 134.60 |
| F-14 | 6,166.00 | 6,166.00 | 6,166.00 | 6,373.00 |
| Standard arm | 180.30 | 241.60 | 220.00 | 250.70 |
| S-3A | 1,763.80 | 2,891.10 | 2,891.10 | 2,891.10 |
| AN/SQS-23 | 160.20 | 175.60 | 116.60 | 321.70 |
| A-7E | 1,465.60 | 1,465.60 | 1,421.50 | 1,919.10 |
| Mark 48-Mod 1 | 70.70 | 71.60 | 71.60 | 111.10 |
| Condor | 117.20 | 126.00 | 126.00 | 167.00 |
| F-4J | 770.00 | 770.00 | 2,509.6 | 2,743.70 |
| AN/SQS-26CX | 95.70 | 88.80 | 95.60 | 119.60 |
| CH46E/F helicopter | 323.60 | 589.00 | 577.10 | 550.60 |
| LHA | 651.00 | 1,346.50 | 1,346.50 | 1,379.40 |
| DE-1052 | 1,285.00 | 1,259.00 | 1,259.00 | 1,286.00 |
| CVA-67 | 310.00 | 280.00 | 280.00 | 307.80 |
| CVAN-68 [4] | 427.50 | 427.50 | 427.50 | |
| Poseidon [4] | | 4,384.90 | | 5,602.00 |
| Subroc [4] | | 438.80 | 462.30 | 591.40 |
| SSN 637 [4] | | | 2,515.80 | 2,838.90 |
| Air Force: | | | | |
| Minuteman II | 2,872.50 | 4,164.20 | 4,168.20 | 4,280.70 |
| Minuteman III | 2,678.10 | 4,339.00 | 4,060.30 | 4,226.00 |
| C-5A | 3,423.00 | 3,370.00 | 3,370.00 | 4,832.00 |
| Maverick | 257.90 | 391.80 | 213.10 | 374.70 |
| A-7D | 1,378.10 | 2,012.10 | 2,012.10 | 2,012.20 |
| Titan III | 932.20 | 745.50 | 745.50 | 1,130.50 |
| F-111A/C/D/E | 4,686.60 | 5,505.50 | 2,941.90 | 7,401.30 |
| F-B111A | 1,781.50 | 1,781.50 | 655.70 | 1,218.50 |
| SRAM [4] | | 261.10 | | 1,470.10 |
| F-4E [4] | | | | 2,630.80 |
| RF-4C [4] | | | | 1,571.00 |

[1] The system acquisition stage and the cost data presented in this schedule includes DOD and services' adjustments through Dec. 23, 1969.

[2] Not available.

[3] While this is the estimate appearing on the SAR at Mar. 31, 1969, it should be noted that due to litigation the Army currently estimates their liability as unknown.

[4] Systems in engineering and/or operational systems development and 1 or more of the program cost elements was omitted on the June 30, 1969, SAR.

[5] The DOD considers this as an annex to the Sheridan vehicle and not a weapon system itself.

Mr. PROXMIRE. Mr. President, these figures are important. They reinforce the criticism which many of us have made over the past year and a half. They justify our efforts. But they are still grossly inadequate and gross underestimates of the huge cost increases in weapons systems. Let me say why.

They are gross underestimates because in a number of cases the initial planning estimate is missing or is too low. In other cases, important information is missing. As a result, the overruns on 19 of the 57 systems are not included in the totals. Furthermore, even if the information available is used it is obviously too low. Examples include Poseidon, SRAM, and the F-4 and others where the planning

estimate is not given and hence the information is excluded.

On Poseidon, for example, Secretary McNamara gave an estimate in 1957 of $3.3 billion to convert 31 Polaris submarines into Poseidon-carrying vessels. Last summer Assistant Secretary of Defense Barry Shillito estimated that it would cost just under $7 billion to convert 30 Polaris submarines into Poseidon weapons, or a difference of $3.7 billion. Yet, in appendix II the increase is given as only $1.2 billion, and even that amount is not included in the total because the original planning estimate is missing. Thus, on that item alone, the total of $20.9 billion is deficient by $3.7 billion. It would be $24.6 if Poseidon were included.

The figures are gross underestimates for a series of other reasons too. Additional figures are already available for some systems. For example, the Safeguard is cranked in at $4.2 billion. But we all know that the estimates had risen officially to somewhere between $6 and $8 billion before we finished debating the ABM last August and those figures did not include phase II which the Secretary of Defense has now said he will ask for.

They are gross underestimates because related costs, in most instances, are not included. These are costs for training facilities, logistical support, special ramps for planes like the C–5A, and so forth.

The figures are wholly inadequate because they include no comparison between the specifications in the contract and the actual performance of the weapons. In most cases that we know of, the performance requirements on major weapons systems have been degraded or diminished. This fact is not included in the cost estimates.

The figures are gross underestimates because they give no information concerning those systems where the subsystems are lacking—planes without engines, ships without radar, missiles without gyroscopes—where the Government has failed to provide Government furnished material, for example, as in the contract for the new destroyers which vastly increased its costs, or where these have been delivered late. Backfitting increases costs. But these costs are not reflected in the selected acquisition reporting system on which the GAO figures are based.

The figures are grossly inadequate because they do not tell us what proportion of the contract is finished. If a plane is estimated to cost $2 billion and $2 billion has been spent, one might conclude we were right on target. But the reporting system does not tell us whether the $2 billion is for 50 or 100 percent of the cost of the plane. It does not report these matters in a relevant way.

The figures are grossly inadequate because they do not report an increase or decrease in the quantities ordered. There is no comparison of quantities delivered with quantities ordered.

The system is inadequate because it does not report any important pending decisions, such as a cutback on quantities or downgrading specifications.

For all of these reasons, the figure of $20.9 billion in overruns for 38 major weapons systems grossly underestimates the amount of the overruns. The system, in addition to this deficiency, is deficient in one other vital respect.

There is no one place, no central location, such as the office of the Secretary of Defense, where the figures for all the major weapons systems and the relevant facts about them are located. This makes it virtually impossible for intelligent judgments about them to be made. Which ones should be stopped or increased? Where are the toughest problems? What trade-offs for budgetary reasons should be made? Which ones cost the most with the fewest benefits? Which contractors are performing well or poorly? Which weapons work and which do not?

The present SAR system—selected acquisition reporting system—is so lacking in centralization that it is not now a meaningful planning tool. It should be made to perform the functions in which it is now deficient.

For all of these reasons, the $20.9 estimated overrun on these weapons and the 50-percent increase in cost are a gross underestimate of the real costs on these weapons systems. Nonetheless, they are a beginning and should be available to the public.

Mr. President, I also ask unanimous consent that relevant portions of the testimony by Assistant Comptroller General Robert F. Keller on the selected acquisition reporting system—SAR—before the Subcommittee on Economy in Government of the Joint Economic Committee last December 29 be printed in the RECORD.

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

MAJOR SYSTEMS ACQUISITIONS

(Testimony of Assistant Comptroller General Robert F. Keller)

Because of the increasing significance and magnitude of major systems acquisitions by the Department of Defense and congressional concern, including that of this subcommittee, over contract performance and cost growth, we established a separate group in July 1969, within our Defense Division to place more emphasis on problems associated with the acquisition of major systems.

For our purposes, we have defined major acquisitions as being weapon systems and/or major acquisitions related to weaponry, e.g., aircraft; missiles; boosters; combat, tactical, and support vehicles; ships; submarines; communications systems; space systems; and other acquisitions whose costs are expected to exceed $25 million for RDT&E or $100 million for production.

Our initial efforts have been planned to enable us to furnish the Congress in January 1970, with an overall report dealing with DOD's selected acquisition reporting system as it relates to the cost, schedule and performance experiences of some 50-odd major systems. Reports on the individual systems, practically all of which are classified, are being prepared and will be made available to the Congress.

Work on this assignment commenced in August 1969 and is nearing completion. I should point out that the scope of this initial work was necessarily limited and therefore, our reports will only identify apparent problems with regard to the DOD's Selected Acquisition Reporting (SAR) system and to reported cost, schedule and performance data without attempting to reach definite conclusions as to cause or possible remedies. Additional work will continue to more fully develop the underlying causes of problem areas identified and proposed solutions.

In addition to our review of selected system acquisitions, the Department of Defense, at our request, has prepared an inventory of all major systems being acquired by the military services. It is intended that this inventory will be up-dated periodically and will serve as a basis for future selection of systems in our on-going work in reviewing the SAR system. DOD's inventory includes some 130 systems, having an estimated total cost through completion of about $140 billion. Of this amount, about $85 billion has not been funded as yet. This excludes systems for which production is 90 percent or more complete.

It is important to note that, as far as we know, information is not available centrally as to the total number of systems being acquired or their costs. The costs for these systems are essentially system hardware costs including research and development. Other related costs such as special facilities, training logistics support, etc., associated with major systems are substantial.

The SAR system was introduced in the Department of Defense in early 1968 and has been undergoing refinement since that time. Recently the Deputy Secretary of Defense stated in a directive that it was "* * * the key recurring summary report from project managers and the Military Departments to inform the Secretary of Defense on the progress of their major acquisition programs." The Deputy Secretary has also emphasized to the military services the need for personal involvement in the review and analysis of these reports at the Secretarial level and by all levels of management necessary to ensure that they fairly and accurately reflect the status of the programs being reported.

The SAR reports are prepared quarterly by the responsible military service, usually at the system program or project office. Reports are currently being prepared on 57 designated major systems acquisitions.

We have concluded from our review of the 57 major systems, that the SAR system, in concept, represents a meaningful management tool for measuring and tracking the progress of major acquisitions. However, as with any new reporting system, the SAR system has serious shortcomings and there are several areas where improvements are essential.

We found that the SAR is not sufficiently encompassing and therefore fails to disclose significant matters concerning the progress of Major Acquisitions. For instance:

(1) Although appraisals of certain specified technical features of the systems are required (weight, range, speed, accuracy, etc.) there is no comparison of the technical performance actually demonstrated with that required by the contract.

(2) Major systems delivered without essential subsystems, delays in acquiring Government-furnished equipment, and problems in technical performance of Government-furnished equipment are not required to be reported.

(3) Costs incurred at a particular point in time in relationship to the cost that should have been incurred for the physical progress of the work that has been attained are not reported.

(4) Significant pending decisions that may have a major impact on the program such as changes in quantities or deliveries are not reported.

(5) A comparison of quantities delivered with quantities scheduled to be delivered at that point in time is not made.

We also noted some inconsistencies in the data reported in the SARs. For example, there was a lack of consistency in (1) the reporting of early developmental costs, (2) treatment of costs attributed to inflationary trends in the economy, (3) treatment of costs involving contract incentive/penalty provisions and claims for equitable adjustments, and (4) the reporting of costs involved in

modifying an existing system to accommodate a new subsystem.

I should point out that the Department of Defense is aware of most of these problems and a great deal of attention has been and is continuing to be given to their resolution. A new instruction on the preparation of the SARs was issued earlier this month by the Secretary of Defense and it is expected that the system will be improved substantially. Specifically, this new instruction does require comparisons of planned and actual technical performance and planned and actual deliveries.

Making a meaningful analysis of the systems costs from the information shown on the SARs has been a most troublesome task. Our difficulty stems primarily from a lack of consistency by the military services on the type and extent of cost information that is included in the SARs. We found that approximately 20 percent of the SARs covering the systems we reviewed did not include certain required program cost data.

We are currently attempting to identify missing data and determine the reasons for differences in the program costs shown in the SARs and DOD cost figures for the same time frame. We expect to be able to reconcile these differences and be in a position to address total cost for the 57 systems covered by our current work in the report we plan to submit to Congress in January 1970.

However, we have been able to make comparisons of cost growth [1] on 38 [2] systems using as milestones original planning estimates, contract definition estimates and planned costs at current quantities and we have compared these to the estimates to complete total programs.

As a means of displaying the current status of estimated program costs, SAR instructions require that this data be arrayed in columnar form to show:

1. Original planning estimates.
2. Contract definition costs estimates.
3. Planned costs at current quantities estimates.
4. Current estimate to complete the total program.

The original planning estimate appearing on the SAR should be the earliest formal estimate prepared by the military department of cost anticipated to be incurred to acquire the quantities needed. It is prepared prior to the initiation of the formal acquisition cycle and usually serves as a basis for initial appropriation requests. Contract definition costs estimates are refinements of the initial planning estimates and are prepared during the course of the project definition phase in which preliminary design and engineering are verified or accomplished, and contract and system management planning are performed. This cycle frequently extends over a period of a year. The planned costs at current quantity estimates are refinements of the earlier estimates adjusted for changes in quantities of the system to be bought. The final estimate is intended to be a current, objective estimate of the costs expected to be incurred to accomplish the entire program and is adjusted for changes in quantity as well as current estimates of cost due to inflation, changes in scope, capability increases, program stretch-outs, etc.

In discussing cost growth we believe it is important to recognize that not all cost growth can reasonably be prevented and that some cost growth, even though preventable, may be desirable. Unusual periods of inflation, for instance, result in cost growth. Changes in the state of the art make it possible to incorporate modifications that result in an overall increase in the cost effectiveness of the system. Such cost growth cannot always be anticipated, particularly where a weapons system is in development and production over a long period of time. We believe that the greatest concern should be with cost growth that results from such things as faulty planning, poor management, bad estimating, or deliberate underestimating. Our analysis of the cost growth that has occurred in the weapons systems we reviewed is not as yet complete and we are, therefore, unable to segregate cost growth by its various causes. To be fully meaningful such analysis is essential so that the undesirable and preventable can be identified. The cost growth discussed here today includes all cost growth that has been identified. It is not necessarily all preventable or even undesirable.

Comparing the estimate through program completion (i.e., the current estimate) with earlier estimates prepared on the basis of (1), (2), and (3) above, we found that the 38 systems show a cost growth of $20.919 billion or 49.85 percent from original planning estimates; $13.051 billion or 26.2 percent from contract definition cost estimates; and $13.819 billion or 28.2 percent from planned costs at current quantity estimates.

Appendix I to this statement is a summary schedule showing, by service, the estimated cost of the systems at the various SAR milestones, the dollar and percent of growth from each of these stages and the cost estimate through program completion. There is also appended (Appendix II) a schedule showing, by service, similar information on each of the 38 systems.

The explanatory reasons shown on the SARs for cost growth were often voluminous in number and many of the SARs did not relate any monetary value to the reasons given. Where dollars were identified, the reasons most frequently cited were inflation, capability increases, contract cost increases, quantity increases and poor estimating of expected cost and program stretch-outs.

Of particular significance is the effect quantity or capability increases or decreases have on costs over the life of a program. These often times do vary and do significantly impact on total program cost. A determination of cost growth should take into consideration changes in quantities and capability as well as changes in dollars.

Our analysis of the cost data presented in the SARs disclosed numerous instances where costs or potential costs, which will or can impact on program costs, were not shown. Some of the costs which were omitted were not required in accordance with SAR instructions, while others did seem to us to fall within the purview of existing directives governing the preparation of the SAR.

Our analysis of the slippages in the system time schedules as reported on the 57 SARs we reviewed showed that 34 of the systems either had experienced or there were anticipated slippages of from 6 months to more than 3 years from the originally established program schedules, although in many cases the "Initial Operational Capability" date had not changed. Eleven of the systems were in the early phase of the acquisition process and therefore no schedule slippages were reported. For the remaining 12 systems, either no slippage or slippage of less than 6 months was reported.

Over 30 different reasons were cited on the SARs to explain the schedule slippages. Those most frequently cited were: development problems, funding problems, system design changes, production problems, contract changes, and overly optimistic original schedules estimates. Other reasons cited included delays in associated programs, strikes at contractor plants, problems arising from the Southeast Asia conflict, and late availability of Government or contractor furnished equipment.

Explanations of schedule slippage provided on several SARs were often brief and, in many instances, did not indicate sufficient information to show the basic cause for the slippage.

Concerning system performance, we found that the SARs showed significantly variances between the performance expected originally and that currently estimated for many of the systems we reviewed. In some instances, the variances represented improvements in the system performance while in others a degradation in performance of the system had occurred or was expected. Still in others, trade-offs in technical characteristics had occurred which resulted in improved performance in some aspects of the system and degraded performance in others.

Reasons cited for the differences were many and varied. Some were common among several systems, while others were unique to a particular system. Some of the principal reasons cited included (1) inability to meet technical design specifications, (2) technical objectives beyond the state-of-the-art, (3) inaccurate or overly optimistic estimates of expected performance, (4) improved design to increase capability, and (5) desire to upgrade performance and reliability.

[1] This comprises a dollar growth for many and sundry reasons such as inflation, added capabilities and design changes, technical problems, quantity increases, etc. The figures used are essentially those reported by DOD.

[2] The 38 systems comprise 8 Army systems, 22 Navy systems and 8 Air Force systems.

## MEETING BETWEEN INDEPENDENT DEEPWATER TERMINAL OPERATORS AND THE DEPARTMENT OF THE INTERIOR

Mr. BROOKE. Mr. President, I should like to call the attention of my colleagues to an important meeting to be held tomorrow at the Department of the Interior.

That meeting will be between representatives of east coast independent deepwater terminal operators, largely from the New York and Boston areas, and the Assistant Secretary of the Interior Hollis M. Dole and other officials of the Interior Department.

The purpose of the meeting is outlined in a telegram to Mr. Dole from Mr. Arthur T. Soule, president of the Independent Fuel Terminal Operators Association, which I ask to be inserted at this point in the RECORD.

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

JANUARY 22, 1970.

Hon. HOLLIS M. DOLE,
*Assistant Secretary (Mineral Resources), Department of the Interior, Washington, D.C.:*

As you will recall, in communications and meetings with you last August and September, we warned of home heating (No. 2 fuel) oil shortage expected in January-February, 1970. That has now occurred. Inventories are low, suppliers unable to meet demand, transportation disrupted and many of our members are expected to run completely out of heating oil within one or two weeks. Danger is most acute in New York and Boston areas, which have suffered severe cold in recent weeks. One terminal operator received emergency allocation from Oil Import Appeals Board last week to meet shortage in New York.

Complete run-outs expected in Boston and New York unless relief is given. Strongly urge that substantial portion of unused Department of Defense finished product allocation be given to Oil Import Appeals Board for immediate, repeat, immediate, emergency allocation to East Coast independent deepwater terminal operators to prevent shortage.

We respectfully request opportunity to meet with you and other officials of Interior Department next Wednesday, January 28, to present in person seriousness of situation.

Recurrence of severe shortage substantially underscores need for more permanent change in Oil Import Program to prevent chronic supply problems and continuing escalation of consumer prices.

ARTHUR T. SOULE,
*President, Independent Fuel Terminal Operators Assn.*

Mr. BROOKE. Mr. President, for the third time in the last 4 years the Northeast is facing a near emergency situation in the heating oil market. The reason is clear and well known: Under the present oil import program additional imports of heating oil to relieve such shortages are prohibited. Market dislocations and an imbalance of supplies among areas of the country result from these controls. This absolute bar to relief to consumers and homeowners is a travesty and a tragedy.

I hope that the Department of the Interior and the administration will take action in the next few days to head off the threatened emergency. Even more important, I hope that President Nixon will take steps in revising the oil import program to assure that there is no repetition of this crisis in coming winters.

## PRESIDENT'S VETO OF LABOR-HEW APPROPRIATION BILL

Mr. CRANSTON. Mr. President, President Nixon committed a grave error when he vetoed the Labor-HEW appropriations bill. Having studied both the bill and his veto message closely, I am convinced the funds provided in the bill are urgently needed and that none of the reasons which the President gave for vetoing the bill justify a reduction in funds. Hence, if given the opportunity, I will vote to override the President's veto.

The extra $1.2 billion voted for the Office of Education is not inflationary, as claimed by the President. To the extent that a balanced budget or a budget surplus is necessary to fight inflation, Congress—not the President—has taken the initiative and has gone under the President's budget requests by trimming the total Federal budget by over $7 billion through the elimination of wasteful and unnecessary defense expenditures and foreign aid outlays which the President originally recommended.

I agree with the statement of Dr. Herbert Stein, a member of the President's Council of Economic Advisers, that "preoccupation with small changes in the budget position leads to a bad policy by the Government." In my opinion, it is highly unlikely that the $1.2 billion addition to the Office of Education budget could have any significant inflationary impact on a nearly trillion-dollar economy and a $200 billion budget. The extra money voted for the Office of Education is approximately one-tenth of 1 percent of a trillion-dollar gross national product, and about one-half of 1 percent of the total Federal budget.

Thus, eliminating the extra funds would have a negligible effect, if any, on inflation. Reduction of Federal education funds will only force school districts to offset this loss through other means. This will certainly be true of school districts which incur substantial financial obligations on the basis of anticipated Federal aid. If the aid is not forthcoming, these school districts may be forced to pay outstanding obligations with loans, which, unfortunately, are available only at the high interest rates which in turn are the direct result of the President's tight money policies. Thus, the President's veto imposes a severe double burden on our schoolchildren and their parents, on school administrators, and on the overburdened property owner whose contribution to public education through property taxes has reached the breaking point.

I do not believe that spending the funds provided in the bill during this fiscal year will result in waste, as claimed by the President. School districts take into account Federal aid in preparing their budgets, although these budgets must necessarily be prepared without the knowledge of the exact amount of Federal aid to be made available. This is possible because there is a large measure of consistency in the funding levels of Federal education programs. In addition, school districts have learned to cope with delays in appropriations. In fiscal 1967, the Bureau of the Budget released education funds in the last week of December 1966—almost 7 months into the fiscal year. In fiscal 1968, these funds were released in mid-January—7½ months into the fiscal year. And in fiscal 1969, the funds were released on October 30, 1969, almost 5 months into the fiscal year.

Finally, the fact that the extra money is earmarked for the "same old programs" does not justify their elimination—as claimed by the President—unless it can be demonstrated that these programs are not working. Although some funds may be misspent and some programs should be restructured, the President has failed to submit to Congress any corrective legislation of a comprehensive nature. Congress, therefore, has had no recourse other than to initiate needed reforms on its own. This is amply evidenced by the exhaustive review which the Senate Committee on Labor and Public Welfare made of the Elementary and Secondary Education Act and related acts and the numerous changes which it recommended to the Senate.

The President's tight money policies have failed to stem inflation. Yet, now he tries to reduce the money supply further at the expense of our schoolchildren, the poor and the sick, and the property owner.

This action indicates that, despite the financial crisis facing public education, President Nixon does not contemplate a meaningful Federal role in education. This is particularly distressing because his action comes on the heels of a report issued by an administration task force, headed by Dr. Wilson Riles of California, which recommends an immediate, substantial increase in Federal education aid as the chief means of meeting the urgent financial needs of urban school districts.

In sum, I can only conclude that the appropriation bill was the victim of a new, emerging Presidential anti-inflation policy. This new policy is: Federal spending is "inflationary" and should be vetoed, if the President dislikes the programs for which the funds are earmarked.

## ARREST OF DR. JUDIANNE DENSEN-GERBER

Mr. WILLIAMS of New Jersey. Mr. President, it is with great dismay that I have learned of the arrest of Dr. Judianne Densen-Gerber on charges of violating New York City's building code by running an overcrowded facility. To many of our Nation's youngsters, particularly those afflicted with the dread disease of drug addiction, this arrest must come as a cruel and shocking blow. For, as we all know from Dr. Densen-Gerber's testimony before the Special Subcommittee on Alcoholism and Narcotics last November, she is one of those heroic individuals who are not only committed to the solution of one of society's greatest problems, but who has dedicated her life to correcting this disease which afflicts so many of our young people.

Dr. Densen-Gerber, despite the handicaps of unmoved city and State governments, has directed the growth of the privately supported Odyssey House program—a program designed to rehabilitate the drug addict. As recently as this fall, Dr. Densen-Gerber opened a branch of Odyssey House in Newark, N.J., in an effort to reach even more of our children.

Yesterday morning I conducted hearings on drug abuse prevention and rehabilitation in Camden, N.J. Testifying in those hearings were six former drug addicts. Each told his story of being saved from a life of crime and probable early death because someone cared. For three of these former drug addicts, the ones who cared were people at a State-run institution, Liberty Village. For the other three youngsters, it was a Camden physician who singlehandedly provides the only treatment available for drug addicts in the Camden, N.J., area. The physician, Dr. Charles Brimm, told me only yesterday what the major complaint of our children is that Government at all levels is "shucking" and "jiving." For those of us not familiar with the lexicon of youth, shucking and jiving is the colorful synonym for hypocrisy.

Now we see the epitome of hypocrisy—Government, instead of offering aid and comfort to the afflicted drug addict and those handful of miracle-workers who treat the addict, arrests these miracle-workers for trying to tend to the needs of too many people.

It will be pitiful, indeed, if Dr. Densen-Gerber is convicted for running an overcrowded facility. One must ask, who is the criminal? Is it the physician who opens his door to the sick, or the society which does not permit the physician to open his door? As we consider today the Controlled Dangerous Substances Act, it is incumbent upon us to pledge our efforts to providing the necessary Federal assistance to programs of education, prevention and rehabilitation.

I ask unanimous consent to have an editorial from this morning's New York Times printed in the RECORD.

There being no objection, the editorial

was ordered to be printed in the RECORD, as follows:

THE TEEN-AGE DRUG PROBLEM

At a time when the drug problem among the very young is reaching critical proportions, New York City officials have—incredibly—demanded the closing of the one facility devoted solely to the rehabilitation of teen-age drug-users.

This is the Odyssey House at 995 Bruckner Boulevard, in the addict-ridden Hunts Point section of the Bronx. The director of the privately supported Odyssey House program, Dr. Judianne Densen-Gerber, has been arrested on charges of violating the city's building code by running an overcrowded facility. She must appear tomorrow in Criminal Court, Part VI, the Bronx.

The Bruckner facility is a converted convent, whose Madonna and Child still hover over the battered doorway. Where nine nuns used to reside, 45 teen-agers live now in a therapeutic community—whites, blacks, boys, girls—receiving psychiatric counseling and working out their individual problems. It is crowded, doubtless overcrowded. As many as twelve boys sleep in a room. Some sleep on mattresses on the floor.

Neither the city nor the state maintains separate facilities solely for youthful addicts. Yet their response to the plight of Odyssey House has been inexplicably negative. The city could have offered alternate facilities. It has several that in any case ought to be turned into treatment centers for drug-addicted youngsters. The state did offer a section of its mental facility at Creedmore but one where iron bars in the windows create an unacceptable, jail-like atmosphere. The state had other facilities it could have offered, including a recently refurbished but still unused hospital.

If 1 per cent of the addict population dies annually from drug overdoses, as experts estimate, there are 22,400 teen-age addicts in New York City. Records show that 224 teen-agers died from overdoses of drugs last year. The dimensions of the drug-abuse problem are frighteningly large, and no level of government has adequately grappled with them.

Both city and state must expand their efforts to intensify educational programs aimed at preventing drug addiction and to set up both juvenile and adult rehabilitation centers. Federal funds on a large scale will be needed for such programs. But the answer of government at any level to this excruciating problem of teen-age drug addiction cannot be the kind of belated, insensitive and negative response given by the New York authorities to the long-known overcrowding at Odyssey House.

## STARVATION IN NIGERIA

Mr. CRANSTON. Mr. President, I view with increasing alarm the reports emanating from Nigeria of the horrifying prospects of mass starvation, malnutrition, and death which face millions of men, women, and children.

The world has witnessed in Nigeria a terrifying war which has left the Ibo people decimated and the country divided. Voices were raised in protest to this tragedy. Yet, for the most part, nations stood by viewing this mass starvation from the sidelines—in the complacency of comfortable living rooms.

While the United States has contributed aid and supplies in the past, and I strongly supported these efforts, they were never enough. They did not and could not have a substantial affect on the starvation which prevails.

It is now absolutely imperative that all necessary assistance be rendered. The Federal Government of Nigeria has stated that it will not accept assistance from certain nations and organizations which actively assisted the Biafrans in providing the necessary food and supplies. These suspicions and hostilities must end. The prospect of such widespread starvation and hunger is too horrifying to allow political considerations to come into play. The shocking pictures of small children crying and dying in their mother's arms must move men to compassion and action.

Our Government has begun to send some of the critical transportation supplies which are so desperately needed and this is a hopeful beginning. However, if these supplies are insufficient, we must continue to urge the Nigerian Government to accept whatever assistance can be constructively offered in this vital humanitarian effort. I have communicated my increased concern on this matter to Secretary Rogers and have asked him to continue and increase the efforts our Government has begun.

The situation in Nigeria demands and must receive world concern, but, more importantly, substantial and immediate action and assistance. I pledge my continued efforts to achieve this goal.

## CREDIT WHERE CREDIT IS DUE

Mr. BYRD of West Virginia. Mr. President, I have always been a believer in the principle of giving credit where credit is due.

Great credit is due the FBI and its Director, J. Edgar Hoover, for the fine work which he has done in connection with the investigation of the Joseph Yablonski murders.

A very short—but very much to the point—editorial in the New York Daily News of January 23 takes cognizance of this FBI work. I ask unanimous consent that it be printed in the RECORD.

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

SOME FBI SUPER-SLEUTHING

Working with its usual quiet efficiency, the Federal Bureau of Investigation has collared three suspects in the brutal New Year's Eve murders of United Mineworkers rebel Joseph Yablonski, his wife and daughter.

Without prejudging the cases of the three men—or any others who may be nabbed—we tip our hat to the G-men for a snappy job. For our money, J. Edgar Hoover's corps is the top investigative agency in the world, and the American people should be thankful they are around.

## CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

The PRESIDING OFFICER (Mr. CANNON in the chair). The hour of 12:30 having arrived, the Chair lays before the Senate the unfinished business which will be stated by title.

The LEGISLATIVE CLERK. A 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 Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Under the unanimous consent agreement, the time between now and 1 o'clock is controlled.

The Senator from Connecticut and the Senator from North Carolina have control of the time. Who yields time?

If no Senator yields time, the time will be charged equally against each side.

Mr. ERVIN. Mr. President, I want to make clear something that is somewhat clouded at the present moment. The only Supreme Court decision dealing with this specific question is that of Ker against the State of California.

Mr. President, I ask unanimous consent that the entire opinion be printed at this point in the body of the RECORD in support of my remarks.

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

GEORGE D. KER ET AL., PETITIONERS [374 US 23], *v.* STATE OF CALIFORNIA

(374 U.S. 23, 10 L. ed. 2d 726, 83 S. Ct. 1623)

[No. 53]

Argued December 11, 1962. Decided June 10, 1963.

SUMMARY

On the day following a California police officer's encounter with a known marihuana dealer, including the purchase from the dealer of a package of marihuana, other police officers observed an encounter between the dealer and the defendant husband, which occurred under identical surrounding circumstances except that the officers did not see any substance passing between the two men. The officers following the defendant lost contact with him when he made a U-turn in the middle of a block. Without securing a search warrant, the officers, among them one having information that the defendant husband was selling from his apartment marihuana possibly secured from the dealer, obtained from the building manager a passkey to defendants' apartment, and entered the apartment, where they found the defendant husband in the living room. The defendant wife emerged from the kitchen, and one of the officers, after identifying himself, observed through the open doorway of the kitchen a package of marihuana on a scale atop the kitchen sink. The officers then arrested both defendants and searched the apartment, finding additional marihuana in the kitchen cupboard and atop the bedroom dresser.

The defendants were convicted in the Superior Court of Los Angeles County of possessing marihuana. Their convictions were affirmed by the California District Court of Appeal on the grounds that there was probable cause for the arrests, that the officers' entry into the apartment was for the purpose of arrest and was not unlawful, and that the search, being incident to the arrests, was likewise lawful and its fruits admissible in evidence against the defendants. (195 Cal. App. 2d 246, 15 Cal. Rptr. 767.)

On certiorari, the United States Supreme Court affirmed. The ultimate issue before the Court concerned the admissibility, in defendants' trial, of the marihuana seized in their apartment. Eight members of the Court agreed on the nature of the standards applicable to determine the reasonableness of a state search and seizure, but split 4 to 4 as to whether these standards were violated under the circumstances of the present case. The remaining member—Mr. Justice Harlan—concurred in the affirmance of the judgment below.

In an opinion by CLARK, J., expressing the views of eight members of the Court, it was held that the question of reasonableness of

a state search and seizure is governed by federal constitutional standards, as expressed in the Fourth Amendment and the decisions of the Court applying that amendment. On the other hand, HARLAN, J., expressed the view that state searches and seizures should be judged by the more flexible concept of "fundamental" fairness, or rights "basic to a free society," embraced in the due process clause of the Fourteenth Amendment.

The question whether federal constitutional standards of reasonableness were violated by the search in the present case was answered in the negative in an opinion by CLARK, J., joined by BLACK, STEWART, and WHITE, JJ. These justices held that the search without warrant was valid as incident to a lawful arrest, made upon probable cause, and that the officers' method of entry was not unreasonable. On the other hand, BRENNAN, J., joined by WARREN, Ch. J., and DOUGLAS and GOLDBERG, JJ., expressed the view that federal constitutional standards were violated because the unannounced intrusion of the arresting officers into defendants' apartment violated the Fourth Amendment.

HEADNOTES

(Classified to U.S. Supreme Court Digest, Annotated)

Evidence § 681: Search and Seizure § 5—restrictions on states—admissibility of evidence illegally obtained

1. The Fourth Amendment is enforceable against the states by the same sanction of exclusion of evidence as is used against the federal government and through the application of the same constitutional standard prohibiting "unreasonable searches and seizures." [*See annotation references* 1, 2]

Evidence § 859; Supreme Court of the United States § 9—rules of evidence in federal criminal trials

2. The principles governing the admissibility of evidence in federal criminal trials are not restricted to those derived solely from the Federal Constitution; in the exercise of its supervisory authority over the administration of criminal justice in the federal courts, the United States Supreme Court has formulated rules of evidence to be applied in federal criminal prosecutions, but the Court assumes no supervisory authority over state courts.

Courts § 683—federal and state—conflicts

3. The very essence of a healthy federalism depends upon the avoidance of needless conflicts between state and federal courts.

Search and Seizure §4—Constitutional Prohibitions

4. Implicit in the Fourth Amendment's protection from unreasonable searches and seizures is its recognition of individual freedoms; that safeguard is of the very essence of constitutional liberty the guaranty of which is as important and as imperative as the guaranties of the other fundamental rights of the individual citizens.

Search and Seizure § 6—Persons Protected

5. The Fourth Amendment forbids every search that is unreasonable and protects those suspected or known to be offenders as well as the innocent.

Search and Seizure § 8—Place of Search

6. The Fourth Amendment's prohibition of unreasonable searches and seizures extends to the premises where the search was made.

Search and Seizure § 5—Standards Governing Reasonableness

7. The principle that standards of reasonableness of searches and seizures are not susceptible of Procrustean application is carried forward when the Fourth Amendment's proscriptions are enforced against the states through the Fourteenth Amendment. [*See annotation reference* 2]

Evidence § 681; Search and Seizure § 5; Supreme Court of the United States § 9—Obtained Through Unlawful Search and Seizure—Distinctions

8. Although the standard of reasonableness of searches and seizures is the same under the Fourth and Fourteenth Amendments, there is a distinction between evidence held inadmissible because of the United States Supreme Court's supervisory powers over federal courts and evidence held inadmissible because prohibited by the United States Constitution. [*See annotation references 1, 2*]

Search and Seizure § 5—Unreasonableness—Determination by Trial Court

9. The reasonableness of a search is in the first instance a substantive determination to be made by the trial court from the facts and circumstances of the case and in the light of the fundamental criteria laid down by the Fourth Amendment and in opinions of the United States Supreme Court applying that amendment.

Appeals and Error § 806.5—State Court Findings—United States Supreme Court Review

10. On review of a state court judgment of conviction of crime, the United States Supreme Court will respect the state court's findings of reasonableness of a search and seizure only insofar as the finding is consistent with federal constitutional guaranties.

Appeal and Error § 806.5—United States Supreme Court Review of State Court Findings—Federal Constitutional Rights

11. On review by the United States Supreme Court of state court judgments of conviction of crime, findings of state courts involving federal constitutional rights are by no means insulated against examination by the United States Supreme Court; while the Court does not sit as in nisi prius to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the state court findings, such as a finding as to the reasonableness of a search and seizure, the constitutional criteria established by the Supreme Court have been respected.

Arrest § 1; Evidence § 681; Search and Seizure § 4—Power of State

12. The states have power to develop workable rules governing arrests, and searches and seizures, to meet the practical demands of effective criminal investigation and law enforcement in the states, provided that those rules do not violate the Fourth Amendment's proscription of unreasonable searches and seizures, and the concomitant command that evidence so seized is inadmissible against one who has standing to complain. [*See annotation reference 1*]

*Points from separate opinions*

Evidence § 681; Search and Seizure § 12—Search as Incident to Lawful Arrest

13. Evidence obtained by a search without search warrant is admissible only if the search was incident to a lawful arrest. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

[*See annotation reference 3*]

Arrest § 2—Without Warrant—Probable Cause

14. The lawfulness of an arrest without warrant must be based upon probable cause, which exists where the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Arrest § 2—Without Warrant—For Narcotics Offense—Reasonable Grounds

15. Information within the knowledge of state narcotics officers at the time they arrested a suspect at his apartment furnishes grounds for a reasonable belief that the suspect had committed and was committing the offense of possession of marijuana, where some of the officers observed an encounter between a known marijuana dealer and the suspect on the evening of the arrest and, although the officers did not see any substance pass between the two men, their encounter was a virtual re-enactment of the previous night's encounter between the dealer and another narcotics officer, including the sale by the dealer to that officer of a pound of marijuana, the virtual identity of the surrounding circumstances warranting a strong suspicion that the one remaining element, a sale of narcotics, was a part of the encounter preceding the arrest, as it was the previous night, and where, moreover, the office had information from a reliable informer as well as from other sources, not only that the suspect had been selling marijuana from his apartment but also that his likely source of supply was the dealer. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 4]

Arrest § 2—Without Warrant—Probable Cause—Hearsay Information

16. That information in possession of a police officer is hearsay does not destroy its role in establishing probable cause supporting an arrest without warrant. [From separate opinion by Clark, Black, Stewart, and White JJ.]

Arrest § 2—Without Warrant—For Narcotics Offense—Probable Cause

17. Probable cause for the arrest, without warrant, of the wife of a narcotics suspect, and a reasonable ground for the belief of state narcotics officers that the wife was in joint possession of marijuana with her husband, exist where, upon the officers' entry into the spouse's apartment and announcement of their identity, one of the officers, walking to the doorway of the kitchen, from which the wife had emerged, and without entering the kitchen, observed a package of marijuana in plain view on a scale atop the kitchen sink, and moreover the officers had reliable information that the husband had been using his apartment as a base of operations for his narcotics activities. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 4]

Courts § 625—Arrest Without Warrant—Governing Law

18. In cases under the Fourth Amendment the lawfulness of arrests for federal offenses is to be determined by reference to state law insofar as it is not violative of the Federal Constitution; a fortiori, the lawfulness of an arrest made by a state officer for a state offense is to be determined by state law. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Courts § 625; Search and Seizure § 12—Search In Connection With Arrest—Governing Law

19. Where a person's federal constitutional protection from unreasonable searches and seizures by state police officers for a state offense is to be determined by whether the search was incident to a lawful arrest, the United States Supreme Court is warranted in examining that arrest to determine whether, notwithstanding its legality under state law, the method of entering the home may offend federal constitutional standards of reasonableness and therefore vitiate the

legality of an accompanying search. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 3]

Arrest § 1—"Breaking"

20. The common law recognizes that under certain circumstances breaking a person's house is permissible in executing an arrest. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Search and Seizure § 29—Execution of Search Warrant

21. Under California law the presence of exigent circumstances constitutes an exception to the notice requirement of a statute authorizing a police officer to break open any part of a house to execute a search warrant if, after notice of his authority and purpose, he is refused admittance. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Arrest § 2—Without Warrant—Probable Cause

22. In determining the lawfulness of entry and the existence of probable cause supporting an arrest without warrant, the court concerns itself only with what the arresting officers had reason to believe at the time of their entry. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Search and Seizure § 3—Legality of Search—Result

23. A search is not to be made legal by what it turns up; in law it is good or bad when it starts and does not change character from its success. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Arrest § 1; Search and Seizure § 12—Searches Incident to Lawful Arrest—Officers' Method of Entry

24. Notwithstanding the failure of state narcotics officers to give notice of their authority and purpose to a narcotics suspect prior to his arrest and the search of his apartment, their method of entry, sanctioned by state law, by obtaining a passkey from the manager of the building is not unreasonable under the standards of the Fourth Amendment as applied to the states through the Fourteenth Amendment, where, in addition to the officers' belief that the suspect was in possession of narcotics, which could be quickly and easily destroyed, his furtive conduct in eluding them shortly before the arrest was ground for the belief that he might well have been expecting the police. [From separate opinion by Clark, Black, Stewart, and White, JJ. Contra: separate opinion by Brennan, J., Warren, Ch. J., and Douglas and Goldberg, JJ.] [*See annotation references* 2, 3]

Search and Seizure § 12—in connection with arrest

25. The doctrine that a search without warrant may be lawfully conducted if incident to a lawful arrest is consistent with the Fourth Amendment's protection against unreasonable searches and seizures. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference 3*]

Search and Seizure § 12—in connection with arrest—practicability of obtaining warrant

26. The practicability of obtaining a warrant is not the controlling factor when a search is sought to be justified as incident to arrest. [From separate opinion by Clark, Black, Stewart, and White JJ.] [*See annotation reference 3*]

Search and Seizure § 12—in connection with arrest—practicability of obtaining search warrant

27. A search without warrant, incident to a lawful arrest, is not unreasonable, and hence not violative of the Fourth Amendment in that the state narcotics officers involved could practicably have obtained a search warrant where the officers' observations and their corroboration, which furnished probable cause for the suspect's arrest, occurred at about 9 p.m., approximately one hour before the time of arrest, and the officers had reason to act quickly because of the suspect's furtive conduct and the likelihood that the marijuana in his possession would be distributed or hidden before a warrant could be obtained at that time of night. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference 3*]

Search and Seizure § 12—in connection with arrest—extent of premises searched

28. The search, as an incident to a narcotics suspect's lawful arrest, of the kitchen and bedroom of his apartment, is within the rule that such search may, under appropriate circumstances, extend beyond the person of the one arrested to include the premises under his immediate control. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See anotation reference 3*]

Search and Seizure § 12—in connection with arrest

29. The rule that an arrest may not be used merely as the pretext for a search without warrant is not violated where the record shows that the arresting officers entered the suspect's apartment for the purpose of arresting him and that they had probable cause to make that arrest prior to the entry. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference 3*]

Search and Seizure § 2—what constitutes search

30. The discovery by a police officer entering a suspect's apartment of a brick of marijuana on a scale atop the kitchen sink does not constitute a search, since the officer merely saw what was placed before him in full view. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Search and Seizure § 12—as an incident to arrest

31. California law does not require that an arrest precede an incidental search as long as probable cause exists at the outset. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 3]

Appeal and Error §§ 1084(2), 1088, 1123—questions not properly raised

32. On review of a state court judgment of conviction of crime, the United States Supreme Court will not reach the question of the reasonableness of the search of defendant's automobile on the day subsequent to his arrest where that question was not raised in the petition for certiorari, nor discussed in the brief filed in the United States Supreme Court, nor in the state trial court, nor in the state appellate court, and the latter court did not adjudicate it. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Appeal and Error § 1104; Courts § 95.3—scope of review—questions not raised

33. Ordinarily the United States Supreme Court does not reach for constitutional questions not raised by the parties, nor extend its review beyond those specific federal questions properly raised in the state court. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Appeal and Error § 431—from state court—federal question

34. There can be no question as to the proper presentation of a federal claim when the highest state court passes on it. [From separate opinion by Clark, Black, Stewart and White, JJ.]

Arrest § 1; Search and Seizure § 12—search as incident to arrest—prerequisites of validity

35. Even if probable cause exists for the arrest of a person within, the Fourth Amendment's prohibition of unreasonable searches and seizures is violated by an unannounced police intrusion into a private home, with or without an arrest warrant, except (1) where the persons within already know of the officers' authority and purpose, or (2) where the officers are justified in the belief that persons within are in imminent peril of bodily harm, or (3) where those within, made aware of the presence of someone outside (because, for example, there has been a knock at the door) are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted. [From separate opinion by Brennan, J., Warren, Ch. J., and Douglas and Goldberg, JJ.]

Search and Seizure § 5—constitutional protection—lawful entry

36. A lawful entry is the indispensable predicate of a reasonable search within the meaning of the Fourth Amendment guaranteeing the right of the people to be secure against unreasonable searches and seizures. [From separate opinion by Brennan, J., Warren, Ch. J., and Douglas and Goldberg, JJ.]

Courts § 95.3—constitutional question

37. The United States Supreme Court will not decide constitutional questions when a nonconstitutional basis for decision is available. [From separate opinion by Brennan, J., Warren, Ch. J., and Douglas and Goldberg, JJ.]

*Appearances of counsel*

Robert W. Stanley argued the cause for petitioners. Gordon Ringer argued the cause for respondent. Briefs of Counsel, p. 1312, infra.

OPINION OF THE COURT

[374 US 24] Mr. Justice Clark delivered the opinion of the Court with reference to the standard by which state searches and seizures must be evaluated (Part I), together with an opinion applying that standard, in which Mr. Justice Black, Mr. Justice Stewart and Mr. Justice White join (Parts II–V), and announced the judgment of the Court.

This case raises search and seizure questions under the rule of Mapp v Ohio, 367 US 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933 (1961). Petitioners, husband and wife, were convicted of possession of marijuana in violation of § 11530 of the California Health and Safety Code. The California District Court of Appeal affirmed, 195 Cal App 2d 246, 15 Cal Rptr 767, despite the contention of petitioners that their arrests in their [374 US 25] apartment without warrants lacked probable cause[1] and the evidence seized incident thereto and introduced at their trial was therefore inadmissible. The California Supreme Court denied without opinion a petition for hearing. This being the first case arriving here since our opinion in Mapp which would afford suitable opportunity for further explication of that holding in the light of intervening experience, we granted certiorari. 386 US 974, 7 L ed 2d 437, 82 S Ct 480. We affirm the judgment before us.

The state courts' conviction and affirmance are based on these events, which culminated in the petitioners' arrests. Sergeant Cook of the Los Angeles County Sheriff's Office, in negotiating the purchase of marijuana from one Terrhagen, accompanied him to a bowling alley about 7 p.m. on July 26, 1960, where they were to meet Terrhagen's "connection." Terrhagen went inside and returned shortly, pointing to a 1946 DeSoto as his "connection's" automobile and explaining that they were to meet him "up by the oil fields" near Fairfax and Slauson Avenues in Los Angeles. As they neared that location, Terrhagen again pointed out the DeSoto traveling ahead of them, stating that the "connection" kept his supply of nar-

Footnotes at end of article.

cotics "somewhere up in the hills." They parked near some vacant fields in the vicinity of the intersection of Fairfax and Slauson, and, shortly thereafter, the DeSoto reappeared and pulled up beside them. The deputy then recognized the driver as one Roland Murphy, whose "mug" photograph he had seen and whom he knew from other narcotics officers to be a large-scale seller of marijuana currently out on bail in connection with narcotics charges.

[374 US 26] Terrhagen entered the DeSoto and drove off toward the oil fields with Murphy, while the Sergeant waited. They returned shortly, Terrhagen left Murphy's car carrying a package of marijuana and entered his own vehicle, and they drove to Terrhagen's residence. There Terrhagen cut one pound of marijuana and gave it Sergeant Cook, who had previously paid him. The Sergeant later reported this occurrence to Los Angeles County Officers Berman and Warthen, the latter of whom had observed the occurrences as well.

On the following day, July 27, Murphy was placed under surveillance. Officer Warthen, who had observed the Terrhagen-Murphy episode the previous night, and Officer Markman were assigned this duty. At about 7 p.m. that evening they followed Murphy's DeSoto as he drove to the same bowling alley in which he had met Terrhagen on the previous evening. Murphy went inside, emerged in about 10 minutes and drove to a house where he made a brief visit. The officers continued to follow him but, upon losing sight of his vehicle, proceeded to the vicinity of Fairfax and Slauson Avenues where they parked. There, immediately across the street from the location at which Terrhagen and Sergeant Cook had met Murphy on the previous evening, the officers observed a parked automobile whose lone occupant was later determined to be the petitioner George Douglas Ker.

The officers then saw Murphy drive past them. They followed him but lost sight of him when he extinguished his lights and entered the oil fields. The officers returned to their vantage point and, shortly thereafter, observed Murphy return and park behind Ker. From their location approximately 1,000 feet from the two vehicles, they watched through field glasses. Murphy was seen leaving his DeSoto and walking up to the driver's side of Ker's car, where he "appeared to have conversation with him." It was shortly before 9 p.m. and the distance in the [374 US 27] twilight was too great for the officers to see anything pass between Murphy and Ker or whether the former had anything in his hands as he approached.

While Murphy and Ker were talking, the officers had driven past them in order to see their faces closely and in order to take the license number from Ker's vehicle. Soon thereafter Ker drove away and the officers followed him but lost him when he made a U-turn in the middle of the block and drove in the opposite direction. Now, having lost contact with Ker, they checked the registration with the Department of Motor Vehicles and ascertained that the automobile was registered to Douglas Ker at 4801 Slauson. They then communicated this information to Officer Berman, within 15 to 30 minutes after observing the meeting between Ker and Murphy. Though officers Warthen and Markman had no previous knowledge of Ker, Berman had received information at various times beginning in November of 1959 that Ker was selling marijuana from his apartment and that "he was possibly securing this Marijuana from Ronnie Murphy who is the alias of Roland Murphy." In early 1960 Officer Berman had received a "mug" photograph of Ker from the Inglewood Police Department. He further testified that between May and July 27, 1960, he had received information as to Ker from one Robert Black, who had previously given information leading to at least three arrests and whose information was believed by Berman to be reliable. According to Officer Berman, Black had told him on four or five occasions after May 1960 that Ker and others, including himself, had purchased marijuana from Murphy.[3]

[375 US 28] Armed with the knowledge of the meeting between Ker and Murphy and with Berman's information as to Ker's dealings with Murphy, the three officers and a fourth, Officer Love, proceeded immediately to the address which they had obtained through Ker's license number. They found the automobile which they had been following—and which they had learned was Ker's—in the parking lot of the multiple-apartment building and also ascertained that there was someone in the Kers' apartment. They then went to the office of the building manager and obtained from him a passkey to the apartment. Officer Markman was stationed outside the window to intercept any evidence which might be ejected, and the other three officers entered the apartment. Officer Berman unlocked and opened the door, proceeding quietly, he testified, in order to prevent the destruction of evidence,[3] and found petitioner George Ker sitting in the living room. Just as he identified himself, stating that "We are Sheriff's Narcotics Officers, conducting a narcotics investigation," petitioner Diane Ker emerged from the kitchen. Berman testified that he repeated his identification to her and immediately walked to the kitchen. Without entering, he observed through the open doorway a small scale atop the kitchen sink, upon which lay a "brick-like—brick-shaped package containing the green leafy substance" which he recognized as marihuana. He beckoned the petitioners into the kitchen where, following their denial of knowledge of the contents of the two-and-two-tenths-pound package and [374 US 29] failure to answer a question as to its ownership, he placed them under arrest for suspicion of violating the State Narcotic Law. Officer Markman testified that he entered the apartment approximately "a minute, minute and a half" after the other officers, at which time Officer Berman was placing the petitioners under arrest. As to this sequence of events, petitioner George Ker testified that his arrest took place immediately upon the officers' entry and before they saw the brick of marihuana in the kitchen.

Subsequent to the arrest and the petitioners' denial of possession of any other narcotics, the officers, proceeding without search warrants, found a half-ounce package of marijuana in the kitchen cupboard and another atop the bedroom dresser. Petitioners were asked if they had any automobile other than the one observed by the officers, and George Ker replied in the negative, while Diane remained silent. On the next day, having learned that an automobile was registered in the name of Diane Ker, Officer Warthen searched this car without a warrant, finding marijuana and marijuana seeds in the glove compartment and under the rear seat. The marijuana found on the kitchen scale, that found in the kitchen cupboard and in the bedroom, and that found in Diane Ker's automobile[4] were all introduced into evidence against the petitioners.

The California District Court of Appeal in affirming the convictions found that there was probable cause for the arrests; that the entry into the apartment was for the purpose of arrest and was not unlawful; and that the search being incident to the arrests was likewise lawful and its fruits admissible in evidence against petitioners. These conclusions were essential to the affirmance, since the California Supreme Court in 1955 had held that evidence [374 US 30] obtained by means of unlawful searches and seizures was inadmissible in criminal trials. People v Cahan, 44 Cal 2d 434, 282 P2d 905, 50 ALR2d 513. The court concluded that in view of its findings and the implied findings of the trial court, this Court's intervening decision in Mapp v Ohio, 367 US 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933, supra, did "not justify a change in our original conclusion." 195 Cal App 2d, at 257, 15 Cal Rptr, at 773.

I

In Mapp v Ohio, 367 US at 646, 647, 657, we followed Boyd v United States, 116 US 616, 630, 29 L ed 746, 751, 6 S Ct 524 (1886), which held that the Fourth Amendment,[5] implemented by the self-incrimination clause of the Fifth,[6] forbids the Federal Government to convict a man of crime by using testimony or papers obtained from him by unreasonable searches and seizures as defined in the Fourth Amendment. We specifically held in Mapp that this constitutional prohibition is enforceable against the States through the Fourteenth Amendment.[7] This means, as we said in Mapp (Headnote 1) that the Fourth Amendment "is enforceable against them [the states] by the same sanction of exclusion as is used against the Federal Government," by the application of the same constitutional standard prohibiting "unreasonable [374 US 31] searches and seizures." 367 US, at 655. We now face the specific question as to whether Mapp requires the exclusion of evidence in this case which the California District Court of Appeal has held to be lawfully seized. It is perhaps ironic that the initial test under the Mapp holding comes from California, whose decision voluntarily to adopt the exclusionary rule in 1955 has been commended by us previously. See Mapp v Ohio, supra (367 US at 651, 652); Elkins v United States, 364 US 206, 220, 4 L ed 2d 1669, 1679, 80 S Ct 1437 (1960).

Preliminary to our examination of the search and seizures involved here, it might be helpful for us to indicate what was not decided in Mapp. (Headnote 2) First, it must be recognized that the "principles governing the admissibility of evidence in federal criminal trials that have not been restricted . . . to those derived solely from the Constitution. In the exercise of its supervisory authority over the administration of criminal justice in the federal courts . . . this Court has . . . formulated rules of evidence to be applied in federal criminal prosecutions." McNabb v United States, 318 US 332, 341, 87 L ed 819, 824, 63 S Ct 608 (1943); cf. Miller v United States, 357 US 301, 2 L ed 2d 1332, 78 S Ct 1190 (1958); Nordone v United States, 302 US 379, 82 L ed 314, 58 S Ct 275 (1937). Mapp, however, established no assumption by this Court of supervisory authority over state courts, cf. Cleary v Bolger, 371 US 392, 401, 9 L ed 2d 390, 396, 83 S Ct 385 (1963), and, consequently, it implied no total obliteration of state laws relating to arrests and searches in favor of federal law. Mapp sounded no death knell for our federalism; rather, it echoed the sentiment of Elkins v. United States, supra (364 at 221), (Headnote 3) that "a healthy federalism depends upon the avoidance of needless conflict between state and federal courts" by itself urging that "[f]ederal-state cooperation in the solution of crime under constitutional standards will be promoted. If only by recognition of their now mutual obligation to respect *the same fundamental criteria* in their approaches." 367 US, at 658. (emphasis added.) Second, Mapp did not attempt the impossible task of laying [374 US 32] down a "fixed formula" for the application in specific cases of the constitutional prohibition against unreasonable searches and seizures; it recognized that we would be "met with 'recurring questions of the reasonableness of searches' " and that, "at any rate, '[r]easonableness is in the first instance for the [trial court] . . . to determine,' " id. 367 US at 653, thus indicating that the usual weight be given to findings of trial courts.

Mapp, of course, did not lend itself to a

Footnotes at end of article.

detailed explication of standards, since the search involved there was clearly unreasonable and bore no stamp of legality even from the Ohio Supreme Court. Id. 367 U.S. at 643–645. This is true also of Elkins v. United States, where all of the courts assumed the unreasonableness of the search in question and this Court "invoked" its "supervisory power over the administration of criminal justice in the federal courts," 364 U.S., at 216, in declaring that the evidence so seized by state officers was inadmissible in a federal prosecution. The prosecution being in a federal court, this Court of course announced that "[t]he test is one of federal law, neither enlarged by what one state court may have countenanced, nor diminished by what another may have colorably suppressed." Id. 364 U.S. at 224. Significant in the Elkins holding is the statement, apposite here, that "it can fairly be said that in applying the Fourth Amendment this Court has seldom shown itself unaware of the practical demands of effective criminal investigation and law enforcement." Id. 364 U.S. at 222.

Implicit in the Fourth Amendment's protection from unreasonable searches and seizures is its recognition of individual freedom (Headnote 4). That safeguard has been declared to be "as of the very essence of constitutional liberty" the guaranty of which "is as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen . . . ." Gouled v. United States, 255 U.S. 298, 304, 65 L ed 647, 650, 41 S Ct 261 (1921); cf. Powell v. Alabama, 287 U.S. [374 U.S. 33] 45, 65–68, 77 L ed 158, 168–170, 53 S Ct 55, 84 ALR 527 (1932). While the language of the Amendment is "general," it "forbids every search that is unreasonable; (Headnote 5, Headnote 6) it protects all, those suspected or known to be offenders as well as the innocent, and unquestionably extends to the premises where the search was made . . . ." Go-Bart Importing Co. v. United States, 282 U.S. 344, 357, 75 L ed 374, 382, 51 S Ct 153 (1931). Mr. Justice Butler there stated for the Court that "[t]he Amendment is to be liberally construed and all owe the duty of vigilance for its effective enforcement lest there shall be impairment of the rights for the protection of which it was adopted." Ibid. He also recognized that "[t]here is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances." Ibid; see United States v. Rabinowitz, 339 U.S. 56, 63, 94 L ed 653, 658, 70 S Ct 430 (1950); Rios v. United States, 364 U.S. 253, 255, 4 L ed 2d 1688, 1690, 80 S Ct 1431 (1960).

This Court's long-established recognition that standards of reasonableness under the Fourth Amendment (Headnote 7) are not susceptible of Procrustean application is carried forward when that Amendment's proscriptions are enforced against the States through the Fourteenth Amendment. And, although the standard of reasonableness is the same under the Fourth and Fourteenth Amendments (Headnote 8), the demands of our federal system compel us to distinguish between evidence held inadmissible because of our supervisory powers over federal courts and that held inadmissible because prohibited by the United States Constitution (Headnote 9, Headnote 10). We reiterate that the reasonableness of a search is in the first instance a substantive determination to be made by the trial court from the facts and circumstances of the case and in the light of the "fundamental criteria" laid down by the Fourth Amendment and in opinions of this Court applying that Amendment. Findings of reasonableness, of course, are respected only insofar as consistent with federal constitutional guarantees. As we have stated above and in other cases involving [374 US 34] federal constitutional rights, findings of state courts are by no means insulated against examination here (Headnote 11). See, e.g., Spano v New York, 360 US 315, 316, 3 L ed 2d 1265, 1267, 79 S Ct 1202 (1959); Thomas v Arizona, 356 US 390, 393, 2 L ed 2d 863, 866, 78 S Ct 885 (1958); Pierre v Louisiana, 306 US 354, 358, 83 L ed 751, 760, 59 S Ct 536 (1939). While this Court does not sit as in nisi prius to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the decision as to reasonableness the fundamental—i.e., constitutional—criteria established by this Court have been respected (Headnote 12). The States are not thereby precluded from developing workable rules governing arrests, searches and seizures to meet "the practical demands of effective criminal investigation and law enforcement" in the States, provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures and the concomitant command that evidence so seized is inadmissible against one who has standing to complain. See Jones v United States, 362 US 257, 4 L ed 2d 697, 80 S Ct 725, 78 ALR2d 233 (1960). Such a standard implies no derogation of uniformity in applying federal constitutional guarantees but is only a recognition that conditions and circumstances vary just as do investigative and enforcement techniques.

Applying this federal constitutional standard we proceed to examine the entire record including the findings of California's courts to determine whether the evidence seized from petitioners was constitutionally admissible under the circumstances of this case.

SEPARATE OPINION

II

The evidence at issue, in order to be admissible, must be the product of a search incident to a lawful arrest, since the officers had no search warrant (Headnote 13, Headnote 14). The lawfulness of the arrest without warrant, in turn, must be based upon [374 US 35] probable cause which exists "where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." Brinegar v United States, 338 US 160, 175, 176, 93 L ed 1879, 1890, 69 S Ct 1302 (1949), quoting from Carroll v United States, 267 US 132, 162, 69 L ed 543, 555, 45 S Ct 280, 39 ALR 790 (1925); accord, People v Fischer, 49 Cal 2d 442, 317 P2d 967 (1957); Bompensiero v Superior Court of San Diego County, 44 Cal 2d 178, 281 P2d 250 (1955) (Headnote 15). The information within the knowledge of the officers at the time they arrived at the Kers' apartment, as California's courts specifically found, clearly furnished grounds for a reasonable belief that petitioner George Ker had committed and was committing the offense of possession of marijuana. Officers Markman and Warthen observed a rendezvous between Murphy and Ker on the evening of the arrest which was a virtual reenactment of the previous night's encounter between Murphy, Terrhagen and Sergeant Cook, which concluded in the sale by Murphy to Terrhagen and the Sergeant of a package of marijuana of which the latter had paid Terrhagen for one pound which he received from Terrhagen after the encounter with Murphy. To be sure, the distance and lack of light prevented the officers from seeing and they did not see any substance pass between the two men, but the virtual identity of the surrounding circumstances warranted a strong suspicion that the one remaining element—a sale of narcotics—was a part of this encounter as it was the previous night. But Ker's arrest does not depend upon this single episode with Murphy. When Ker's U-turn thwarted the officer's pursuit, they learned his name and address from the Department of Motor Vehicles and reported the occurrence to Officer Berman. Berman, in turn, revealed information from an informer whose reliability had been tested previously, as [374 US 36] well as from other sources, not only that Ker had been selling marijuana from his apartment but also that his likely source of supply was Murphy himself (Headnote 16). That this information was hearsay does not destroy its role in establishing probable cause. Brinegar v United States, 338 US 160, 93 L ed 1879, 69 S Ct 1302, supra. In Draper v United States, 358 US 307, 3 L ed 2d 327, 79 S Ct 329 (1959), we held that information from a reliable informer, corroborated by the agents' observations as to the accuracy of the informer's description of the accused and of his presence at a particular place, was sufficient to establish probable cause for an arrest without warrant.[8] The corroborative elements in Draper were innocuous in themselves, but here both the informer's tip and the personal observations connected Ker with specific illegal activities involving the same man, Murphy, a known marijuana dealer. To say that this coincidence of information was sufficient to support a reasonable belief of the officers that Ker was illegally in possession of marijuana is to indulge in understatement.

Probable cause for the arrest of petitioner Diane Ker (Headnote 17), while not present at the time the officers entered the apartment to arrest her husband, was nevertheless present at the time of her arrest. Upon their entry and announcement of their identity, the officers were met not only by George Ker but also by Diane Ker, who was emerging from the kitchen. Officer Berman immediately walked to the doorway from which she emerged and, without entering, observed the brick-shaped package of marijuana in plain view. Even assuming that her presence [374 US 37] in a small room with the contraband in a prominent position on the kitchen sink would not alone establish a reasonable ground for the officers' belief that she was in joint possession with her husband, that fact was accompanied by the officers' information that Ker had been using his apartment as a base of operations for his narcotics activities. Therefore, we cannot say that at the time of her arrest there were not sufficient grounds for a reasonable belief that Diane Ker, as well as her husband, was committing the offense of possession of marijuana in the presence of the officers.

III

It is contended that the lawfulness of the petitioners' arrests, even if they were based upon probable cause, was vitiated by the method of entry. This Court (Headnote 18), in cases under the Fourth Amendment, has long recognized that the lawfulness of arrests for federal offenses is to be determined by reference to state law insofar as it is not violative of the Federal Constitution. Miller v United States, 357 US 301, 2 L ed 2d 1332, 78 S Ct 1190, supra; United States v Di Re, 332 US 581, 92 L ed 210, 68 S Ct 222 (1948); Johnson v United States, 333 US 10, 15, note 5, 92 L ed 436, 441, 68 S Ct 367 (1948). A fortiori, the lawfulness of these arrests by state officers for state offenses is to be determined by California law. California Penal Code, § 844,[9] permits peace officers to break into a dwelling place for the purpose of arrest after demanding admittance and explaining their purpose. Admittedly the officers did not comply with the terms of this statute since they entered quietly and without announcement, in order to prevent the destruction of contraband. The California District Court of Appeal, [374 US 38] however, held that the circumstances here came within a judicial exception which had been engrafted upon the statute by a series of decisions, see, e. g., People v Ruiz, 146 Cal App

Footnotes at end of article.

2d 630, 304 P2d 175 (1956); People v Maddox, 46 Cal 2d 301, 294 P2d 6, cert den 352 US 858, 1 L ed 2d 65, 77 S Ct 81 (1956), and that the noncompliance was therefore lawful.

Since the petitioners' federal constitutional protection from unreasonable searches and seizures (Headnote 19) by police officers is here to be determined by whether the search was incident to a lawful arrest, we are warranted in examining that arrest to determine whether, notwithstanding its legality under state law, the method of entering the home may offend federal constitutional standards of reasonableness and therefore vitiate the legality of an accompanying search. We find no such offensiveness on the facts here. Assuming that the officers' entry by use of a key obtained from the manager is the legal equivalent of a "breaking," see Keiningham v. United States, 109 App DC 272, 276, 287 F2d 126, 130 (1960) (Headnote 20), it has been recognized from the early common law that such breaking is permissible in executing an arrest under certain circumstances. See Wilgus, Arrest Without a Warrant, 22 Mich L Rev 541, 798, 800–806 (1924). Indeed, 18 USC § 3109,[10] dealing with the execution of search warrants by federal officers, authorizes breaking of doors in words very similar to those of the California statute, both statutes including a requirement of notice of authority and purpose. In Miller v United States, 357 US 301, 2 L ed 2d 1332, 78 S Ct 1190, supra, this Court held unlawful an arrest, and therefore its accompanying search, on the ground that the District of [374 US 39] Columbia officers before entering a dwelling did not fully satisfy the requirement of disclosing their identity and purpose. The Court stated that "the lawfulness of the arrest without warrant is to be determined by reference to state law. . . . By like reasoning the validity of the arrest of petitioner is to be determined by reference to the law of the District of Columbia." 357 US, at 305, 306. The parties there conceded and the Court accepted that the criteria for testing the arrest under District of Columbia law were "substantially identical" to the requirements of § 3109. Id. 357 US at 306. Here, however, the criteria under California law (Headnote 21) clearly include an exception to the notice requirement where exigent circumstances are present. Moreover, insofar as violation of a federal statute required the exclusion of evidence in Miller, the case is inapposite for state prosecutions, where admissibility is governed by constitutional standards. Finally, the basis of the judicial exception to the California statute, as expressed by Justice Traynor in People v Maddox, supra (46 Cal 2d at 306), effectively answers the petitioners' contention:

"It must be borne in mind that the primary purpose of the constitutional guarantees is to prevent unreasonable invasions of the security of the people in their persons, houses, papers, and effects, and when an officer has reasonable cause to enter a dwelling to make an arrest and as an incident to that arrest is authorized to make a reasonable search, his entry and his search are not unreasonable. Suspects have no constitutional right to destroy or dispose of evidence, and no basic constitutional guarantees are violated because an officer succeeds in getting to a place where he is entitled to be more quickly than he would, had he complied with section 844. Moreover, since the demand and explanation requirements [374 US 40] of section 844 are a codification of the common law, they may reasonably be interpreted as limited by the common law rules that compliance is not required if the officer's peril would have been increased or the arrest frustrated had he demanded entrance and stated his purpose. (Read v. Case, 4 Conn. 166, 170 [10 Am. Dec. 110]; see Rest., Torts, § 206, com. d.) Without the benefit of hindsight and ordinarily on the spur of the moment, the officer must decide these questions in the first instance."

No such exigent circumstances as would authorize noncompliance with the California statute were argued in Miller, and the Court expressly refrained from discussing the question, citing the Maddox Case without disapproval. 357 US, at 309.[11] Here justification for the officers' failure to give notice is uniquely present. In addition to the officers' belief that Ker was in possession of narcotics, which could be quickly and easily destroyed, Ker's furtive conduct in eluding them shortly before the arrest was ground for the belief that he might well have been expecting the police.[12] We therefore hold that in the particular [374 US 41] circumstances of this case (Headnote 24) the officers' method of entry, sanctioned by the law of California, was not unreasonable under the standards of the Fourth Amendment as applied to the States through the Fourteenth Amendment.

IV

Having held the petitioners' arrests lawful, it remains only to consider whether the search which produced the evidence leading to their convictions was lawful as incident to those arrests. The doctrine that a search without warrant may be lawfully conducted (Headnote 25) if incident to a lawful arrest has long been recognized at consistent with the Fourth Amendment's protection against unreasonable searches and seizures. See Marron v. United States, 275 US 192, 72 L ed 231, 48 S Ct 74 (1927); Harris v. United States, 331 US 145, 91 L ed 1399, 67 S Ct 1098 (1947); Abel v. United States, 362 US 217, 4 L ed 2d 668, 80 S Ct 683 (1960); Kaplan, Search and Seizure; A No-Man's Land in the Criminal Law, 49 Cal L Rev 474, 490–493 (1961). The cases have imposed no requirement that the arrest be under authority of an arrest warrant, but only that it be lawful. See Marron v. United States, supra (275 US at 198, 199); United States v. Rabinowitz, supra (339 US at 61); cf. Agnello v. United States, 269 US 20, 30, 31, 70 L ed 145, 148, 46 S Ct 4, 51 ALR 409 (1925). The question remains whether the officers' action here exceeded the recognized bounds of an incidental search.

Petitioners contend that the search was unreasonable in that the officers could practicably have obtained a search warrant. The practicability of obtaining a warrant (Headnote 26, Headnote 27) is not the controlling factor when a search is sought to be justified as incident to arrest, United States v. Rabinowitz, 339 US 56, 94 L ed 653, 70 S Ct 430, supra; [374 US 42] but we need not rest the validity of the search here on Rabinowitz, since we agree with the California court that time clearly was of the essence. The officers' observations and their corroboration, which furnished probable cause for George Ker's arrest, occurred at about 9 p.m., approximately one hour before the time of arrest. The officers had reason to act quickly because of Ker's furtive conduct and the likelihood that the marijuana would be distributed or hidden before a warrant could be obtained at that time of night.[13] Thus the facts bear no resemblance to those in Trupiano v. United States, 334 US 699, 92 L ed 1663, 68 S Ct 1229 (1948), where federal agents for three weeks had been in possession of knowledge sufficient to secure a search warrant.

The search of the petitioners' apartment was well within the limits upheld in Harris v. United States (Headnote 28), 331 US 145, 91 L ed 1399, 67 S Ct 1098, supra, which also concerned a private apartment dwelling. The evidence here, unlike that in Harris, was the instrumentality of the very crime for which petitioners were arrested, and the record does not indicate that the search here was as extensive in time or in area as that upheld in Harris.

The petitioners' only remaining contention is that the discovery of the brick of marijuana cannot be justified as incidental to arrest since it preceded the arrest. This contention is of course contrary to George Ker's testimony, but we reject it in any event. While an arrest may not be used merely as the pretext for a search without warrant (Headnote 29), the California court specifically found and the record supports both that the officers entered the apartment for the purpose of arresting George Ker and that they had probable cause to make that arrest prior to the entry.[14] We cannot say that it was unreasonable for Officer Berman, upon seeing Diane Ker emerge from the kitchen, merely to walk to the doorway of that adjacent room. We thus agree with the California court's holding (Headnote 30) that the discovery of the brick of marijuana did not constitute a search, since the officer merely saw what was placed before him in full view. United States v Lee, 274 US 559, 71 L ed 1202, 47 S Ct 746 (1927); United States v Lefkowitz, 285 US 452, 465, 76 L ed 877, 882, 52 S Ct 420, 82 ALR 775 (1932); People v West, 144 Cal App 2d 214, 300 P2d 729 (1956). Therefore, while California law does not require that an arrest precede an incidental search as long as probable cause exists at the outset (Headnote 31), Willson v Superior Court of San Diego County 46 Cal 2d 291, 294 P2d 36 (1956), the California court did not rely on that rule and we need not reach the question of its status under the Federal Constitution.

V

The petitioners state and the record bears out that the officers searched Diane Ker's automobile on the day subsequent to her arrest.

The reasonableness of that search (Headnote 32, Headnote 33), however, was not raised in the petition for certiorari, nor was it discussed in the brief here. Ordinarily "[w]e do not reach for constitutional questions not raised by the parties," Mazer v Stein, 347 US 201, 206, 98 L ed 630, 636, 74 S Ct 460 note 5 (1954), nor extend our review beyond those specific federal questions [374 US 44] properly raised in the state court. The record gives no indication that the issue was raised in the trial court or in the District Court of Appeal, the latter court did not adjudicate it and we therefore find no reason to reach it on the record.[15]

For these reasons the judgment of the California District Court of Appeal is Affirmed.

ADDITIONAL SEPARATE OPINIONS

Mr. Justice Harlan, concurring in the result.

Heretofore there has been a well-established line of demarcation between the constitutional principles governing the standards for state searches and seizures and those controlling federal activity of this kind. Federal searches and seizures have been subject to the requirement of "reasonableness" contained in the Fourth Amendment, as that requirement has been elaborated over the years in federal litigation. State searches and seizures, on the other hand, have been judged, and in my view properly so, by the more flexible concept of "fundamental" fairness, or rights "basic to a free society," embraced in the Due Process Clause of the Fourteenth Amendment. [374 US 45] See Wolf v Colorado, 338 US 25, 27, 93 L ed 1782, 1785, 69 S Ct 1359; [16] cf. Rochin v California, 342 US 165, 96 L ed 183, 72 S Ct 205, 25 ALR2d 1396; Palko v Connecticut, 302 US 319, 82 L ed 288, 58 S Ct 149. Today this distinction in constitutional principle is abandoned. Henceforth state searches and seizures are to be judged by the same constitutional standards as apply in the federal system.

In my opinion this further extension of federal power over state criminal cases, cf. Fay v Noia, 372 US 391, 9 L ed 2d 837, 83 S

Footnotes at end of article.

Ct 822; Douglas v. California, 372 US 353, 9 L ed 2d 811, 83 S Ct 814; Drapery Washington, 372 US 487, 9 L ed 2d 899, 83 S Ct 774—all decided only a few weeks ago, is quite uncalled for and unwise. It is uncalled for because the States generally, and more particularly California, are increasingly evidencing concern about improving their own criminal procedures, as this Court itself has recently observed on more than one occasion (see Gideon v Wainwright, 372 US 335, 345, 9 L ed 2d 799, 806, 83 S Ct 792; ante, p. 736, and because the Fourteenth Amendment's requirements of fundamental fairness stand as a bulwark against serious local shortcomings in this field. The rule is unwise because the States, with their differing law enforcement problems, should not be put in a constitutional straitjacket and also because the States, more likely than not, will be placed in an atmosphere of uncertainty since this Court's decisions in the realm of search and seizure are hardly notable for their predictability. Cf Harris v United States, 331 US 145, 175–181, 91 L ed 2d 1399, 1419–1422 67 S Ct 1098 (Appendix to dissenting opinion of Mr. Justice Frankfurter). (The latter point is indeed forcefully illustrated by the fact that in the first application of its new constitutional rule the majority finds itself equally divided.) And if the Court is prepared to relax Fourth Amendment standards in order to avoid unduly fettering the States, this would be in [374 US 46] derogation of law enforcement standards in the federal system—unless the Fourth Amendment is to mean one thing for the States and something else for the Federal Government.

I can see no good coming from this constitutional adventure. In judging state searches and seizures I would continue to adhere to established Fourteenth Amendment concepts of fundamental fairness. So judging this case, I concur in the result.

Mr. Justice Brennan, with whom The Chief Justice, Mr. Justice Douglas and Mr. Justice Goldberg join.

I join Part I of Mr. Justice Clark's opinion and the holding therein that "as we said in Mapp . . . the Fourth Amendment 'is enforceable against . . . [the States] by the same sanction of exclusion as is used against the Federal Government,' by the application of the same constitutional standard prohibiting 'unreasonable searches and seizures.'" Only our Brother Harlan dissents from that holding; he would judge state searches and seizures "by the more flexible concept of 'fundamental' fairness, of rights 'basic to a free society,' embraced in the Due Process Clause of the Fourteenth Amendment."

However, Mr. Justice Clark, Mr. Justice Black, Mr. Justice Stewart and Mr. Justice White do not believe that the federal requirement of reasonableness contained in the Fourth Amendment was violated in this case. The Chief Justice, Mr. Justice Douglas, Mr. Justice Goldberg and I have the contrary view. For even on the premise that there was probable cause by federal standards for the arrest of George Ker, the arrests of these petitioners were nevertheless illegal, because the unannounced intrusion of the arresting officers into their apartment violated the Fourth Amendment. Since the (374 US 47) arrests were illegal, Mapp v Ohio, 367 US 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933, requires the exclusion of the evidence which was the product of the search incident to those arrests.

Even if probable cause exists for the arrest of a person within, the Fourth Amendment (Headnote 35) is violated by an unannounced police intrusion into a private home, with or without an arrest warrant, except (1) where the persons within already know of the officers' authority and purpose, or (2) where the officers are justified in the belief that persons within are in imminent peril of bodily harm, or (3) where those within, made aware of the presence of someone outside (because, for example, there has been a knock at the door), are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted.

It was firmly established long before the adoption of the Bill of Rights that the fundamental liberty of the individual includes protection against unannounced police entries. "[T]he Fourth Amendment did not embody a principle of English liberty, a principle old, yet newly won, that finds another expression in the maxim 'every man's home is his castle.'" Fraenkel, Concerning Searches and Seizures, 34 Harv L Rev 361, 365 (1921); Frank v Maryland, 359 US 360, 376–382, 3 L ed 2d 877, 887–891, 79 S Ct 804 (dissenting opinion). As early as Semayne's Case, 5 Co Rep 91a, 91b, 77 Eng Rep 194, 195 (1603), it was declared that "[i]n all cases when the King is party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the K[ing]'s process, if otherwise he cannot enter. *But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors . . .*" (Emphasis supplied.) Over a century later the leading commentators upon the English criminal law affirmed the continuing vitality of [374 US 48] that principle. 1 Hale, Pleas of the Crown (1736), 583; see also 2 Hawkins, Pleas of the Crown (6th ed 1787), c. 14, § 1; Foster, Crown Law (1762), 320–321.[17] Perhaps its most emphatic confirmation was supplied only 35 years before the ratification of the Bill of Rights. In Curtis' Case, Fost, 135, 168 Eng Rep 67, decided in 1756, the defendant, on trial for the murder of a Crown officer who was attempting an entry to serve an arrest warrant, pleaded that because the officer had failed adequately to announce himself and his mission before breaking the doors, forceful resistance to his entry was justified and the killing was therefore justifiable homicide. In recognizing the defense the court repeated the principle that "peace-officers, having a legal warrant to arrest for a breach of the peace, may break open doors, *after having demanded admittance and given due notice of their warrant*"; the court continued that "no precise form of words is required in a case of this kind" because "[i]t is sufficient that the party hath notice, that the officer cometh not as a mere trespasser, but claiming to act under a proper authority . . . ." Fost., at 136–137, 168 Eng Rep, at 68. (Emphasis supplied.) The principle was again confirmed not long after the Fourth Amendment became part of our Constitution. Abbott, C. J., said in Launock v Brown, 2 B & Ald 592, 593–594, 106 Eng Rep 482, 483 (1819):

". . . I am clearly of opinion that, in the case of a misdemeanour, such previous demand is requisite. . . . It is reasonable that the law should be so; for if no [374 US 49] previous demand is made, how is it possible for a party to know what the object of the person breaking open the door may be? He has a right to consider it as an aggression on his private property, which he will be justified in resisting to the utmost."[18]

The protections of individual freedom carried into the Fourth Amendment, Boyd v. United States, 116 US 616, 630, 20 L ed 746, 751, 6 S Ct 524, undoubtedly included this firmly established requirement of an announcement by police officers of purpose and authority before breaking into an individual's home. The requirement is no mere procedural nicety or formality attendant upon the service of a warrant. Decisions in both the federal and state courts have recognized, as did the English courts, that the requirement is of the essence of the substantive protections which safeguard individual liberty.[19] The Court of Appeals for the District of Columbia Circuit has said: ". . . there is no division of opinion among the learned authors . . . that even where an officer may [374 US 50] have power to break open a door without a warrant, he cannot lawfully do so unless he first notifies the occupants as to the purpose of his demand for entry." Accarino v United States, 85 App DC 394, 400, 179 F2d 456, 462.

Similarly, the Supreme Judicial Court of Massachusetts declared in 1852:

"The maxim of law that every man's house is his castle . . . has not the effect to restrain an officer of the law from breaking and entering a dwelling-house for the purpose of serving a criminal process upon the occupant. In such case the house of the party is no sanctuary for him, and the same may be forcibly entered by such officer after a proper notification of the purpose of the entry, and a demand upon the inmates to open the house, and a refusal by them to do so." Barnard v Bartlett, 64 Mass (10 Cush) 501, 502, 503; cf. State v Smith, 1 NH 346.

Courts of the frontier States also enforced the requirement. For example, Tennessee's high court recognized that a police officer might break ino a home to serve an arrest warrant only "after demand for admittance and notice of his purpose," McCaslin v. McCord, 116 Tenn. 690, 708, 94 SW 79, 83; cf. Hawkins v. Commonwealth, 53 Ky (14 B Mon) 395. Indeed, a majority of the States have encated the requirement in statutes substantially similiar to California Penal Code § 844 and the federal statute, 18 USC § 3109.[20]

[374 US 511] Moreover, in addition to carrying forward the protections already afforded by English law, the Framers also meant by the Fourth Amendment to eliminate once and for all the odious practice of searches under general warrants and writs of assistance against which English law had generally left them helpless. The colonial experience under the writs was unmistakably "fresh in the memories of those who achieved our indepedence and established our form of government."[21] Boyd v. United States, supra (166 US at 625). The problem of entry under a general warrant was not, of course, exactly that of unannounced intrusion to arrest with a warrant or upon probable cause, but the two practices clearly invited common abuses. One of the grounds of James Otis' eloquent indictment of the writs bears repetition here: "Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is *[374 US 52] quiet, he is as well *guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and everything in their way: and whether they break through malice or revenge, no man, no court, can inquire. Bare suspicion without oath is sufficient." Tudor, Life of James Otis (1823), 66–67.

Similar, if not the same, dangers to individual liberty are involved in unannounced intrusions of the police into the homes of citizens. Indeed in two respects such intrusions are even more offensive to the sanctity and privacy of the home. In the first place service of the general warrants and writs of assistance was usually preceded at least by some form of notice or demand for admission. In the second place the writs of assistance by their very terms might be served only during daylight hours.[22] By significant contrast, the unannounced entry of the Ker apartment occurred after dark, and such timing appears to be common police practice, at least in California.[23]

[1374 US 53] It is much too late in the day to deny that a lawful entry is as essential to vindication of the protections of the Fourth Amendment as, for example, probable cause to arrest or a search warrant for a search not incidental to an arrest. This Court settled in Gouled v United States

Footnotes at end of article.

(Headnote 36), 255 US 298, 305, 306, 65 L ed 647, 651, 41 S Ct 261, that a lawful entry is the indispensable predicate of a reasonable search. We held there that a search would violate the Fourth Amendment if the entry were illegal whether accomplished "by force or by an illegal threat or show of force" or "obtained by stealth instead of by force or coercion." Similarly, rigid restrictions upon unannounced entries are essential if the Fourth Amendment's prohibition against invasion of the security and privacy of the home is to have any meaning.

It is true, of course, that the only decision of this Court which forbids federal officers to arrest and search after an unannounced entry, Miller v United States, 357 US 301, 2 L ed 2d 1332, 78 S Ct 1190, did not rest upon constitutional doctrine but rather upon an exercise of this Court's supervisory powers. But that disposition in no way implied that the same result was not compelled by the Fourth Amendment. Miller is simply an instance of the usual practice of the Court (Headnote 37), not to decide constitutional questions when a nonconstitutional basis for decision is available. See International Asso. of Machinists v Street, 367 US 740, 749, 750, 6 L ed 2d 1141, 1149, 1150, 81 S Ct 1784. The result there drew upon analogy to a federal statute, similar in its terms to § 844, with which the federal officers concededly had not complied in entering to make an arrest. Nothing we said in Miller so much as intimated that, without such a basis for decision, the Fourth Amendment would not have required the same result. The implication, indeed, is quite to the contrary. For the history adduced in Miller in support of the nonconstitutional ground persuasively demonstrates that the Fourth Amendment's protections include the security of the householder against unannounced invasions by the police.

II

[374 US 54] The command of the Fourth Amendment reflects the lesson of history that "the breaking an outer door is, in general, so violent, obnoxious and dangerous a proceeding, that it should be adopted only in extreme cases, where an immediate arrest is requisite." 1 Burn, Justice of the Peace (28th ed 1837), 275–276.

I have found no English decision which clearly recognizes any exception to the requirement that the police first give notice of their authority and purpose before forcibly entering a home. Exceptions were early sanctioned in American cases, e.g., Read v Case, 4 Conn 166, but these were rigidly and narrowly confined to situations not within the reason and spirit of the general requirement. Specifically, exceptional circumstances have been thought to exist only when, as one element, the facts surrounding the particular entry support a finding that those within actually knew or must have known of the officer's presence and purpose to seek admission. Cf. Miller v. United States, supra (357 US at 311–313). For example, the earliest exception seems to have been that "[i]n the case of an escape after arrest, the officer, on fresh pursuit of the offender to a house in which he takes refuge, may break the door to recapture him, in the case of felony, without a warrant, and without notice or demand for admission to the house of the offender." [24] Wilgus, Arrest Without a [374 US 55] Warrant, 22 Mich L Rev 541, 798, 804 (1924). The rationale of such an exception is clear, and serves to underscore the consistency and the purpose of the general requirement of notice: Where such circumstances as an escape and hot pursuit by the arresting officer leave no doubt that the fleeing felon is aware of the officer's presence and purpose, pausing at the threshold to make the ordinarily requisite announcement and demand would be a superfluous act which the law does not require.[25] But no exceptions have heretofore permitted unannounced entries in the absence of such awareness on the part of the occupants—unless possibly where the officers are justified in the belief that someone within is in immediate danger of bodily harm.

Two reasons rooted in the Constitution clearly compel the courts to refuse to recognize exceptions in other situations [374 US 56] when there is no showing that those within were or had been made aware of the officers' presence. The first is that any exception not requiring a showing of such awareness necessarily implies a rejection of the inviolable presumption of innocence. The excuse for failing to knock or announce the officer's mission where the occupants are oblivious to his presence can only be an almost automatic assumption that the suspect within will resist the officer's attempt to enter peacefully, or will frustrate the arrest by an attempt to escape, or will attempt to destroy whatever possibly incriminating evidence he may have. Such assumptions do obvious violence to the presumption of innocence. Indeed, the violence is compounded by another assumption, also necessarily involved, that a suspect to whom the officer first makes known his presence will further violate the law. It need hardly be said that not every suspect is in fact guilty of the offense of which he is suspected, and that not everyone who is in fact guilty will forcibly resist arrest or attempt to escape or destroy evidence.[26]

[374 US 57] The second reason is that in the absence of a showing of awareness by the occupants of the officers' presence and purpose, "loud noises" or "running" within would amount, ordinarily, at least, only to ambiguous conduct. Our decisions in related contexts have held that ambigious conduct cannot form the basis for a belief of the officers that an escape or the destruction of evidence is being attempted. Wong Sun v. United States, 371 US 471, 483, 484, 9 L ed 2d 441, 452, 453, 83 S Ct 407; Miller v United States, supra (357 US at 311).

Beyond these constitutional considerations, practical hazards of law enforcement militate strongly against any relaxation of the requirement of awareness. First, cases of mistaken identity are surely not novel in the investigation of crime. The possibility is very real that the police may be misinformed as to the name or address of a suspect, or as to other material information. That possibility is itself a good reason for holding a tight rein against judicial approval of unannounced police entries into private homes. Innocent citizens should not suffer the shock, fright or embarrassment attendant upon an unannounced police intrusion.[27] Second, the requirement [374 U.S. 58] of awareness also serves to minimize the hazards of the officers' dangerous calling. We expressly recognized in Miller v United States, supra (357 U.S. at 313, note 12), that compliance with the federal notice statute "is also a safeguard for the police themselves who might be mistaken for prowlers and be shot down by a fearful householder." [28] Indeed, one of the principal objectives of the English requirement of announcement of authority and purpose was to protect the arresting officers from being shot as trespassers, ". . . for if no previous demand is made, how is it possible for a party to know what the object of the person breaking open the door may be? He has a right to consider it as an aggression on his private property, which he will be justified in resisting to the utmost." Launock v Brown, 2 B & Ald 592, 594, 106 Eng Rep 482, 483 (1819).

These compelling considerations underlie the constitutional barrier against recognition of exceptions not predicated on knowledge or awareness of the officers' presence. State and federal officers have the common obligation to respect this basic constitutional limitation upon their police activities. I reject the contention that the courts, in enforcing such respect on the part of all officers, state or federal, create serious obstacles to effective law enforcement. Federal officers have operated for five years under [374 U.S. 59] the Miller rule with no discernible impairment of their ability to make effective arrests and obtain important narcotics convictions. Even if it were true that state and city police are generally less experienced or less resourceful than their federal counterparts (and the experience of the very police force involved in this case, under California's general exclusionary rule adopted judicially in 1955, goes very far toward refuting any such suggestion,[29] see Elkins v. United States, 364 U.S. 206, 220, 221, 4 L ed 2d 1669, 1679, 80 S Ct 1437), the Fourth Amendment's protections against unlawful search and seizure do not contract or expand depending upon the relative experience and resourcefulness of different groups of law-enforcement officers. When we declared in Mapp that, because the rights of the Fourth Amendment were of no lesser dignity than those of the other liberties of the Bill of Rights absorbed in the Fourteenth, ". . . we can no longer permit . . . [them] to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend [their] . . . enjoyment," 367 U.S., at 660—I thought by these words we had laid to rest the very problems of constitutional dissonance which I fear the present case so soon revives.[30]

III

[374 US 60] I turn now to my reasons for believing that the arrests of these petitioners were illegal. My Brother Clark apparently recognizes that the element of the Kers' prior awareness of the officers' presence was essential, or at least highly revelant, to the validity of the officers' unannounced entry into the Ker apartment, for he says, "Ker's furtive conduct in eluding them shortly before the arrest was ground for the belief that he *might well have been* expecting the police." (Emphasis supplied.) But the test under the "fresh pursuit" exception which my Brother Clark apparently seeks to invoke depends not, of course, upon mere conjecture whether those within "might well have been" expecting the police, but upon whether there is evidence which shows that the occupants were in fact aware that the police were about to visit them. That the Kers were wholly oblivious to the officers' presence is the only possible inference on the uncontradicted facts; the "fresh pursuit" exception is therefore clearly unavailable. When the officers let themselves in with the passkey, "proceeding quietly," as my Brother Clark says, George Ker was sitting in his living room reading a newspaper, and his wife was busy in the kitchen. The marijuana, moreover, was in full view on the top of the kitchen sink. More convincing evidence of the complete unawareness of an imminent police visit can hardly be imagined. Indeed, even the conjecture that the Kers "might well have been expecting the police" has no support in the record. That conjecture is made to rest entirely upon the unexplained U-turn made by Ker's car when the officers lost him after the rendezvous at the oil fields. But surely the U-turn must be disregarded as wholly ambiguous conduct; there is absolutely no proof that the driver of the Ker car knew that the officers were [374 US 61] following it. Cf. Miller v. United States, supra (357 US at 311); Wong Sun v. United States, supra (371 US at 483, 484).

My Brother Clark invokes chiefly, however, the exception allowing an unannounced entry when officers have reason to believe that someone within is attempting to destroy evidence. But the minimal conditions for the application of that exception are not present in this case. On the uncontradicted record, not only were the Kers completely

Footnotes at end of article.

unaware of the officers' presence, but, again on the uncontradicted record, there was absolutely no activity within the apartment to justify the officers in the belief that anyone within was attempting to destroy evidence. Plainly enough, the Kers left the marijuana in full view on the top of the sink because they were wholly oblivious that the police were on their trail. My Brother Clark recognizes that there is no evidence whatever of activity in the apartment, and is thus forced to find the requisite support for this element of the exception in the officers' testimony that, in their experience in the investigation of narcotics violations, other narcotics suspects had responded to police announcements by attempting to destroy evidence. Clearly such a basis for the exception fails to meet the requirements of the Fourth Amendment; if police experience in pursuing other narcotics suspects justified an unannounced police intrusion into a home the Fourth Amendment would afford no protection at all.

The recognition of exceptions to great principles always creates, of course, the hazard that the exceptions will devour the rule. If mere police experience that some offenders have attempted to destroy contraband justifies unannounced entry in any case, and cures the total absence of evidence not only of awareness of the officers' presence but even of such an attempt in the particular case, I perceive no logical basis for distinguishing unannounced police entries into homes to make [374 US 62] arrests for any crime involving evidence of a kind which police experience indicates might be quickly destroyed or jettisoned. Moreover, if such experience, without more, completely excuses the failure of arresting officers before entry, at any hour of the day or night, either to announce their purpose at the threshold or to ascertain that the occupant already knows of their presence, then there is likewise no logical ground for distinguishing between the stealthy manner in which the entry in this case was effected, and the more violent manner usually associated with totalitarian police of breaking down the door or smashing the lock.[31]

My Brother Clark correctly states that only when state law "is not violative of the Federal Constitution" may we defer to state law in gauging the validity of an arrest under the Fourth Amendment. Since the California [374 US 63] law of arrest here called in question patently violates the Fourth Amendment, that law cannot constitutionally provide the basis for affirming these convictions. This is not a case of conflicting testimony pro and con the existence of the elements requisite for finding a basis for the application of the exception. I agree that we should ordinarily be constrained to accept the state fact-finder's resolution of such factual conflicts. Here, however, the facts are uncontradicted: the Kers were completely oblivious of the presence of the officers and were engaged in no activity of any kind indicating that they were attempting to destroy narcotics. Our duty then is only to decide whether the officers' testimony—that in their general experience narcotics suspects destroy evidence when forewarned of the officers' presence—satisfies the constitutional test for application of the exception. Manifestly we should hold that such testimony does not satisfy the constitutional test. The subjective judgment of the police officers cannot constitutionally be a substitute for what has always been considered a necessarily objective inquiry,[32] namely, whether circumstances exist in the *particular* case which allow an unannounced police entry.[33]

[374 US 64] We have no occasion here to decide how many of the situations in which, by the exercise of our supervisory power over the conduct of federal officers, we would exclude evidence, are also situations which would require the exclusion of evidence from state criminal proceedings under the constitutional principles extended to the States by Mapp. But where the conduct effecting an arrest so clearly transgresses those rights guaranteed by the Fourth Amendment as does the conduct which brought about the arrest of these petitioners, we would surely reverse the judgment if this were a federal prosecution involving federal officers. Since our decision in Mapp has made the guarantees of the Fourteenth Amendment coextensive with those of the Fourth we should pronounce precisely the same judgment upon the conduct of these state officers.

ANNOTATION REFERENCES

1. As to the rules governing, prior to the Mapp Case, the admissibility of evidence obtained by illegal search, see 24 ALR 1408, 32 ALR 408, 41 ALR 1145, 52 ALR 477, 88 ALR 348, 134 ALR 819, 150 ALR 566, 50 ALR2d 531. See also 93 L ed 1797, 96 L ed 145, 98 L ed 581, 100 L ed 239, 6 L ed 2d 1544 (dealing with United States Supreme Court cases in point). For the law developed on the same subject in and after the Mapp Case, see 84 ALR2d 959.

2. Federal constitution as a limitation upon the powers of the states in respect of search and seizure. 19 ALR 644.

3. Right of search and seizure incident to lawful arrest without a search warrant, 32 ALR 680, 51 ALR 424, 74 ALR 1387, 82 ALR 782. See 4 L ed 2d 1982 (collecting Supreme Court cases in point).

4. What constitutes "probable cause" or "reasonable grounds" justifying arrest of narcotics suspect without warrant. 3 L ed 2d 1736.

FOOTNOTES

[1] This contention was initially raised prior to the trial. Section 995, California Penal Code, provides for a motion to set aside the information on the ground that the defendant has been committed without probable cause. Evidence on that issue was presented out of the presence of the jury, and, following the court's denial of the motion, the petitioners were tried and convicted by the jury.

[2] During the hearing on the § 995 motion, see note 1, supra, Black testified for the defense, admitting that he knew the petitioners but denying that he gave Officer Berman information about George Ker. Black first denied but then admitted that he had met with Officer Berman and another Officer in whose presence Berman said the information about Ker was given.

[3] Arresting Officers Berman and Warthen had been attached to the narcotics detail of the Los Angeles County Sheriff's office for three and four years, respectively. Each had participated in hundreds of arrests involving marijuana. Warthen testified that on "many, many occasions" in his experience with narcotics arrests "persons have flushed narcotics down toilets, pushed them down drains and sinks and many other methods of getting rid of them prior to my entrance. . . ."

[4] For the reasons discussed in § V of this opinion, we find that the validity of the search of the automobile is not before us and we therefore do not pass on it.

[5] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[6] "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ."

[7] Our holding as to enforceability of this federal constitutional rule against the States had its source in the following declaration in Wolf v Colorado, 338 U.S. 25, 27, 28, 93 L ed 1782, 1785, 69 S Ct 1359 (1949):

"The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is . . . implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause."

† Editor's Note: As stated on p. 732, supra, Parts II–V hereof represent the separate opinion of Clark, Black, Stewart, and White, JJ.

[8] In Draper the arrest upon probable cause was authorized under 26 USC § 7607, authorizing narcotics agents to make an arrest without warrant if they have "reasonable grounds to believe that the person to be arrested has committed or is committing such violation." Under § 836, California Penal Code, an officer may arrest without a warrant if he has "reasonable cause to believe that the person to be arrested has committed a felony . . . ."

[9] "To make an arrest, . . . in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which . . . [he has] reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired."

[10] "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant."

[11] Nor has the Court rejected the proposition that noncompliance may be reasonable in exigent circumstances subsequent to Miller. In Wong Sun v United States, 371 US 471, 9 L ed 2d 441, 83 S Ct 407 (1963), the Court held that federal officers had not complied with § 3109 in executing an arrest. There the Court noted that in Miller it had reserved the question of an exception in exigent circumstances and stated that "[h]ere, as in Miller, the Government claims no extraordinary circumstances—such as the imminent destruction of vital evidence, or the need to rescue a victim in peril— . . . which excused the officer's failure truthfully to state his mission before he broke in." Id. 371 US at 483, 484.

[12] A search of the record with the aid of hindsight may lend some support to the conclusion that, contra (Headnote 22) the reasonable belief of the (Headnote 23) officers, petitioners may not have been prepared for an imminent visit from the police. It goes without saying that in determining the lawfulness of entry and the existence of probable cause we may concern ourselves only with what the officers had reason to believe *at the time of their entry*. Johnson v United States, 333 US 10, 17, 92 L ed 436, 442, 68 S Ct 367 (1948). As the Court said in United States v Di Re, 332 US 581, 595, 92 L ed 210, 220, 68 S Ct 222 (1948), "a search is not to be made legal by what it turns up. In law it is good *or bad* when it starts and does not change character from" what is dug up subsequently. (Emphasis added.)

[13] In cases in which a search could not be regarded as incident to arrest because the petitioner was not present at the time of the entry and search, the absence of compelling circumstances, such as the threat of destruction of evidence, supported the Court's holdings that searches without warrants were unconstitutional. See Chapman v. United States, 365 US 610, 615, 5 L Ed 2d 828, 832, 81 S Ct 776 (1961); United States v Jeffers, 342 US 48, 52, 96 L ed 59, 64, 72 S Ct 93 (1951); Taylor v United States, 286 US 1, 5, 76 L ed 951, 953, 52 S Ct 466 (1932).

[14] Compare Johnson v United States, note 12, supra (333 US at 40). There the Court held that a search could not be justified as

incident to arrest since the officers, prior to their entry into a hotel room, had no probable cause for the arrest of the occupant. The Court stated that "[a]n officer gaining access to private living quarters under color of his office and of the law which he personifies must then have some valid basis in law for the intrusion." Here, of course, probable cause for the arrest of petitioner George Ker provided that valid basis.

[15] The record shows that petitioners made no objection to the admission of any of the evidence, thus failing to observe a state procedural requirement, People v Brittain, 149 Cal App 2d 201, 308 P2d 38 (1957); see Mapp v Ohio, supra (367 US at 659, note 9). However, the District Court of Appeal passed on the issue of the narcotics seized in the apartment, presumably on the ground that petitioners preserved that question by their motion under § 905, California Penal Code, which was directed toward the principal objection to that search—the alleged lack of probable cause. While "[t]here can be no question as to the proper (Headnote 34) presentation of a federal claim when the highest state court passes on it," Raley v Ohio, 360 US 423, 436, 3 L ed 2d 1344, 1354, 79 S Ct 1257 (1959), there is no indication in the court's opinion that it passed on the issue of the search of the automobile, nor is there any indication in the petitioners' briefs in that court that the issue was presented.

[16] Mapp v Ohio, 367 US 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933, did not purport to change the standards by which state searches and seizures were to be judged; rather it held only that the "exclusionary" rule of Weeks v United States, 232 US 383, 58 L ed 652, 34 S Ct 341, LRA1915B 834, was applicable to the States.

[17] Hale's view was representative: "A man, that arrests upon suspicion of felony, may break open doors, if the party refuse upon demand to open them. . . ." 1 Hale, Pleas of the Crown (1736), 583. See generally Miller v United States, 357 US 301, 306–310, 2 L ed 2d 1332, 1336–1338, 78 S Ct 1190; Accarino v United States, 85 App DC 394, 398–402, 179 F2d 456, 460–464; Thomas, The Execution of Warrants of Arrest, [1962] Crim L Rev 520, 597, 601–604.

[18] Compare also the statement of Bayley, J., in Burdett v Abbot, 14 East 1, 162–163, 104 Eng Rep 501, 563 (1811):

"Now in every breach of the peace the public are considered as interested, and the execution of process against the offender is the assertion of a public right: and in all such cases, I apprehend that the officer has a right to break open the outer door, provided there is a request of admission first made for the purpose, and a denial of the parties who are within."

See also Ratcliffe v Burton, 3 Bos & Pul 223, 127 Eng Rep 123 (1802); Kerbey v Denby, 1 M & W 336, 150 Eng Rep 463 (1836); cf. Park v Evans, Hob 62, 80 Eng Rep 211; Penton v Brown, 1 Keble 698, 83 Eng Rep 1193; Percival v Stamp, 9 Ex 167, 156 Eng Rep 71 (1853).

[19] See generally Gatewood v United States, 93 App DC 226, 229, 209 F2d 789, 791; 1 Bishop, New Criminal Procedure (2d ed 1913), § 201; 1 Varon, Searches, Seizures and Immunities (1961), 399–401; Day and Berkman, Search and Seizure and the Exclusionary Rule: A Re-Examination in the Wake of Mapp v Ohio, 13 West Res L Rev 56, 79–80 (1961).

[20] Ala Code, Tit 15 § 155; Ariz Rev Stat Ann § 13–1411; Deering's Cal Penal Code § 844; Fla Stat Ann § 901.19(1); Idaho Code § 19–611; Burns' Ind Ann Stat § 9–1009; Iowa Code Ann § 755.9; Kan Gen Stat § 62–1819; Ky Rev Stat § 70.078; Dart's La Crim Code, Art 72; Mich Stat Ann § 28.880; Minn Stat Ann § 629.34; Miss Code § 2471; Mo Rev Stat § 544.200; Mont Rev Code § 94–6011; Neb Rev Stat § 29–411; Nev Rev Stat § 171.275; McKinney's NY Crim Code § 178; NC Gen Stat § 15–44; Page's Ohio Rev Code Ann § 2935.15; Okla Stat Ann, Tit 22, § 194; Ore Rev Stat § 133.320; SC Code § 53–198; SD Code § 34.1606; Tenn Code Ann § 40–807; Utah Code Ann 77–13–12; Wash Rev Code § 10.31.040; Wyo Comp Stat § 10–309.

Compare Code of Crim Proc, American Law Institute, Official Draft (1930), § 28:

"*Right of Officer to break into building.* An officer, in order to make an arrest either by virtue of a warrant, or when authorized to make such arrest for a felony without a warrant, as provided in section 21, may break open a door or window of any building in which the person to be arrested is or is reasonably believed to be, if he is refused admittance after he has announced his authority and purpose."

[21] See also Henry v United States, 361 US 98, 100, 101, 4 L ed 2d 134, 137, 138, 80 S Ct 168; Lasson, The History and Development of the Fourth Amendment to the United States Constitution (1937), c. II; Barrett, Personal Rights, Property Rights, and the Fourth Amendment, 1960 Supreme Court Review 46, 70–71; Comment, Search and Seizure in the Supreme Court: Shadows on the Fourth Amendment, 28 U of Chi L Rev 664, 678–679 (1961). Compare East-India Co v Skinner, Comb 342, 90 Eng Rep 516.

[22] Lasson, The History and Development of the Fourth Amendment to the United States Constitution (1937), 54.

[23] In these two respects, the practice of unannounced police entries by night is also considerably more offensive to the rights protected by the Fourth Amendment than the use of health-inspection and other administrative powers of entry, concerning the constitutionality of which this Court has divided sharply, Frank 1. Maryland, 359 US 360, 3 L ed 2d 877, 79 S Ct 804, supra; Ohio et rel. Eaton v. Price, 364 US 263, 4 L ed 2d 1708, 80 S Ct 1463. Since my Brother Clark does not rely upon either of those decisions, I have no occasion to discuss further the applicability of either to the case at bar. For further consideration of problems raised by those cases, see generally, Waters, Rights of Entry in Administrative Officers, 27 U of Chi L Rev 79 (1959); Comment, State Health Inspections and "Unreasonable Search": The Frank Exclusion of Civil Searches, 44 Minn L Rev 513 (1960).

[24] It is not clear whether the English law ever recognized such an exception to the requirement of notice or awareness. See, e.g., Genner v Sparks, 6 Mod 173, 87 Eng Rep 928. It is stated in an English annotator's note to Semayne's Case, supra, that "if a man being legally arrested, escapeth from the officer, and taketh shelter though in his own house, the officer may upon fresh suit break open doors in order to retake him, having first given due notice of his business and demanded admission, and been refused." 77 Eng Rep, at 196. The views of other commentators are ambiguous on this point. See, e. g., 2 Hawkins, Pleas of the Crown (6th ed 1787), c. 14, § 8. Blackstone's view was that "in case of felony *actually* committed, or a dangerous wounding, whereby felony is like to ensue . . . [a constable] may upon probable suspicion arrest the felon; and for that purpose is authorized (as upon a justice's warrant) to break open doors, and even to kill the felon if he cannot otherwise be taken . . . ." 4 Commentaries 292.

[25] See Professor Wilgus' comment: "Before doors are broken, there must be a necessity for so doing, and notice of the authority and purpose to make the arrest must be given and a demand and refusal of admission must be made, *unless this is already understood, or the peril would be increased.*" Wilgus Arrest Without a Warrant, 22 Mich L Rev 541, 798, 802 (1924). (Emphasis supplied.) Cf. Accarina v United States, 85 App DC 394, 398–402, 179 F2d 456, 460–464.

Compare Lord Mansfield's statement, in 1774, of the rationale for the requirement of announcement and demand for admission: "The ground of it is this; that otherwise the consequences would be fatal: for it would leave the family within, naked and exposed to thieves and robbers. It is much better therefore, says the law, that you should wait for another opportunity, than do an act of violence, which may probably be attended with such dangerous consequences." Lee v Gansel, 1 Cowp 1, 6–7, 98 Eng Rep 935, 938.

[26] The comment of Rooke, J., in Ratcliffe v Burton, 3 Bos & Pul 223, 230, 127 Eng Rep 123, 127 (1802), is relevant here: "What a privilege will be allowed to sheriffs' officers if they are permitted to effect their search by violence, without making that demand which possibly will be complied with, and consequently violence be rendered unnecessary!" This view of the requirement of notice or awarenes has its parallel in the historic English requirement that an arresting officer must give notice of his authority and purpose to one whom he is about to arrest. In the absence of such notice, unless the person being arrested already knew of the officer's authority and mission, he was justified in resisting by force, and might not be charged with an additional crime if injury to the officer resulted. The origin of this doctrine appears to be Mackalley's Case, 9 Co Rep 65b, 69a, 77 Eng Rep 828, 835. See also Rex v George, [1935] 2 DLR 516 (BC Ct App); Regina v Beaudette, 118 Can Crim Cases 295 (Ont Ct App). Compare, e. g., People v. Potter, 144 Cal App. 2d 350, 300 P2d 889, in which noncompliance with § 844 was excused because the defendant was known to have been convicted of three previous robberies and was suspected of a fourth—thought in fact, upon entering his hotel room unannounced and by means of a key obtained from the manager, the officers found the defendant in bed, with the lights off, and unarmed. The entry occurred after midnight.

[27] The importance of this consideration was aptly expressed long ago by Heath, J., in Ratcliffe v Burton, 3 Bos & Pul 223, 230, 127 Eng Rep 123, 126–127 (1802):

"The law of England, which is founded on reason, never authorises such outrageous acts as the breaking open every door and lock in a man's house without any declaration of the authority under which it is done. Such conduct must tend to create fear and dismay, and breaches of the peace by provoking resistance. This doctrine would not only be attended with great mischief to the persons against whom process is issued, but to other persons also, since it must equally hold good in cases of process upon escape, where the party has taken refuge in the house of a stranger. Shall it be said that in such case the officer may break open the outer door of a stranger's house without declaring the authority under which he acts, or making any demand of admittance? No entry from the books of pleading has been cited in support of this justification, and Semayne's case is a direct authority against it."

[28] See also McDonald v United States, 335 US 451, 460, 461, 93 L ed 153, 160, 161, 69 Ct 191 (concurring opinion) for Mr. Justice Jackson's comment: "Many homeowners in this crime-beset city doubtless are armed. When a woman sees a strange man, in plain clothes, prying up her bedroom window and climbing in, her natural impulse would be to shoot."

[29] See, e.g., Kamisar, Public Safety v Individual Liberties: Some "Facts" and "Theories," 53 J Crim L, Criminology and Police Science 171, 188–190 (1962); Rogge, Book Review, 76 Harv L Rev 1516, 1522–1523 (1963).

[30] Compare Justice Traynor's recent comment:

"Nevertheless the United States Supreme Court still confronts a special new responsibility of its own. Sooner or later it must establish ground rules of unreasonableness

to counter whatever local pressures there might be to spare the evidence that would spoil the exclusionary rule. Its responsibility thus to exercise a restraining influence looms as a heavy one. It is no mean task to formulate far-sighted constitutional standards of what is unreasonable that lend themselves readily to nation-wide application." Traynor, Mapp v Ohio at Large in the Fifty States, 1962 Duke LJ 319, 328.

[31] The problems raised by this case are certainly not novel in the history of law enforcement. One of the very earliest cases in this field, decided more than three centuries ago, involved facts strikingly similar to those of the instant case. The case of Waterhouse v Saltmarsh, Hob 263, 80 Eng Rep 409, arose out of the service by a sheriff and several bailiffs of execution upon a bankrupt. These officers, having entered the outer door of the house by means not described, "ran up to the chamber, where the plaintiff and his wife were in bed and the doors lockt, and knocking a little, without telling what they were, or wherefore they came, brake open the door and took him . . ." The sheriff was fined the substantial sum of £200—for what the court later described in a collateral proceeding as "the unnecessary outrage and terror of this arrest, and for not signifying that he was sheriff, that the door might have been opened without violence . . ." Hob, at 264, 80 Eng Rep, at 409. Compare another early case involving similar problems, Park v. Evans, Hob 62, 80 Eng Rep. 211, in which the Star Chamber held unlawful an entry effected by force after the entering officers had knocked but failed to identify their authority or purpose. The Star Chamber concluded that "the opening of the door was occasioned by them by craft, and then used to the violence, which they intended."

[32] Any doubt concerning the scope of the California test which may have survived People v Maddox, 46 Cal 2d 301, 294 P2d 6, must have been removed by the later case of People v Hammond, 54 Cal 2d 846, 854, 855, 9 Cal Rptr 233, 357 P2d 289, 294:

"When there is reasonable cause to make an arrest, and the facts known to the arresting officer before his entry are not inconsistent with a good faith belief on his part that compliance with the formal requirements of . . . section [844] is excused, a failure to comply therewith does not invalidate the search and seizure made as an incident to the ensuing arrest."

[33] I think it is unfortunate that this Court accepts the judgment of the intermediate California appellate court on a crucial question of California law—for it is by no means certain that the Supreme Court of California, the final arbiter of questions of California law, would have condoned the willingness of the District Court of Appeal to excuse noncompliance with the California statute under the facts of this case. For the view of the California Supreme Court on the scope of the exception under § 844, see e.g., People v Martin, 45 Cal 2d 755, 290 P2d 855; People v Carswell, 51 Cal 2d 602, 335 P2d 99; People v Hammond, 54 Cal 2d 846, 9 Cal Rptr 233, 357 P2d 289.

An examination of the California decisions which have excused noncompliance with § 844 reveals the narrow scope of the exceptions heretofore recognized—confined for the most part to cases in which officers entered in response to cries of a victim apparently in imminent danger, e.g., People v Roberts, 47 Cal 2d 374, 303 P2d 721; or in which they first knocked at the door, or knew they had been seen at the door, and then actually heard or observed destruction of evidence of the very crime for which they had come to arrest the occupants, see, e.g., People v Moore, 140 Cal App 2d 870, 295 P2d 969; People v Steinberg, 148 Cal App 2d 855, 307 P2d 634; People v Williams, 175 Cal App 2d 774, 1 Cal Rptr 44; People v Fisher, 184 Cal App 2d 308, 7 Cal Rptr 461. See generally, for summary and discussion of California cases involving various grounds for noncompliance with § 844, Fricke, California Criminal Evidence (5th ed 1960), 432–433; Comment, Two Years With the Cahan Rule, 9 Stan L Rev 515, 528–529 (1957).

Mr. ERVIN. Mr. President, in this case, there were three opinions—one by Judge Clark, one by Judge Harlan, and one by Judge Brennan. The Clark opinion, which represented the views of four Judges, and the Brennan opinion, which represented the views of four Judges, agreed on the law. They disagreed on the facts.

They all agreed that in the case of a search made with a warrant or incidental to an arrest, the fourth amendment places upon the officer the constitutional obligation to notify the occupants of the House of his presence, purpose, and authority, and to demand that they open the door and admit him.

If an officer ordinarily enters a house without announcing his presence and purpose and authority and making the demand for his admittance, his act is unconstitutional, regardless of whether he is making an arrest or making a search, and the evidence obtained must be excluded.

The eight Judges in the Ker case agreed that the ruling in the Mapp case was correct, and that the due process clause of the 14th amendment had made the 14th amendment applicable to the States binding on State officers.

Justice Harlan disagreed with the eight Judges. He said he did not adopt the incorporation doctrine that the matter was to be tested by the due process clause of the 14th amendment.

Justice Clark held, and three Judges agreed with him, that on the particular facts of the case, the officer was justified in not apprising the parties of his presence and purpose and authority, and he could gain admittance under one of the exceptions of the California law.

In this decision, instead of being in disagreement on the law and the Constitution, eight Judges agreed on the law and the Constitution. They agreed, in three instances, that the necessity of knocking and demanding admittance did not exist if certain circumstances gave the officer executing the warrant, at the time he undertook to execute it, notice of certain facts. The first was that those within the house already knew of the presence, the purpose, and the authority of the officer; or, second, in case the existing circumstances at the time the officer undertook to execute the warrant gave him notice or probable cause to believe that the persons within the house were attempting to escape or to destroy or otherwise dispose of the things sought to be seized under the warrant. The third exception is that the notice and demand will place the officer or someone in the building in imminent peril of bodily harm.

Under the decision and concurrence on the Constitution of the eight Judges, it is absolutely unconstitutional for an officer executing a peace warrant to break and enter a house without first giving notice of his presence, purpose, and authority and demanding admittance, unless the facts existing at that particular moment—not at the time he gets a peace warrant from some U.S. magistrate miles away; not at a time, hours away, when he gets a peace warrant, but at that specific moment—make it plain that one of these three conditions exists.

There is now no Federal no-knock statute. There is now no law that authorizes a Federal officer to enter a house without giving notice when he undertakes to execute a search warrant. I abhor all no-knock statutes, because they enable officers of the law to break into a house like a thief in the night.

So it is my purpose, when the time comes, to move to table the Griffin amendment, because I think any amendment or any Federal statute that authorizes a no-knock law is subject to great abuses. I think that in the case of section 702(b), which I seek to strike, and in the Griffin amendment, it is unconstitutional because the right to enter without knocking must be dependent upon the facts existing at the precise time the officer makes the entry, and not at the time that he gets a search warrant, which may occur miles away and hours away in point of time.

So I am going to move to table the Griffin amendment at the appropriate time, and I trust a majority of the Senate will share my view that a no-knock statute is incompatible with an essential liberty under our Constitution and will vote to table. But if we are going to have a no-knock statute, I want to have a no-knock statute that is constitutional. So, if the motion to table should fail, I shall offer a perfecting amendment to the Griffin amendment which would be constitutional, under the decision of the eight Judges in the Ker case, because it allows the officer to exercise no-knock authority when, at the particular time he undertakes to enter the house, he has notice of the facts enumerated in that opinion as exceptions to the general rule.

The amendment proposed by the Senator from Michigan (Mr. GRIFFIN), like the original provision in the bill to which it is directed, is clearly unconstitutional, not only under the Ker case but under two cases from the State of California, the law of which State was involved in that case, those cases being the People against Santiago, reported in 76 California Reports 809, and the People against Gastelo, reported in 63 California Reports at page 10.

I ask unanimous consent that the opinions in both of those cases be printed in the RECORD at this point, as a part of my remarks.

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

[76 Cal.Rptr. 809]

THE PEOPLE, PLAINTIFF AND RESPONDENT, *v.* MARLO DE SANTIAGO, DEFENDANT AND APPELLANT

Cr. 12033.

(Supreme Court of California, In Bank. Apr. 24, 1969)

Rehearing Denied May 21, 1969.

The Superior Court, Los Angeles County, Richard Schauer, J., found defendant guilty of possession of heroin for sale and he appealed from the order denying his motion for new trial. The Supreme Court, Sullivan,

J., held that where decision holding that, in absence of special circumstances in narcotics case, officers must comply with statute requiring officer to announce his authority and purpose before breaking open any door to window of house had not been decided at time of defendant's trial, defendant's failure to assert noncompliance with statute as ground of objection to admission of evidence at his trial did not preclude his asserting such ground on appeal. The court further held that evidence obtained by officers who had no warrant and who forcibly entered defendant's premises without first announcing their authority and purpose was inadmissible in defendant's trial.

Reversed.

McComb, J., dissented.

Opinion Cal.App., 65 Cal.Rptr. 252, vacated.

1. Arrest ⇐63(4), 71.1(3).

Officers who had been advised of defendant's narcotics activities by reliable informer who was given marked money and made purchase of narcotics from defendant had probable cause to arrest defendant and search him.

2. Criminal Law ⇐1043(2).

Generally, questions relating to admissibility of evidence will not be reviewed on appeal absent specific and timely objection at trial on ground sought to be urged on appeal.

3. Criminal Law ⇐1043(3).

Where decision holding that, in absence of special circumstances in narcotics case, officers must comply with statute requiring officer to announce his authority and purpose before breaking open any door or window of house had not been decided at time of defendant's trial, defendant's failure to assert noncompliance with statute as ground of objection to admission of evidence at his trial did not preclude his asserting such ground on appeal; People v. Flores, 68 Cal.2d 563, 68 Cal.Rptr. 161, 440 P.2d 233 overruled and cases inconsistent herewith disapproved. West's Ann.Evid.Code, § 353; West's Ann. Pen.Code, §§ 844, 1531.

4. Arrest ⇐68.

Particular reason for officer's noncompliance with statute relating to announcement of authority and purpose before breaking down door or window to gain admittance to premises must be based upon specific facts of case. West's Ann.Pen.Code, § 844.

5. Arrest ⇐68.

Officer's general knowledge that narcotics suspects attempt to get rid of evidence once officers announce their presence and request *admission* was insufficient, in absence of specific facts showing that defendant intended to get rid of evidence, to sustain noncompliance with statute providing that officers must announce their authority and purpose before breaking door or window to gain entry. West's Ann.Pen.Code, § 844.

6. Arrest ⇐68.

Reason for officer's entry without announcement must be additional to basic reason for entry. West's Ann.Penn.Code, § 844.

7. Arrest ⇐68.

Where officer and three others had defendant's premises under surveillance for some time and defendant who had been arrested short time before on another charge had remained in area, officer's belief that nonviolent defendant might try to escape did not justify noncompliance with statute requiring officer to announce his authority and purpose before breaking door or window to gain admission. West's Ann.Pen.Code, § 844.

8. Criminal Law ⇐394.4(11).

Evidence obtained by officers who had no warrant and forcibly entered defendant's premises without first announcing their authority and purpose was inadmissible in defendant's trial. West's Ann.Pen.Code, § 844.

Daniel L. Dintzer, Los Angeles, under appointment by the Supreme Court, for defendant and appellant.

Thomas C. Lynch, Atty. Gen., William E. James, Asst. Atty. Gen., and Thomas Kerrigan, Deputy Atty. Gen., for plaintiff and respondent.

Evelle J. Younger, Dist. Atty., (Los Angeles), Harry Wood and Harry B. Sondheim, Deputy Dist. Attys', as amici curiae on behalf of plaintiff and respondent.

SULLIVAN, Justice.

In a nonjury trial defendant Mario De Santiago was acquitted of a charge of selling heroin (Health & Saf.Code, § 11501) and convicted of the possession of heroin for sale (Health & Saf.Cod, § 11500.5). His motion for a new trial was denied, criminal proceedings were adjourned, and, after proceedings had pursuant to Welfare and Institutions Code section 3051 et seq., defendant was committed to the state hospital at Corona for treatment as an addict. We properly entertain, in these circumstances, defendant's appeal from the order denying his motion for a new trial.[1]

On February 10, 1966, Deputy Sheriffs Trujillo and Penland, together with other officers, by prearrangement met one Henry Estrada, a reliable informer, in an alley near defendant's apartment. Earlier that day Estrada had told Deputy Trujillo of a conversation with defendant during which the latter stated than on February 8 he had been arrested by narcotics officers for "marks," that he had tricked them into releasing him by offering to help them apprehend a "dope peddler," but that he never contacted the officers. Estrada also told Deputy Trujillo that he had purchased heroin from defendant on two occasions. At the meeting place near the apartment, the officers searched Estrada but found neither contraband nor money on his person. They then supplied him with marked currency and watched him proceed along a walk leading to defendant's apartment. About five minutes later Estrada returned with a balloon containing white powder, later determined to be heroin, which he said he had bought from defendant after being admitted into the apartment.

The deputies thereupon contacted defendant's landlord, and advised the latter that they were conducting a narcotics investigation and were waiting for defendant to come out of the apartment so that they would not have to break in through the door. After waiting an hour for defendant to leave, Deputy Trujillo advised the landlord that the officers would have to make a forcible entry. Without knocking or otherwise demanding admittance or explaining the purpose for which admittance was desired, Deputy Trujillo kicked open the door to defendant's apartment and immediately placed defendant under arrest.[2] A search of defendant's person uncovered in his pants pocket four more balloons containing a similar white powder later shown to be heroin. Narcotics supplies and paraphernalia used for diluting and packaging heroin, some of which materials containing residues of heroin, were found in the apartment. Defendant's wallet, found in the pocket of a coat hanging in a closet, contained the marked currency earlier supplied to Estrada. Deputy Penland observed puncture wounds, 24 hours to two weeks old, near the inner elbows of defendant's arms.

[1] The deputies were not armed with a search or arrest warrant at the time of their entry into the apartment. However the record clearly shows that Estrada was a reliable informant and that the information obtained from him by the deputies constituted reasonable cause to make an arrest and search without a warrant. (People v. Prewitt (1959) 52 Cal. 2d. 330, 337, 341, P.2d 1; Willson 1. Superior Court (1956) 46 Cal.2d 291, 294–295, 294 P.2d 36; People v. Boyles (1955) 45 Cal.2d. 652, 656, 290 P.2d 535.) Defendant's contention that there was no probable cause for his arrest and for the subsequent search of his person and premises must therefore fall.

He further contends, however, that the trial court committed prejudicial error in admitting in evidence the heroin and certain narcotics paraphernalia since such evidence was obtained as the result of an unlawful entry by the deputies who failed to comply with the provisions of Penal Code section 844. That section provides: "To make an arrest, a private person, if the offense be a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired."

[2] At the outset of our examination of this contention we are met with the fact that defendant failed to object to the admission of the subject evidence on the ground which he now advances.[3] It is the general rule, of course, that questions relating to the admissibility of evidence will not be reviewed on appeal absent a specific and timely objection at trial on the ground sought to be urged on appeal. (People v. Robinson (1965) 62 Cal. 2d 889, 894, 44 Cal.Rptd. 762, 402 P.2d 834; People v. Rojas (1961) 55 Cal. 2d 252, 260, 10 Cal. Rptr. 465, 358 P. 2d 921, 85 A.L.R. 2d 252; see generally Witkin, Cal. Evidence (2d ed. 1966), § 1285, p. 1188.) [4] Defendant urges, however, that that rule should be held inapplicable to the instant case because an objection on the ground of noncompliance with section 844 would have been wholly without support in the law as it stood at the time of trial. Reference is made to the fact that People v. Gastelo (1967) 67 Cal.2d 586, 63 Cal.Rptr. 10, 432 P.2d 706, upon which defendant bases his contention on appeal, was not yet decided at the time of trial, and he urges that that case represents a change in the law so significant as to excuse his failure to object at trial.

In other instances we have excused a failure to object where to require defense counsel to raise an objection "would place an unreasonable burden on defendants to anticipate unforseen changes in the law and encourage fruitless objections in other situations where defendants might hope that an established rule of evidence would be

[1] Defendant's notice of appeal was filed prior to the 1968 amendment to section 1237 of the Penal Code which provides in relevant part that "The commitment of a defendant for narcotics addiction shall be deemed to be a final judgment within the meaning of this section 90 days after such commitment." The former section 1237, as amended in 1965, provided that an appeal might be taken "From an order denying a motion for a new trial, in cases where the defendant is committed before final judgment for * * * narcotics addiction."

[2] At trial Deputy Trujillo gave the following entry: "Q [by the prosecutor] Why is it that you didn't announce that you were police officers before you went in? A Because it's been our experience that when making an arrest of that type, that when you announce yourself, there is usually a rush to the bathroom and there is a flushing of narcotics—anyway, the person will try to get rid of narcotics in one manner or another. Q Did you have any knowledge of the defendant's background so far as any possible use of violence is concerned? A I have arrested the defendant before; as to violence, maybe an escape, but that's all."

[3] At trial defendant unsuccessfully moved to suppress the subject evidence on the grounds that there was no probable cause to arrest and no warrants had been obtained. The ground of noncompliance with section 844 was not mentioned.

[4] See also Evidence Code section 353, in effect January 1, 1967, after the trial of this case.

changed on appeal." (People v. Kitchens (1956) 46 Cal.2d 260, 263, 294 P.2d 17, 19; see also People v. Hillery (1965) 62 Cal.2d 692, 711-712, 44 Cal.Rptr. 30, 401 P.2d 382.) In *Kitchens* the failure to raise a timely objection was excused because that case was tried before our decision in People v. Cahan (1955) 44 Cal.2d 434 282 P.2d 905, 50 A.L.R.2d 513, at a time when the trial court was bound by earlier decisions to the effect that illegally obtained evidence was nevertheless admissible. It was deemed that only in trials commencing after *Cahan* could defense counsel have reasonably been expected to object to the receipt of such evidence, and his failure to do so was excused in *Kitchens*.

The crucial question confronting us in the case at bench is whether or not the rule announced in *Gastelo*, the content of which we examine below, represented such a substantial change in the former rule as to excuse an objection anticipating that decision. We are guided in this inquiry not by metaphysical considerations as to what the law "was" preceding *Gastelo*, but by practical considerations as to what competent and knowledgeable members of the legal profession should reasonably have concluded the law to be. This is the approach undertaken by us in *Kitchens*, where we emphasized the reasonable expectations of counsel at the time of trial: "* * * in view of the decisions of this court prior to People v. Cahan, *supra*, an objection would have been futile, and 'The law neither does nor requires idle acts.' Civ. Code § 35.32." (46 Cal.2d at p. 263, 294 P.2d at p. 19.)

We therefore undertake to determine the state of the law as it would have appeared to competent and knowledgeable counsel at the time of the trial of the instant case which took place prior to our decision in *Gastelo*.

In 1956 we held in the leading case of People v. Maddox (1956) 46 Cal.2d 301, 294 P.2d 6, that the requirements of section 844 are "limited by the common law rules that compliance is not required if the officer's peril would have been increased or the arrest frustrated had he demanded entrance and stated his purpose." (46 Cal. 2d at p. 306, 294 P.2d at p. 9.) In that case police officers, having probable cause to believe that the defendant was selling narcotics, went to his residence and knocked on the door. One of the officers heard a male voice say "Wait a minute" and also heard the sound of retreating footsteps. He kicked the door open and apprehended the defendant. On the basis of these circumstances we concluded that "When as in this case, [the officer] has reasonable grounds to believe a felony is being committed and hears retreating footsteps, the conclusion that his peril would be increased or that the felon would escape if he demanded entrance and explained his purpose, is not unreasonable." (46 Cal.2d at p. 306, 294 P.2d at p. 9.)

Subsequent pre-*Gastelo* decisions of this court which applied the so-called "Maddox exceptions" invariably involved specific factual elements comparable to the "retreating footsteps" in *Maddox*—that is, circumstances peculiar to the entry in question by which the officers could reasonably conclude that announcement would increase their own peril or frustrate the arrest. We summarized some of these decisions in *Gastelo* as follows: "* * * in People v. Carrillo (1966) 64 Cal.2d 387, 50 Cal. Rptr. 185, 412 P.2d 377, entry followed a knock and observation of suspicious movements. In People v. Smith (1966) 63 Cal. 2d 779, 48 Cal. Rptr. 382, 409 P. 2d 222, and People v. Gilbert (1965) 63 Cal. 2d 690, 47 Cal. Rptr. 909, 408, P.2d 365, the officers were in fresh pursuit of gun-wielding defendants. Similarly, in People v. Hammond (1960) 54 Cal. 2d 846, 9 Cal. Rptr. 233, 357 P.2d 289, officers had cause to believe defendant had a gun and was under the influence of heroin at the time of arrest." (People v. Gastelo, *supra*, 67 Cal. 2d at p. 588, 63 Cal. Rptr. at p. 12, 432 P.2d at p. 708.)

However, numerous decisions of the Courts of Appeal, some of which were filed within months of the *Maddox* decision, undertook to excuse compliance with section 814 or its counterpart section 1531[5] in the absence of such or similar circumstances. Moreover, in a number of these cases the defendant's petition for a hearing in this court was denied.

The first of these cases was People v. King (1956) 140 Cal.App.2d 1, 294 P.2d 972. There officers having reasonable cause to believe that the occupant of a certain residence was engaging in bookmaking went to the address in question. An officer knocked on the door and identified himself. After waiting about two minutes and receiving no response, he made a forced entry into the premises. On appeal the court concluded that section 844 was not complied with since the record failed to disclose whether the officer "demanded admittance and explained the purpose for which admittance is desired" (§ 844, cf. People v. Cockrell (1965) 63 Cal.2d 659, 665–666, 47 Cal. Rptr. 788, 408 P.2d 116; People v. Rosales (1968) 68 Cal.2d 299, 302, 66 Cal. Rptr. 1, 437 P.2d 489), but held nevertheless that such compliance was excused under *Maddox*. No explanation for this holding was offered other than a long quotation from the *Maddox* opinion. This court denied a hearing less than two months after the *Maddox* decision.

A year later, in People v. Shelton (1957) 151 Cal.App.2d 587, 311 P.2d 859, a rationale for *King* and similar cases was articulated. There officers again went to the residence of one whom they reasonably believed to be engaging in bookmaking. After ringing the doorbell and waiting "for one-half minute," they forced the door with a sledgehammer. The court found that compliance with section 844 was excused under *Maddox:* "In view of the case with which guilty persons may destroy records of bets (as appellant in fact was doing when the officers forced an entry into his home) we cannot say that the officers' conduct in this case was not justified * * *." (151 Cal.App.2d at p. 588, 311 P.2d at p. 860). Similarly, in People v. Russell (1963) 223 Cal.App. 2d 733, 36 Cal.Rptr. 27, the court justified the officers' noncompliance with section 844 solely on the basis of the kind of criminal activity in which they had reasonable cause to believe defendant was engaging: "Experienced in bookmaking activities, familiar with the manner in which they are carried on and the habits of those so engaged, and knowing the practices employed, the papers, apparatus and paraphernalia used, and the case with which records of bets can be destroyed, [the officer] was justified in assuming that if he first informed the occupant of his presence and demanded admission to the premises, the latter might become alarmed and break the telephone connection, attempt to destroy betting markers and other incriminating evidence, and try to leave." (223 Cal.App.2d at p. 737, 36 Cal.Rptr. at p. 29.) This court denied a hearing.

The above rationale, first employed in bookmaking cases, was also applied to narcotics cases. (See People v. Sayles (1956) 140 Cal.App.2d 657, 295 P.2d 579; People v. Morris (1958) 157 Cal.App.2d 81, 320 App.2d 67; People v. Miller (1958) 162 Cal. App. 2d 96, 328 P.2d 506; People v. Covan (1960) 178 Cal.App.2d 416, 2 Cal.Rptr. 811 [hearing denied]; People v. Montano (1960) 184 Cal. App.2d 199, 7 Cal.Rptr. 307; People v. Gauthier (1962) 205 Cal.App.2d 419, 22 Cal.Rptr. 888 [hearing denied]; People v. Guthaus (1962) 208 Cal.App.2d 785, 25 Cal. Rptr. 735 [hearing denied]; People v. Villanueva (1963) 220 Cal.App.2d 443, 33 Cal.Rptr. 811 [hearing denied]; People v. Samuels (1964) 229 Cal. App.2d 351, 40 Cal.Rptr. 290 [hearing denied]; People v. Halloway (1964) 230 Cal. App.2d 834, 41 Cal.Rptr. 325; People v. Manriguez (1965) 231 Cal.App.2d 725, 42 Cal. Rptr. 157; People v. Aguilar (1965) 232 Cal. App.2d 173, 42 Cal.Rptr. 666; People v. King (1965) 234 Cal.App.2d 423, 44 Cal. Rptr. 500 [hearing denied]; People v. La Peluso (1966) 239 Cal.App.2d 715, 49 Cal.Rptr. 85 [hearing denied].) Its first articulation in the context of narcotics came in the case of People v. Guthaus, *supra* 208 Cal.App.2d 785, 25 Cal. Rptr. 735, where the Court of Appeal, holding that an unannounced entry was justified under the "*Maddox* exceptions" to section 844, stated: "In this case the sheriff's deputies had reasonable cause to believe that a felony was being committed in the house, to wit, the possession and sale of narcotics. As experienced members of a narcotics squad, they were entitled to conclude in good faith that if they informed the defendant of their presence and demanded admission before breaking into the premises, he might attempt to dispose of the narcotics then in his possession." (208 Cal.App.2d at p. 791, 25 Cal.Rptr. at p. 738.) The defendant's petition for a hearing was denied by this court.

Similar statements of the rationale in question were expressed in later narcotics cases (see People v. Samuels, *supra*, 229 Cal.App.2d 351, 361, 40 Cal.Rptr. 290 [hearing denied]; People v. Holloway, *supra*, 230 Cal.App.2d 834, 840, 41 Cal.Rptr. 325), and its ultimate formulation was advanced in People v. Manriquez, *supra*, 231 Cal.App. 2d 725, 42 Cal.Rptr. 157, a case whose facts are strikingly similar to those in the case now before us. There police officers, suspecting the defendant of dealing in narcotics, provided an informer with money, having recorded the serial numbers thereof, and sent him to the defendant's house in order to make a purchase. When the informer returned without the money and with a quantity of heroin, the officers made an unannounced forcible entry into the house. At trial one of the officers testified as follows relative to his reasons for the mode of entry: "It has been my experience that people involved in narcotic trafficking will always attempt to dispose of evidence, either by flushing or some other disposal in the house." (231 Cal.App.2d at p. 728, 42 Cal. Rptr. at p. 159.) The Court of Appeal, holding that noncompliance with section 844 was excused, stated: "We need not here determine how far in non-narcotic cases, a general course of conduct on the part of most law violators could be used as an excuse for ignoring the statutory mandate expressed in section 844. At least in cases of suspected narcotic violations, the evidence, in the form of narcotics or marked money, is of a kind susceptible of destruction in a matter of seconds. We think that where, as here, the officers are dealing with an offense committed within minutes of the entry, their belief in the necessity for immediate entry without warning—a belief accepted and concurred in by the trial court—cannot be disregarded on appeal. As was pointed out in People v. Maddox (1956) 46 Cal.2d 301, 306, 294 P.2d 6, the rule requiring warning is statutory and not constitutional; it may and should yield to the practical necessities of reasonable law enforcement activity." (231 Cal.App.2d at pp. 728–729, 42 Cal.Rptr, at p. 160.)

From the foregoing summary it is manifest that, prior to the *Gastelo* case, competent and knowledgeable defense counsel concerned with preventing the admission of evidence obtained by means of an entry which failed to comply with the provisions

[5] Section 1531 provides: "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance."

of section 844 or section 1531 could only have concluded that compliance with these sections was excused by law without any showing of particular exigency whenever the nature of the evidence sought was such as to facilitate easy disposal.[6] In *Gatselo*, however, we held precisely to the contrary: "* * * we have excused compliance with the statute in accordance with established common law exceptions to the notice and demand requirements on the basis of the specific facts involved. No such basis exists for nullifying the statute in all narcotics cases, and, by logical extension, in all other cases involving easily disposable evidence." (67 Cal.2d at p. 588, 63 Cal.Rptr. at p. 12, 432 P.2d at p 708.)

[3] We do not believe that we can demand of defendants or their counsel the prescience necessary to anticipate that a rule so deeply rooted as that whose history we have outlined above would be suddenly extirpated. "A contrary holding would place an unreasonable burden on defendants to anticipate unforeseen changes in the law and encourage fruitless objections in other situations where defendants might hope that an established rule of evidence would be changed on appeal." (People v. Kitchens, *supra*. 46 Cal.2d 260, 263, 294 P.2d 17, 19.) We therefore hold that defendant is not precluded from raising for the first time on this appeal his objection based upon section 844 of the Penal Code.[7]

We turn to the merits of defendant's contention. First, it clearly appears that the forced entry here in question was effected absent compliance with the provisions of section 844, for the officers made no efforts of any kind to announce their presence prior to entry. (Cf. People v. Cockrell, *supra*, 63 Cal.2d 659, 665–666, 66 Cal.Rptr. 1, 437 P.2d 489.) Thus, the question before us whether such compliance was excused under the common law exceptions to the rule of announcement which were first set forth by this court in *Maddox*.

According to the testimony of Deputy Trujillo, which is set forth in relevant part in footnote 2, *ante*, there were two reasons for the manner of entry undertaken. The first of these was the officer's general experience relative to the propensity of narcotics violators to dispose of evidence upon being informed of the presence of police. The second was the officer's knowledge of defendant's particular propensity to attempt escape and his motive for such an attempt in the circumstances. We consider each of these reasons in order.

[4] Our decision in People v. Gastelo, *supra*, 67 Cal.2d 586, 63 Cal.Rptr. 10, 432 P.2d 706, clearly forecloses the propriety of noncompliance with section 844 or its counterpart section 1531 when such noncompliance is based solely upon an officer's general experience relative to the disposability of the kind of evidence sought and the propensity of offenders to effect disposal. "Just as the police must have sufficiently particular reason to enter at all, so must they have some particular reason to enter in the manner chosen." (67 Cal.2d at p. 589, 63 Cal.Rptr. at p. 12, 432 P.2d at p. 708.) Moreover, the particular reason for entry must be based upon the specific facts of the case. Thus, where officers have obtained particular information which leads them to reasonably conclude that the occupants of an apartment or residence have specifically resolved to effect disposal in the event of police intrusion or have made specific preparations in that regard (see People v. Barnett (1958) 156 Cal. App.2d 803, 805, 320 P.2d 128; People v. Steinberg (1957) 148 Cal.App.2d 855, 857, 307 P.2d 634), or when officers prior to entry are able to detect activity from within which leads them to reasonably conclude that the occupants are then engaged in the destruction or concealment of evidence (see People v. Carrillo, *supra*, 64 Cal.2d 387, 50 Cal.Rptr. 185, 412 P.2d 377; People v. Maddox, *supra*, 46 Cal.2d 301, 294 P.2d 6; People v. Morales (1968) 259 A.C.A. 294, 66 Cal.Rptr. 234; People v. Satterfield (1967) 252 Cal. App.2d 270, 60 Cal. Rptr. 733; People v. Manning (1966) 239 Cal.App.2d 416, 49 Cal.Rptr. 433; People v. Moore (1956) 140 Cal.App.2d 870, 295 P.2d 969), an unannounced entry may be justified. In these cases, however, compliance with the applicable knock-and-notice provision is excused not because of a blanket rule based on the type of crime involved but because the particular circumstances of the case give rise to a reasonable belief that immediate action is necessary to prevent the destruction of physical evidence.

[5] In the instant case the record discloses no particular circumstances upon the basis of which the officers could have reasonably concluded that defendant harbored a present intention to dispose of evidence. Nor does it disclose any particular circumstances prior to the actual entry which would have supported a reasonable conclusion that defendant was then engaged in the destruction or concealment of evidence. Therefore the unannounced entry in violation of section 844 may not be excused on these grounds.

[6] In reaching the above conclusion we have not disregarded the suggestion of amicus curiae that compliance with knock-and-notice provisions should be excused when an officer has personal knowledge that a felony is being committed in an apartment or residence contemporaneously with his entry. Aside from the difficulties inherent in determinations as to what constitutes "personal knowledge" on the part of the officer, it is clear that his knowledge or belief that a felony is being committed relates to probable cause for arrest—*not* to the imminence of disposal of evidence. As we stated in *Gastelo* and have reiterated above: "Just as the police must have sufficiently particular reason to enter at all, so must they have some particular reason to enter in the manner chosen." (67 Cal.2d at p. 589, 63 Cal.Rptr. at p. 12, 432 P.2d at p. 708). The reason for entry without announcement must be additional to the basic reason for entry.[8]

[7] The second reason given by Deputy Trujillo for the unannounced entry into defendant's apartment was that the officer had arrested defendant before and was of the opinion, based upon such past experience, that defendant might try to escape and thereby frustrate the arrest. It is urged that defendant's prior arrest on February 8 and the trickery to which he then resorted in order to obtain his release supported this opinion and provided a motive for escape. We do not believe, however, that these factors were sufficient to give rise to a reasonable belief that an unannounced forcible entry was necessary to prevent escape. Defendant had remained in the area following the events of February 8 and indeed was in his home during all the time it was under surveillance. So far as the record shows, Estrada had not observed anything during his visit to the apartment which even suggested that defendant was either alerted to make an escape or to present any physical threat to the officers. Finally, there were four deputies at the premises at the time of the midday entry, more than adequate to cope with defendant who, on February 8, had exhibited no violent reaction to his arrest on that date. (See People v. Rosales, *supra*, 68 Cal. 2d 299, 305, 66 Cal.Rptr. 1, 437 P.2d 489.)

[8] We conclude that the instant case is wholly devoid of circumstances sufficient to excuse the officer's noncompliance with the provisions of sections 844 of the Penal Code, that their entry was therefore unlawful, and that the illegally obtained evidence, which was crucial to the conviction, should therefore have been excluded.

The order denying defendant's motion for a new trial is reversed.

TRAYNOR, C. J., and PETERS, TOBRINER, MOSK and BURKE, JJ., concur.

McCOMB, Justice.

I dissent. I would affirm the order.

Rehearing denied; McCOMB, J. dissenting.

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[63 Cal. Rptr. 10]

THE PEOPLE, PLAINTIFF AND RESPONDENT, *v.* MAX MUNOZ GASTELO, DEFENDANT AND PETITIONER, CR. 11197.

(Supreme Court of California, En Banc, Oct. 30, 1967)

Defendant was convicted in the Superior Court, Los Angeles County, Joseph A. Wapner, J., of a narcotics violation, and he appealed. The Supreme Court, Traynor, C. J., held that where there was nothing in narcotics case to justify officer's failure to comply with statute providing that an officer may break open any outer or inner door or window of a house if, after notice of his authority and purpose, he is refused admittance, except an asserted general propensity of narcotics violators to destroy evidence when confronted by police officers, the officers' entry was unlawful and illegally obtained evidence, which was crucial to prosecution's case, should therefore have been excluded.

Reversed.

Opinion, 58 Cal.Rptr. 67, vacated.

1. Searches and Seizures ⇐7(1).

Under Fourth Amendment, a specific showing must always be made to justify any kind of police action tending to disturb the security of the people in their homes; unannounced forcible entry is in itself a serious disturbance of that security and cannot be justified on a blanket basis, otherwise the constitutional test of reasonableness would turn only on practical expediency, and the amendment's primary safeguard, the requirement of particularity, would be lost. U.S.C.A. Const. Amend. 4.

2. Criminal Law ⇐394.4(8). Searches and Seizures ⇐3.8(1).

Where there was nothing in narcotics case to justify officer's failure to comply with statute providing that an officer may break open any outer or inner door or window of a house if, after notice of his authority and purpose, he is refused admittance, except an asserted general propensity of narcotics violators to destroy evidence when confronted by police officers, officers' entry was unlawful and illegally obtained evidence, which was crucial to prosecution's case,

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[6] Although in most cases employing the above rationale the evidence sought was either narcotics or bookmaking paraphernalia, at least one decision indicated a broader application extending to other types of easily disposable evidence. (People v. Phillips (1966) 240 Cal.App.2d 197, 203, 49 Cal.Rptr. 480, reversed on other grounds, 386 U.S. 212, 87 S.Ct. 977, 17, L.Ed.2d 870.)

[7] In People v. Flores (1968) 68 Cal.2d 563, 68 Cal.Rptr. 161, 440 P.2d 233, we held that the defendant was precluded by his failure to object at trial from raising on appeal the issue of noncompliance with section 1531 upon execution of the search warrant therein. The instant opinion reflects our reconsideration of this conclusion upon further extensive reflection; People v. Flores is overruled to the extent it is inconsistent herewith. People v. De Leon (1968) 260 A.C.A. 155, 67 Cal.Rptr. 45, and People v. Perez (1968) 267 A.C.A. 300 72 Cal.Rptr. 746, are disapproved to the same extent.

[8] It has come to our attention that in at least two recent cases the Court of Appeal has interpreted our *Gastelo* decision in a manner inconsistent with the language and clear implications of that decision. (People v. Yeoman (1968) 261 A.C.A. 367, 67 Cal. Rptr. 869; People v. Camerano (1968) 260 A.C.A. 910, 67 Cal.Rptr. 446.) Those cases are disapproved to the extent of such inconsistency.

should therefore have been excluded; disapproving anything to the contrary in People v. Manriquez, 231 Cal. App. 2d 725, 42 Cal. Rptr. 157, and People v. Samuels, 229 Cal. App. 2d 351, 40 Cal. Rptr. 290. U.S.C.A. Const. Amend. 4, West's Ann. Pen. Code, § 1531.

Frederic G. Marks, Los Angeles, under appointment by the Supreme Court, for defendant and appellant.

Thomas C. Lynch, Atty. Gen., William E. James, Asst. Atty. Gen., S Clark Moore and Richard Tanzer, Deputy Attys Gen., for plaintiff and respondent.

TRAYNOR, Chief Justice.

Defendant appeals from a judgment of conviction of possession of heroin in violation of section 11500 of the Health and Safety Code.

The facts are not in dispute. Los Angeles police officers obtained a warrant for the search of the apartment of Donna Trujillo, with whom defendant was living, on the basis of a reliable information's report that he had purchased narcotics from defendant at Donna's apartment more than 30 times during the previous 45 days. His last purchase was on December 23, 1964. About 8:20 in the morning of Saturday, December 26, 1964, four officers went to Donna's apartment to execute the warrant. Outside they saw an automobile that they believed was defendant's. Two officers went to the rear door of the apartment and two to the front. Without knocking, announcing their purpose or demanding admittance, they forced entry through both doors. Defendant and Donna Trujillo were asleep in the bedroom, and the officers pulled defendant from the bed. They served the warrant, searched the apartment, and found a small packet of heroin between the mattress and box springs of the bed. Defendant was arrested. Two days later, he confessed to possession of the heroin.

Defendant contends that the trial court committed prejudicial error in admitting the heroin into evidence over his objection that it was illegally obtained in violation of Penal Code, section 1531.

Section 1531 provides that to execute a search warrant "The officer may break open any outer or inner door or window of a house, * * * if, after notice of his authority and purpose, he is refused admittance."

The Attorney General contends that compliance with section 1531 was excused under the rule of People v. Maddox (1956) 46 Cal. 2d 301, 294 P.2d 6.

In *Maddox*, we held that compliance with the substantially identical notice requirements of Penal Code, section 844 for making arrests [1] was excused, if the facts known to the officer before his entry were sufficient to support his good faith belief that compliance would have increased his peril or frustrated the arrest. Later cases have included the prevention of destruction of evidence as an additional ground for noncompliance with section 844. (People v. Covan (1960) 178 Cal. App.2d 416, 2 Cal.Rptr. 811; People v. Morris (1958) 157 Cal. App.2d 81, 320 P.2d 67.) Ker v. State of California (1963) 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed.2d 726, approved the principle of these cases under French Amendment standards similar exceptions to the requirements of section 1531.

The Attorney General contends that unannounced forcible entry to execute a search warrant is always reasonable in narcotics cases, on the ground that narcotics violators normally are on the alert to destroy the easily disposable evidence quickly at the first sign of an officer's presence.

We do not agree with this contention. Neither this court nor the United States Supreme Court has held that unannounced forcible entries may be authorized by a blanket rule based on the type of crime or evidence involved. Indeed in the *Ker* case the court was divided 4 to 4 on the question whether the evidence offered to excuse compliance with the notice and demand requirements was sufficient.[2]

In *Maddox*, the officers knocked, heard a male voice call "wait a minute" followed by the sound of retreating footsteps, and only then forced entry. Similarly, in People v. Carrillo (1966) 64 Cal. 2d 387, 50 Cal. Rptr. 185, 412 P. 2d 377, entry followed a knock and observation of suspicious movements. In People v. Smith (1966) 63 Cal. 2d 779, 48 Cal. Rptr. 382, 409 P. 2d 222, and People v. Gilbert (1965) 63 Cal. 2d 690, 47 Cal. Rptr. 909, 408 P. 2d 365, the officers were in fresh pursuit of gun-wielding defendants. Similarly, in People v. Hammond (1960) 54 Cal. 2d 846, 9 Cal. Rptr. 233, 357 P. 2d 289, officers had cause to believe defendant had a gun and was under the influence of heroin at the time of arrest.

Thus we have excused compliance with the statute in accordance with established common law exceptions to the notice and demand requirements on the basis of the specific facts involved. No such basis exists for nullifying the statute in all narcotics cases, and, by logical extension, in all other cases involving easily disposable evidence. The statute does not contain the seeds of such far-reaching self-destruction.

[1, 2] Under the Fourth Amendment, a specific showing must always be made to justify any kind of police action tending to disturb the security of the people in their homes. Unannounced forcible entry is in itself a serious disturbance of that security and cannot be justified on a blanket basis. Otherwise the constitutional test of reasonableness would turn only on practical expediency, and the amendment's primary safeguard—the requirement of particularity—would be lost. Just as the police must have sufficient particular reason to enter at all, so must they have some particular reason to enter in the manner chosen. To the extent that People v. Manriquez (1965) 231 Cal. App. 2d 725, 42 Cal. Rptr. 157, and People v. Samuels (1964) 229 Cal. App. 2d 351, 40 Cal. Rptr. 290, are contrary to our conclusion herein, they are disapproved.

Since there was nothing in the present case to justify the officers' failure to comply with section 1531, except an asserted general propensity of narcotics violators to destroy evidence when confronted by police officers, the officers' entry was unlawful. The illegally obtained evidence, which was crucial to the prosecution's case, should therefore have been excluded.

The judgment is reversed.

McComb, Peters, Tobriner, Mosk, Burke and Sullivan JJ., concur.

Mr. GRIFFIN. Mr. President, will the distinguished Senator yield?

Mr. ERVIN. In a moment.

I was much intrigued by the argument of my friend from Nebraska. He said you could always enter the house with the king's keys. But neither the bill nor the Griffin amendment is a proposal to enter the house with the king's keys; they are proposals to enter the house by using the king's ax, to knock down the doors or break the windows.

I was also intrigued by the New York case which was placed in the RECORD by my good friend the Senator from Michigan, who said that in that case the Supreme Court denied certiorari. I have not checked that point. But he said that was impliedly an approval of that case by the Supreme Court.

Mr. President, I would have to take issue with that contention, because the Supreme Court has declared time and again that the denial of a writ of certiorari, while it leaves the judgment of the lower court in effect, does not approve the judgment of the lower court, and has no effect for that purpose.

The reason judges deny writs of certiorari in many cases which they could accept is because it is impossible, in the limited time in which the Supreme Court Justices can work, for them to consider all of the cases where an application is made for a writ of certiorari and in which they could grant it. They do not have time to handle the cases, and for that reason, the denial of an application for a writ has no legal effect whatsoever, except to leave the judgment of the lower court in effect.

I now yield to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, in view of the statement of the Senator from North Carolina that the amendment which I have offered in the nature of a substitute would be unconstitutional, is it also his view that the District of Columbia crime bill which the Senate passed last year was also unconstitutional?

Mr. ERVIN. Yes, because that bill, as finally passed, declared that you can break into a house merely by getting a search warrant granting you that authority is clearly unconstitutional.

Mr. GRIFFIN. I thank the Senator for his view on that point.

Mr. ERVIN. I say to the Senator from Michigan that I sat up rather late last night and wrote out a perfecting amendment, the text of which is in a letter I have had left at each Senator's desk, which in my judgment complies with the Constitution as interpreted in the Ker case.

Mr. GRIFFIN. If the Senator will permit me to ask him a question or two concerning the amendment, I understand that he intends to offer it as a perfecting amendment to my amendment in the event his motion to table my amendment does not prevail. Is that correct?

Mr. ERVIN. That is right.

Mr. GRIFFIN. As I understand your proposed perfecting amendment, it would not permit a search warrant to be issued which would authorize the entry without notice under any circumstances. Is that correct?

Mr. ERVIN. My amendment would require what the Constitution now requires, that is, that the officer in executing a search warrant notify the occupants of the house of his presence, purpose, and authority, and make a demand for admission before he attempts to enter. But my amendment would apply the rule which the Supreme Court says, in the Ker case, would meet the requirements of the Constitution if exigent circumstances exist. But those conditions must exist at the time the officer under-

[1] "To make an arrest, * * * a peace officer, may break open the door * * * of the house in which the person to be arrested is * * * after having demanded admittance and explained the purpose for which admittance is desired."

[2] Justice Harlan was of the opinion that Fourth Amendment standards should not be applied to the states. Thus, the judgment of conviction was affirmed, 5–4.

takes to execute the warrant at the house, and therefore the Senator's amendment, which provides that the officers get these orders miles away from the house to be searched and also far away in point of time, would be unconstitutional, in my judgment.

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

Mr. GRIFFIN. As the Senator from Connecticut has control of the time, I ask him for a moment to make one observation.

Mr. DODD. I yield the Senator from Michigan 3 minutes.

Mr. GRIFFIN. I know that the Senator from North Carolina will not agree with this statement, and I respect his point of view, but his perfecting amendment, it seems to me, provides for a more limited right of privacy than does either the committee bill or my amendment thereto. Under his amendment, the judgment whether to enter without giving notice is left to the officer at the door of the premises.

Under my amendment, there must be two judgments—an initial judgment by the officer that entry without notice is needed—and an independent judgment made by a magistrate or a judge upon a showing that there is some need or necessity to enter the premises without notice under the particular circumstances of that case.

As the perfecting amendment of the Senator from North Carolina leaves the entire determination to the officer's judgment which is admittedly under stress at the door, it is my strong belief that it offers far less protection to the citizen than the Griffin substitute.

Mr. ERVIN. If the Senator will yield half a second, I say that not only I say that, but the eight judges in the Ker case say it also.

Mr. DODD. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Connecticut has 13 minutes remaining.

Mr. DODD. How much time does the Senator from Michigan require?

Mr. GRIFFIN. I would need about 5 minutes.

Mr. DODD. I yield 5 minutes to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, yesterday I made the point that our Founding Fathers were very much concerned about searches and seizures by the King or his representatives, and they sought to provide protection for the citizenry by making it clear, in the fourth amendment, that unreasonable searches and seizures were prohibited.

The question, of course, that is difficult to answer and has perplexed judges down through the years is what is a reasonable search?

There is no question, as the Senator from North Carolina agrees, that under the common law there is no absolute rule that under all circumstances an officer must knock and announce his presence and his purpose before entering. That is certainly the general rule, and it should be applied in the overwhelming majority of instances, but there are situations when to knock and give notice would, for example, endanger the very life of the officer seeking to serve a warrant.

In 29 out of the 50 State jurisdictions, no-knock authority exists, either by statute or by common law. These 29 jurisdictions follow no uniform pattern. But for example, the no-knock statute of the State of New York is quite similar to the provision the committee seeks to incorporate into this bill. If anything, the committee bill is more protective of the citizens' rights than the New York statute.

Last year, the Senate and the District of Columbia Committee sought to give to Federal officers in the District of Columbia this law enforcement tool held by State officers in 29 States to be used in limited, circumscribed situations in dealing with and coping with the crime problem in the District of Columbia.

As I understand it, the committee chaired by the distinguished Senator from Maryland (Mr. TYDINGS) studied very thoroughly the constitutional questions which the Senator from North Carolina has raised.

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

Mr. GRIFFIN. I yield.

Mr. TYDINGS. At this point I ask unanimous consent to have printed in the RECORD the language in the report of the District of Columbia Committee, Calendar No. 531, pages 13 through 15.

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

Under sections 107, 108, and 109 of S. 2869 as reported, an officer executing a search warrant must ordinarily give notice of his authority and purpose prior to entering upon premises to be searched. (See the comparable statute under existing law, sec. 3109 of title 18, United States Code.) U.S. Supreme Court in the case of *Ker* v. *California*, 374 U.S. 23 (1963), suggested, however, that the fourth amendment of the Constitution (in the *Ker* case, as "incorporated" for application to the States by the due process clause of the 14th amendment) is not violated, the search is not unreasonable, if pursuant to the law of the jurisdiction in question, an officer is authorized to dispense with the giving of notice under certain narrowly defined, exigent circumstances. Sections 107, 108, and 109 grant such authority as the law of the jurisdiction of the District of Columbia; and, in addition, manifest a legislative policy favoring the prior application by such officers for further court authority, to be expressed in the warrant, for dispensing with the notice requirement.

The latter policy approved by the Senate District Committee is that expressed, by way of dicta, in the case of *Trupiano* v. *United States*, 334 U.S. 699, 705 (1947), where the Court alludes to "the desirability of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities * * * In their understandable zeal to ferret out crime * * * officers are less likely to possess the detachment and neutrality with which * * * constitutional rights * * * must be viewed."

In other words, it is made clearly the law of the District of Columbia, on the one hand, that police officers may under certain conditions and on their own initiative, effect entry upon premises without notice. Effective law enforcement locally demands as much. Nevertheless, it is likewise intended, under sections 107, 108, and 109, that, when the applicant is aware, at the time of the request for the warrant, of compelling reasons for dispensing with notice of authority and purpose, he must state those reasons to the judicial officer who is to issue the warrant; and, in the absence of authorization then from said judicial officer for dispensing with the requirement of prior notice, those compelling reasons without more are not to be deemed by the executing officer alone to be adequate exigent circumstances.

The precise language of sections 108 and 109 defining those exigent circumstances which justify dispensing with notice is largely derived from the *Ker* case itself. Of the eight Justices who sought to apply the requirements of the fourth amendment to the California criminal proceeding, four determined that the facts of the *Ker* case made out a volation of those requirements, while four, ruling as the majority, found no such violation. (Mr. Justice Harlan voted to affirm the judgment below, but applied not the requirements of the fourth amendment—which would be applicable in the District of Columbia outright—but rather a more flexible requirement of fundamental fairness embodied in the 14th amendment). The District Committee in revising sections 108 and 109 was inclined in consequence to read the *Ker* case narrowly, with a view toward forestalling constitutional attack.

The California rule which the Court approved is stated as follows, 374 U.S. at 40: "'[C]compliance is not required if the officer's peril would have been increased or the arrest frustrated had he demanded entrance and stated his purpose.'" The facts of the *Ker* case, moreover, were such that "Ker's furtive conduct in eluding them [, the officers,] shortly before the arrest was ground for the belief that he might well have been expecting the police." Mindful that the California rule refers to frustration which would result—or, in the absence of hindsight, which the officer believes would result—sections 108 and 109 posit the standard of probable cause to believe that the property will be destroyed; that is, would be destroyed were notice to be given. (The additional requirement of belief that the property "may" be destroyed requires belief simply that the property is destroyable.) Mindful that the California rule refers to peril which would be increased—or, in the absence of hindsight, which the officer believes would be increased—and furthermore in light of the fact that the officers in *Ker* had good grounds to believe that Ker was awaiting them, sections 108 and 109 posit the further standard of probable causes to believe that the officer (or some other person) will be endangered; that is, would be endangered if notice were to be given. (The additional reference to immediate danger simply restates in narrow terms the scenario approved in *Ker;* the officers had grounds to believe that, were notice to be given, the peril would thereupon increase; the reference is clearly not to peril occuring at some more distant juncture, but to peril at the relevant juncture, the time of the intrusion.

Also in this regard, it was suggested that the standard be one of (A) probable cause (B) to believe that the property (C) *may* be destroyed (or that some person (C) may be endangered). The District Committee opted to substitute (A) probable cause (B) to believe that the property (C) *will* be destroyed (or that some person (C) *will* be endangered), as conforming more closely to the *Ker* case as described above—including its holding, dicta, facts, and case law background—and in order to avoid a seeming unintended further pyramiding of uncertainties (C) upon (A) and (B). That is to say, the committee was fearful lest it be argued that (A) probable cause for (B) belief as to (C) a possibility (indicated by the further "*may*") constitutes, with the three levels of uncertainty (A), (B), and (C)), in fact no reasonable grounds at all.

Mr. TYDINGS. I should like to comment on the point that the Senator from Michigan was making.

In the case of Trupiano against United States, the Supreme Court alluded to "the desirability of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities." The Supreme Court went on to say in that opinion:

> In their understandable zeal to ferret out crime . . . officers are less likely to possess the detachment and neutrality with which . . . constitutional rights . . . must be viewed.

The cases that bear on this—Ker against California and others that have been brought up here—relate to the exigent circumstances when a police officer, without any prior court authority, can make a no-knock search and seizure.

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

Mr. GRIFFIN. Will the Senator yield additional time?

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Connecticut has 8 minutes remaining.

Mr. DODD. I yield 3 minutes to the Senator from Michigan.

Mr. TYDINGS. Mr. President, I and my District of Columbia Committee staff felt that society would be additionally protected, if legislation set forth the exigent circumstances as outlined by the Supreme Court when a no-knock search and procedure could be made. Moreover, my District of Columbia Committee concluded that society would be best served if the police officer were required to go before a magistrate or a judge to show the existence of exigent circumstances, empowering the judge to make the determination as to whether or not the evidence was sufficient to issue a no-knock warrant.

In addition, we changed the initial language of the bill from "may" to "will," in order to comply with fourth amendment requirements, as interpreted by the Supreme Court. The standard set forth by Supreme Court decisions released to this rather is an affirmative assurance, not a statement of possibility of evidence being destroyed if the search were announced. Thus, under the amendment which the Senator from Michigan has offered, the official seeking the no-knock warrant must give evidence to the magistrate that it is not just a possibility that the evidence will be destroyed if the door is knocked upon.

Mr. GRIFFIN. For the purpose of the legislative history, would the Senator from Maryland agree with me that under the substitute I have offered, it is not enough just to show that the particular substance which is being sought is of such nature that it could be easily destroyed, although that is one element. It must be shown that probable cause exists to believe that such property will be destroyed if notice is given?

Mr. TYDINGS. That is correct.

We felt that because magistrates and judges know today the likelihood of their search warrants being attacked, the magistrate or judge issuing the warrant would exercise the same degree of caution he would exercise under a normal warrant, perhaps more. We felt that he would study and be familiar with the law involved. Moreover we feel that he would have a little better judgment than a police officer making a fast search in the dead of night as to whether a no-knock search was justified.

Mr. GRIFFIN. Will the Senator agree with me that neither the District of Columbia crime bill nor what the committee is trying to do in the drug control bill opens up the likelihood that law officers are going to be barging in, hither and yon, without any restraints whatever?

Mr. TYDINGS. Yes, that is correct.

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

Mr. GRIFFIN. Will the Senator yield an additional minute or two?

Mr. DODD. I yield another minute. I have 5 minutes remaining.

Mr. GRIFFIN. I think the Senator from Maryland has made it very clear that this is not going to be the case. The officer cannot by himself make a decision to enter without giving notice. He must first obtain a search warrant from a judge or a magistrate. In addition, he must indicate to the judge or magistrate's satisfaction that a crime has been committed, that there is material evidence on the premises and that he has reason to believe some material will be destroyed if he announces his entry.

Mr. TYDINGS. That is the basic issue. The Supreme Court has held that, under the fourth amendment, there are circumstances in which a search or seizure can be made without announcement. We felt that, rather than allow the police officer to make this decision, the circumstances should be spelled out, and the magistrate should make the decision.

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

Mr. DODD. Mr. President, I should like to make two observations. We have had rather detailed and substantial debate on this question, and I believe that certain points should be made clear for the benefit of the Senate. I shall summarize my own position.

I support the amendment of the distinguished junior Senator from Michigan, which I believe perfects the language of section 702(b) of the bill, the so-called no-knock provision of the pending legislation.

The Senate is now at the point of deliberation where we must either accept or reject the concept of court-authorized no-knock search warrants in cases involving felonious violations of the provisions of the Controlled Dangerous Substances Act.

I believe that the Senate should and shall accept this concept as necessary to the effective enforcement of the act, but with due consideration of the constitutional provisions of the fourth amendment relative to searches and seizures which are reasonable.

I believe that this section of the act does meet the constitutional requirement of reasonable search and I further believe that the Griffin amendment to section 702(b) insures the constitutionality of this provision.

Substantial and detailed debate has taken place on this issue in this body.

I believe I can summarize my position for the Senate on the constitutionality of the amendment as follows:

First, the fourth and 14th amendments provide protection against unreasonable searches and seizures. The operative word here is "unreasonable." So, in order to be valid, the search has to be "reasonable."

Second, under the common law, and long established under that common law, no-knock searches and seizures can be made by the police IF there is reason to believe that the evidence would be destroyed or if the life of the law-enforcement officer would be endangered were he to announce his authority. There is no question about that.

The proposed law before us includes an additional safeguard, as the Senator from Maryland has pointed out. We are going beyond what has been the long-established principle of the law with respect to no-knock. We are saying, in addition to that which is already established, that now we are going to require that the law-enforcement officer go before a magistrate or a judge whom he must convince that the circumstances warrant the issue of a no-knock warrant. It never had to be done before.

Third, 29 States follow the common-law principles or have statutes on no-knock. They have encountered no constitutional obstacles in doing so. The State of Connecticut, long known as one which zealously guards the rights of the accused, has recognized no-knock since 1822.

Among the States allowing common law no-knock searches is California, whose authority to undertake such searches was upheld by the Supreme Court in 1963 in Ker against California. The court held that police officers could enter without knocking where they felt that evidence would be destroyed, even if they had no search warrant at all, because the defendant has no constitutional rights to destroy evidence.

This view was reaffirmed in 1968 in Sabbath against United States. A footnote to the majority opinion says that "exceptions to any possible constitutional rule to announcement and entry have been recognized."

The rationale for either accepting or rejecting the concept of no-knock search warrants has been developed in clear and concise terms. In summarizing my position in this regard, I shall point to the fact that the Griffin amendment, substituting the phraseology:

> (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, or (B) the giving of such notice will immediately endanger the life or safety of the executing officer or another person—

In section 702(b), utilizes the exact wording that the District of Columbia Committee utilized in the District of Columbia crime bill, S. 2869, and which this body adopted just last December.

Mr. President, are we now to reject language identical to that which we

accepted just 1 month ago? This is exactly what we did with the District of Columbia crime bill, S. 2869. Are we going to say to the rest of this country, plagued by the dreadful narcotics traffic, that what we will do for the District of Columbia we refuse to do for the States? I do not think we want to do that. I trust that we will not do it.

I believe that the people of the country are watching us. We have been talking about this dreadful narcotics situation. We have been saying that we are going to do something to alleviate it. The President has urged us to do it. I believe that Congress is ready to do it.

This is not a new proposition. We did not suddenly report from the Committee on the Judiciary a provision that we batter down people's doors. This matter has been before our committee for a year. Eminent lawyers, including the Attorney General, and the Deputy Attorney General have appeared before our committee to testify to the need and efficacy of this provision. Every member of the committee has examined this matter thoroughly.

We do not come before the Senate with something outrageously unconstitutional. Such is certainly not the case.

The people of this great country are watching us. But of equal importance, the hoodlums and the dope peddlers are watching us. They want to know whether we really mean what we say here, and are we going to enact enforceable drug control legislation.

Mr. President, the amendment should be agreed to.

Mr. President, I would make one final comment. I direct the attention of the Senate to section 108 of S. 2869, an act to revise the criminal law and procedure of the District of Columbia, which passed this body on December 8, 1969.

The referenced section of that bill amends subsection (c) of section 23–522 of the District of Columbia Code, which concerns applications for search warrants in the District of Columbia.

Paragraph (2) of section 108 of S. 2869 provides for the application of a no-knock search warrant, the crucial language of which is embodied in the Griffin amendment, now pending before the Senate.

I believe that during the debate of yesterday, some confusion did arise as to the identical nature of the language of the Griffin amendment and the language of the District of Columbia crime bill, passed by this body in December.

The distinguished Senator from North Carolina (Mr. ERVIN) was reading from another District of Columbia bill, S. 2601, in making his assertion that the language of the Griffin amendment was not identical with that contained in the District of Columbia bill.

The point that I make is this: the pertinent language with which we are concerned is to be found in section 108 of S. 2869, rather than in the bill to which Senator ERVIN referred yesterday.

Mr. ERVIN. Mr. President, I move to table the Griffin amendment, and on the motion I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. ALLEN in the chair). The question is on agreeing to the motion of the Senator from North Carolina to table the Griffin amendment.

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. MANSFIELD (after having voted in the negative). On this vote I have a pair with the distinguished senior Senator from Texas (Mr. YARBOROUGH). If he were present and voting, he would vote yea. If I were at liberty to vote, I would vote nay. I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from North Carolina (Mr. JORDAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

On this vote, the Senator from Alaska (Mr. GRAVEL) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Alaska would vote "yea" and the Senator from South Dakota would vote "nay."

I further announce that, if present and voting the Senator from North Carolina (Mr. JORDAN) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. PROUTY), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS) and the Senator from Illinois (Mr. PERCY) are absent on official business.

On this vote, the Senator from Maryland (Mr. MATHIAS) is paired with the Senator from Colorado (Mr. DOMINICK). If present and voting, the Senator from Maryland would vote "yea" and the Senator from Colorado would vote "nay."

On this vote, the Senator from Illinois (Mr. PERCY) 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."

On this vote, the Senator from Alaska (Mr. GRAVEL) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Alaska would vote "yea" and the Senator from South Dakota would vote "nay."

The result was announced—yeas 40, nays 44, as follows:

[No. 11 Leg.]

YEAS—40

| | | |
|---|---|---|
| Allen | Fulbright | Moss |
| Anderson | Goodell | Muskie |
| Bayh | Gore | Nelson |
| Brooke | Harris | Pell |
| Burdick | Hart | Proxmire |
| Byrd, Va. | Holland | Randolph |
| Case | Hollings | Ribicoff |
| Church | Hughes | Sparkman |
| Cook | Inouye | Stennis |
| Cooper | Kennedy | Symington |
| Cranston | McCarthy | Williams, N.J. |
| Eagleton | McGee | Young, Ohio |
| Eastland | Metcalf | |
| Ervin | Mondale | |

NAYS—44

| | | |
|---|---|---|
| Aiken | Fong | Pastore |
| Allott | Griffin | Pearson |
| Baker | Gurney | Russell |
| Bellmon | Hansen | Saxbe |
| Bennett | Hatfield | Schweiker |
| Bible | Hruska | Scott |
| Boggs | Jackson | Smith, Maine |
| Byrd, W. Va. | Jordan, Idaho | Smith, Ill. |
| Cannon | Long | Spong |
| Cotton | Magnuson | Talmadge |
| Curtis | McClellan | Thurmond |
| Dodd | McIntyre | Tydings |
| Dole | Miller | Williams, Del. |
| Ellender | Montoya | Young, N. Dak. |
| Fannin | Murphy | |

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, against.

NOT VOTING—15

| | | |
|---|---|---|
| Dominick | Jordan, N.C. | Percy |
| Goldwater | Mathias | Prouty |
| Gravel | McGovern | Stevens |
| Hartke | Mundt | Tower |
| Javits | Packwood | Yarborough |

So Mr. ERVIN's motion to lay Mr. GRIFFIN's amendment on the table was rejected.

The PRESIDING OFFICER. The question recurs on agreeing to the amendment offered by the Senator from Michigan (Mr. GRIFFIN).

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

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. Will the Presiding Officer instruct the Sergeant at Arms to see that attachés take seats in the rear of the Chamber or leave the Chamber or lobby. And those attachés who are not here on the immediate business of their Senators, I hope that the Presiding Officer will ask them to leave the Chamber and to leave the lobby for the rest of the afternoon.

The PRESIDING OFFICER. The Sergeant at Arms is so instructed.

Mr. ERVIN. Mr. President, all time has expired.

The PRESIDING OFFICER. The Senator is correct.

Mr. ERVIN. Mr. President, I wish to call up a perfecting amendment to the Griffin amendment. And I ask unanimous consent that I be recognized for 1 minute to explain the amendment.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a time limitation of 5 minutes, the time to be equally divided between the Senator from North Carolina (Mr. ERVIN) and the Senator from Michigan (Mr. GRIFFIN).

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

Mr. ERVIN. I send to the desk a perfecting amendment to the Griffin amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On pages 1 and 2 of the Griffin amendment (No. 457) strike out everything from the word "may" on line 4 on page 1 through the word "premises" on line 10 on page 2, and insert in place thereof the following: "shall, except as hereinafter provided, give notice of his presence, purpose, and authority to those within the house described in the warrant and demand of them admittance to it

before entering it. Such notice need not be given and such demand need not be made if at the time he undertakes to execute the warrant the officer has probable cause to believe (1) that those within the house already know of his presence, purpose, and authority, or (2) that those within the house are attempting to escape or to destroy or otherwise dispose of the things sought to be seized under the warrant, or (3) that the notice and demand will place him or someone within the building in imminent peril of bodily harm."

Mr. ERVIN. Mr. President, as I have made manifest, I do not believe we ought to have any Federal no-knock statute, because they are subject to gross abuse.

I do not believe that in a free society an officer should have the right to break into a man's house in the same manner that a burglar does.

I offer this amendment because if we are going to have a no-knock statute, let us have one which complies with what eight Supreme Court justices said in the only Supreme Court decision dealing with this particular matter, one that meets the requirements of the courts.

Under the general rule, the fourth amendment requires that an officer apprise the inhabitants of the house of his presence and his intention to enter the house before he attempts to enter the house.

The amendment is carefully drawn. It specifies the exact circumstances in which the officer can enter without announcing his purpose and his authority.

If we are going to have a bad statute, let us have a bad statute which is constitutional and which makes the right of an officer dependent upon the search warrant, as the Supreme Court in the Ker case says, and not on what some judge says who is hours and miles away.

Mr. President, if we are going to have a bad statute let us have a constitutional amendment. I urge Senators to agree to my perfecting amendment.

Mr. GRIFFIN. Mr. President, I believe that Senators have before them a copy of the amendment which has been proposed by the Senator from North Carolina. The Senator's amendment states:

Such notice need not be given and such demand need not be made if at the time he undertakes to execute the warrant the officer has probable cause to believe . . .

On its face, this language would do more damage to the right of privacy than either the committee language or my substitute amendment.

Under my amendment to the committee bill, the decision to enter without giving notice is not left up to the officer at the door. Under my amendment, if a law officer is going to enter without notice, he must go to a magistrate or judge and satisfy that magistrate or judge that there is a probable cause to believe that this is necessary. Most importantly, this decision is made by the judge or magistrate in a court not by an officer under stress at a door.

I would have great difficulty, as a matter of public policy, voting for the Ervin amendment.

Mr. PASTORE. The Senator from North Carolina said this is in conformity with the Supreme Court opinion. Will the Senator make an observation on that point?

Mr. GRIFFIN. It may be. As I indicated earlier, in Ker against California, the Supreme Court approved a no-knock entry, even where a search warrant had not been issued.

It is important to remember that in this bill, the Senate would obviously not be going to the very limit of constitutionality. In fact, the Senate is really restricting the present law by saying that an officer cannot enter without notice unless he first obtains a warrant specifically authorizing such entry.

Mr. President, I yield to the Senator from Maryland for a comment.

Mr. TYDINGS. Mr. President, reluctantly I am going to oppose the amendment of the Senator from North Carolina for the following reasons. It does comply with the Supreme Court's decision in Ker against California, but Ker against California also related to what a police officer might do.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. TYDINGS. Mr. President, I ask unanimous consent that I may speak for 2 additional minutes.

Mr. MANSFIELD. One minute, and that is the limit. The manager of the bill has not had an opportunity to speak. One minute apiece.

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

Mr. TYDINGS. The issue here is whether or not under the Ervin amendment the Senate wants the police officer to have the authority to make that decision at the time he is going to execute the warrant or whether or not the Senate wants that authority exercised by a court of law prior to that time, under the same circumstances under which search warrants are normally issued. The court has passed on this matter once before in connection with the D.C. bill. We went along with Tripiano against United States, in that we would rather have a judge exercising that authority than police officers in the late hours of the night.

Mr. DODD. Mr. President, I do not have much more to add. Many of us are concerned about this matter.

This amendment would go back and give the cop the right to determine whether or not he would smash in the door. We say, "No, he has to go to a judge or magistrate to get permission."

Mr. President, this would be retrogression and it would not be an advancement at all.

The PRESIDING OFFICER. All time has expired.

Mr. BAYH. Mr. President, I ask unanimous consent that the Senator from North Carolina be given another minute to deal with questions that have been raised.

Several Senators addressed the Chair.

Mr. ERVIN. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the perfecting amendment of the Senator from North Carolina (Mr. ERVIN) to the amendment of the Senator from Michigan (Mr. GRIFFIN). 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 Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from North Carolina (Mr. JORDAN), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Texas (Mr. YARBOROUGH), are necessarily absent.

On this vote, the Senator from Texas (Mr. YARBOROUGH) 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."

On this vote, the Senator from North Carolina (Mr. JORDAN) is paired with the Senator from Texas (Mr. TOWER).

If present and voting, the Senator from North Carolina would vote "yea" and the Senator from Texas would vote "nay."

On this vote, the Senator from Alaska (Mr. GRAVEL) is paired with the Senator from South Dakota (Mr. MUNDT).

If present and voting, the Senator from Alaska would vote "yea" and the Senator from South Dakota would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. PROUTY), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are absent on official business.

On this vote, the Senator from Maryland (Mr. MATHIAS) is paired with the Senator from Colorado (Mr. DOMINICK). If present and voting, the Senator from Maryland would vote "yea" and the Senator from Colorado would vote "nay."

On this vote, the Senator from Texas (Mr. YARBOROUGH) 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."

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

On this vote, the Senator from Alaska (Mr. GRAVEL) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Alaska would vote "yea" and the Senator from South Dakota would vote "nay."

The result was announced—yeas 35, nays 50, as follows:

[No. 12 Leg.]

YEAS—35

| | | |
|---|---|---|
| Allen | Case | Eastland |
| Burdick | Cooper | Ervin |
| Byrd, Va. | Cranston | Gore |

| | | |
|---|---|---|
| Harris | McGee | Randolph |
| Hart | Metcalf | Ribicoff |
| Holland | Mondale | Sparkman |
| Hollings | Moss | Spong |
| Hughes | Muskie | Stennis |
| Inouye | Nelson | Talmadge |
| Kennedy | Pastore | Williams, N.J. |
| Mansfield | Pell | Young, Ohio |
| McCarthy | Proxmire | |

NAYS—50

| | | |
|---|---|---|
| Aiken | Dole | McIntyre |
| Allott | Eagleton | Miller |
| Anderson | Ellender | Montoya |
| Baker | Fannin | Murphy |
| Bayh | Fong | Pearson |
| Bellmon | Fulbright | Russell |
| Bennett | Goodell | Saxbe |
| Bible | Griffin | Schweiker |
| Boggs | Gurney | Scott |
| Brooke | Hansen | Smith, Maine |
| Byrd, W. Va. | Hatfield | Smith, Ill. |
| Cannon | Hruska | Symington |
| Church | Jackson | Thurmond |
| Cook | Jordan, Idaho | Tydings |
| Cotton | Long | Williams, Del. |
| Curtis | Magnuson | Young, N. Dak. |
| Dodd | McClellan | |

NOT VOTING—15

| | | |
|---|---|---|
| Dominick | Jordan, N.C. | Percy |
| Goldwater | Mathias | Prouty |
| Gravel | McGovern | Stevens |
| Hartke | Mundt | Tower |
| Javits | Packwood | Yarborough |

So Mr. ERVIN's amendment to Mr. GRIFFIN's amendment was rejected.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Michigan. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the affirmative). Mr. President, on this vote I have a pair with the senior Senator from Texas (Mr. YARBOROUGH). 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. KENNEDY. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

On this vote, the Senator from North Carolina (Mr. JORDAN) is paired with the Senator from Texas (Mr. TOWER).

If present and voting, the Senator from North Carolina would vote "nay" and the Senator from Texas would vote "yea."

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. PROUTY), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are absent on official business.

If present and voting, the Senator from Colorado (Mr. DOMINICK), the Senator from Maryland (Mr. MATHIAS), the Senator from South Dakota (Mr. MUNDT), and the Senator from Illinois (Mr. PERCY) would each vote "yea."

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from North Carolina (Mr. JORDAN).

If present and voting, the Senator from Texas would vote "yea" and the Senator from North Carolina would vote "nay."

The result was announced—yeas 70, nays 15, as follows:

[No. 13 Leg.]

YEAS—70

| | | |
|---|---|---|
| Aiken | Gore | Murphy |
| Allott | Griffin | Muskie |
| Anderson | Gurney | Pastore |
| Baker | Hansen | Pearson |
| Bayh | Harris | Pell |
| Bellmon | Hart | Proxmire |
| Bennett | Hartke | Randolph |
| Bible | Hatfield | Russell |
| Boggs | Holland | Saxbe |
| Brooke | Hollings | Schweiker |
| Burdick | Hruska | Scott |
| Byrd, Va. | Hughes | Smith, Maine |
| Byrd, W. Va. | Inouye | Smith, Ill. |
| Cannon | Jackson | Sparkman |
| Church | Jordan, Idaho | Spong |
| Cotton | Long | Symington |
| Curtis | Magnuson | Talmadge |
| Dodd | McCarthy | Thurmond |
| Dole | McClellan | Tydings |
| Eagleton | McGee | Williams, N.J. |
| Ellender | McIntyre | Williams, Del. |
| Fannin | Miller | Young, N. Dak. |
| Fong | Mondale | |
| Fulbright | Montoya | |

NAYS—15

| | | |
|---|---|---|
| Allen | Eastland | Moss |
| Case | Ervin | Nelson |
| Cook | Goodell | Ribicoff |
| Cooper | Kennedy | Stennis |
| Cranston | Metcalf | Young, Ohio |

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mr. Mansfield, for.

NOT VOTING—14

| | | |
|---|---|---|
| Dominick | Mathias | Prouty |
| Goldwater | McGovern | Stevens |
| Gravel | Mundt | Tower |
| Javits | Packwood | Yarborough |
| Jordan, N.C. | Percy | |

So Mr. GRIFFIN's amendment was agreed to.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRIFFIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

### NO FURTHER DELAY ON DRUG CONTROL

Mr. MONTOYA. Mr. President, the Senate has before it the Controlled Dangerous Substances Act, an omnibus drug control measure. It codifies a mass of drug laws, provides new tools for the Justice Department to use against the drug traffic and brings tranquilizers under dangerous drug laws for the first time.

I believe that we have very little time left before the drug problem across the entire Nation is totally out of hand. Every State and city has some horror story or another to relate because of this poison and the people who peddle it. This traffic and those who indulge in it are literally a cancer in the body politic of our land.

Only the National Government is able to set an example in combating this menace. We have here an opportunity to throw a net of control over a vast traffic that is ruining tens of thousands of lives daily. I feel this measure would supply a significant portion of the answer we are so ardently searching for.

It will establish a unified approach to Federal enforcement of narcotics and dangerous drug laws by combining diverse drug control and enforcement laws in one piece of legislation. Under this proposed law, responsibility and authority with respect to narcotics and dangerous drug control are vested with the Attorney General.

In line with this, the bill will reassess and improve the administration and regulation of the manufacture, distribution, importation, and export of controlled drugs. This in turn will help reduce present diversion of drugs into illegal channels, which is a common occurrence today. Further, it will inhibit production of drugs in underground laboratories operated by criminal elements. Also, it will crimp severely the illegal traffic in both medical and nonmedical controlled drugs.

It will classify all drugs subject to control into four separate schedules, according to chemical properties, psychological and physical effects, and abuse potential. Such schedules will correspond to penalties applicable to violations involving the four different categories of drugs. For the first time several tranquilizers with significant abuse potential will be covered; librium, valium, and meprobamate.

The measure will also overhaul the terribly archaic penalty structure we now use for drug law violations. It will eliminate mandatory minimum sentences for all drug offenses except for a special class of professional criminals. Under its terms, judges would be able to utilize personal discretion in imposing sentences on heroin pushers and traffickers, and lesser penalties for marihuana and other less dangerous drugs.

Judges would also have placed in their hands probation, parole, and suspended sentences as valuable tools for rehabilitation. We must sort out the peddlers of hard drugs and crack down on them mercilessly. Yet simultaneously we must segregate them from youngsters who experiment on a one-time basis with marihuana. The latter must be saved. The former must be eliminated.

This measure will also create a commission to study marihuana, the most widely utilized drug used by young people. It accounts for the great majority of narcotics arrests of persons under age 21. It is a controversial drug, and its full effects have yet to be determined.

Mr. President, I shall support this bill because it seems to be the type of all-inclusive legislation we have been searching for. It segregates drugs and types of offenders. Above all, it launches us into an all-out war against this traffic, which I feel must be halted before it destroys the very fabric of our Nation.

I am troubled by some aspects of the measure, but nonetheless will support it. We must make a substantial beginning, and cease wringing our hands over the problem. This measure seems to have the tools in it with which to do the job. Let us get cracking.

Mr. McCLELLAN and Mr. HUGHES addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Iowa.

AMENDMENT NO. 451

Mr. HUGHES. Mr. President, I call up my amendment No. 451 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 64, beginning with line 8, delete all through line 20 and insert in lieu thereof the following:

"SEC. 602. (a) The Attorney General is authorized and directed to carry out educational and research programs directly related to enforcement of the control provisions set forth in this Act. Such programs may include—

"(1) educational and training programs on dangerous substance law enforcement for local, State, and Federal personnel;

"(2) studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;

"(3) studies or special projects designed to assess and detect accurately the presence of controlled dangerous substances in the human body, including the development of rapid field identification methods which would enable agents to detect micro-quantities of such substances;

"(4) studies or special projects designed to evaluate the nature and sources of the supply of illegal drugs throughout the country;

"(5) studies or special projects to develop more effective methods of manufacture or distribution to prevent diversion of controlled dangerous substances into illegal channels.".

On page 64, line 22, immediately before "educational", insert "such".

Mr. HUGHES. Mr. President, I ask unanimous consent that, without losing my right to the floor, I may yield to the Senator from Arkansas.

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

Mr. McCLELLAN. I thank the distinguished Senator.

May I say to the distinguished Senator from Iowa that I have two amendments, and his amendment would have to be withdrawn temporarily in order for me to offer these. I understand that my amendments are not controversial—at least, so far as the manager of the bill is concerned.

Mr. DODD. That is correct.

Mr. McCLELLAN. I think we could dispose of these amendments quickly. If they result in any controversy, I will agree to withdraw them temporarily and let the Senator from Iowa have the floor.

Mr. DODD. I think these are good amendments. They will strengthen the bill. So far as I am concerned, I am happy to accept them.

Mr. HUGHES. Mr. President, I ask unanimous consent, without losing my right to the floor, temporarily to withdraw amendment No. 451.

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

Mr. McCLELLAN. I thank the Senator.

I ask unanimous consent that immediately upon the conclusion of this business that the Senator from Iowa have the right to the floor to renew his amendment.

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

Mr. McCLELLAN. Mr. President, the amendment to S. 3246 that I now send to the desk would accomplish three minor clarifications or changes in its provisions that deal with sentencing. As the Judiciary Committee report on the bill makes clear—report No. 91–613 at 28—its sentencing provisions "are modeled on title X of the Organized Crime Control Act of 1969" which the Senate passed last Friday. The purposes of my amendment would be to clarify somewhat the intent of the specal offender sentencing provisions of both bills and to make the provisions of S. 3246 more closely parallel those of S. 30.

The first aspect of the amendment would insure that sentences under the Controlled Dangerous Substances Act, like those under title X of S. 30 and in other Federal criminal cases, are imposed by the judge after proceedings before the court alone.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a brief statement in support of this aspect of the amendment, collecting a number of authorities for the wisdom and constitutionality of sentencing by judges both in ordinary and in special sentencing cases.

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

STATEMENT IN SUPPORT OF COURT HEARING ON SENTENCE

The American Law Institute has expressly rejected the suggestion that the findings underlying special offender sentencing must be or should be made by a jury. Model Penal Code § 7.03 (Proposed Official Draft, 1962); Model Penal Code, Comment at 42 (Draft No. 2, 1954). Similarly, the habitual offender laws of some eight states entrust all relevant fact finding to a judge rather than a jury. See *Yates* v. *State*, 245 Ala. 490, 17 So. 2d 777 (1944); Kan. Gen. Stat. Ann. § 21–107a; La. Rev. Stat. Ann. § 15:529.1; Minn. Stat. Ann. § 609.16; Mo. Ann. Stat. § 556.280(2); Neb. Rev. Stat. §29.2221(2); Nev. Rev. Stat. § 207.010; Ore. Rev. Stat. § 168.065; *accord*, Advisory Council of Judges, National Council on Crime and Delinquency, *Model Sentencing Act* §§ 5, 6, 12 (1963). The American Bar Association endorses the same approach, for both ordinary and special offender cases, largely because of "the need for the development of an expertise beyond that which can be expected of the average lay jury," because sentencing in both types of cases depends heavily upon fact determinations, and because jury sentencing "invites a procedure too cumbersome to justify its recommendation." Advisory Committee on Sentencing and Review, ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Sentencing Alternatives and Procedures* § 1.1, pp. 3, 262 (Tentative Draft December 1967). That approach does not impair the constitutional right to trial by jury. *State* v. *Losieau*, 184 Neb. 178, 166 N.W. 2d 406 (1969). *But cf. Duncan* v. *Louisiana*, 391 U.S. 145 (1968).

Mr. McCLELLAN. Mr. President, the second aspect of the amendment deals with a question which has arisen whether the intent of the special sentencing provisions of both S. 30 and S. 3246 is that the right of appellate review of sentences shall extend to review of the correction or reduction of a sentence as well as to its original imposition. The intent was that appellate review should apply to review of imposition as well as correction and, since the question has arisen. I consider adoption of this clarifying amendment desirable.

The phrase "sentence imposed" in S. 3246, page 62, line 8, and in S. 30, page 96, line 5, was intended to include sentences corrected or reduced, and the amendment adds those terms to S. 3246 to clarify that intent. The amendment uses the words "correction" and "reduction" in the narrow sense in which they are used in rule 35 of the Federal Rules of Criminal Procedure. Those terms are distinguished from the word "imposition," used in the amendment to refer to the fixing or changing of a sentence by the sentencing court or court of appeals under authority other than rule 35 of the Federal Rules of Criminal Procedure. Similarly, it was intended that the prohibition against increase of a sentence where the Government had not taken review would be applied, in the context of review of correction or reduction of a sentence after the Government had failed to take review of the original sentence, to prohibit increase of the sentence above its original level. The amendment makes that application more explicit.

Finally, the amendment would strike the word "act" and insert the word "section" in section 507(b) of the statute. I regard this as just a technical amendment. Subsection (b), in its present form, is an amendment that I offered in committee, modeled on section 6 of S. 2677, the Student Disturbances Act of 1969. We must not only visit severe punishment on those who traffic in drugs, but we must also give the first offender an opportunity to reform himself. The inclusion of the phrase "act" in subsection (b) is apparently a printing error. My original amendment read "section."

Mr. President, I have discussed these amendments with the distinguished Senator from Connecticut, the manager of the bill. He and his staff have had the benefit of these amendments for several days. They have studied the amendments, and I understand that they are acceptable. As he indicated earlier, I believe they will strengthen the bill and will correct one or two technical defects in it.

Mr. DODD. I reiterate what I said a few moments ago. I think it is correct to say that. I thank the Senator for these amendments.

Mr. McCLELLAN. I thank the Senator. I told him a few days ago that it was not to cripple the bill, but to try to strengthen it that these amendments were prepared.

I ask that the amendments be stated.

The PRESIDING OFFICER. Does the Senator from Arkansas desire that the amendments be considered en bloc?

Mr. McCLELLAN. I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection is it so ordered.

The amendments will be stated.

The legislative clerk proceeded to read the amendments.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendments will be printed in the RECORD.

The amendments offered by the Senator from Arkansas (Mr. MCCLELLAN) are as follows:

On page 56, line 13, strike "Act" and insert "section".

On page 58, line 6, strike "a trial before a jury" and insert "a hearing before the court".

On page 58, line 8, strike "the jury" and insert "the court".

On page 62, strike lines 8 through 25 and insert the following:

"(h) With respect to the imposition, correction or reduction of a sentence after proceedings under this section, a review may be taken by the defendant or the United States to a court of appeals. Any review by the United States shall be taken at least five days before expiration of the time for taking a review or appeal by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review by the United States after the time has expired. A court extending the time for taking a review by the United States shall extend the time for taking a review or appeal by the defendant for the same period. The court of appeals may, after considering the record, including the presentence report, information submitted during the trial of such felony and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be made more severe only on review taken by the United States and after hearing. Failure of the United States to take a review of the imposition of a sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Upon any withdrawal of review taken by the United States, a sentence less severe than that reviewed may be imposed but one more severe may not be imposed. Any review taken by the United States may be dismissed on a showing of abuse of the right of the United States to take such review."

On page 63, strike lines 1 through 11.

Mr. HRUSKA. Mr. President, I wish to concur in what was expressed in regard to these amendments by the Senator from Connecticut. This is material which had been considered in connection in part, the organized crime bill. I agree with the Senator from Arkansas that it will strengthen the bill and will clarify, in the places where clarifying language is sought, the language of the bill. It will be to the betterment of the legislation that these amendments be agreed to.

Mr. MCCLELLAN. I thank the Senator from Nebraska.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments were agreed to en bloc.

Mr. MCCLELLAN. Mr. President, the next amendment to S. 3246 that I now send to the desk would substitute for the immunity provisions now found in section 707, new language patterned on S. 30, the Organized Crime Control Act of 1969, which the Senate passed Friday by a record vote of 73 to 1. This language reflects the recommendations of the National Commission on Reform of Federal Criminal Law and the President in his message on April 23 on "Organized Crime." It substitutes "use" immunity for "transaction" immunity in line with recent Supreme Court cases. See *Murphy v. Waterfront Commission*, 378 U.S. 52 (1964): S. Rep. No. 91-617 at 51-56 (1969).

Mr. President, this matter was taken up with the Senator from Connecticut a few days ago. Its purpose is to try to keep the various laws in this field uniform. It would make applicable to drugs the same language that was used in the organized crime bill. I believe that we should try to keep provisions of law uniform, unless there are circumstances or conditions that dictate a difference, and then they should be treated differently. But I see no reason for any difference here. Therefore, I hope that my good friend from Connecticut will accept the amendment in order to make the immunity provisions of the bill uniform with the organized crime control bill, which passed the Senate a few days ago.

Mr. DODD. Mr. President, I am glad to say that I completely agree with the amendment. We have examined it. I have told the Senator that we will accept it. I believe that the Senator from Nebraska (Mr. HRUSKA) is also of the same view.

Mr. HRUSKA. Mr. President, I fully agree with the explanation and am in support of the amendment. In addition to its having been considered and incorporated into the organized crime bill, it has been, as the Senator from Arkansas noted, the subject of discussion by the Commission on the Revision of Federal Criminal Laws. It is in this direction that the Commission has decided to go, focusing not on the individual's complete immunity, but rather upon the evidence he gives and any evidence that is derived from such evidence.

I, therefore, urge adoption of the amendment.

Mr. MCCLELLAN. Mr. President, I ask that the amendments be stated.

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk proceeded to read the amendments.

Mr. MCCLELLAN. I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendments will be printed in the RECORD.

The amendments offered by the Senator from Arkansas are as follows:

On page 84, line 13, strike out all after "Sec. 707".

On page 84, strike out lines 14 through 25 and insert the following:

"(a) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before a court or grand jury of the United States, involving a violation of this Act, and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order issued under subsection (b) of this section or any information obtained by the exploitation of such testimony or other information, may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

"(b) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before a court or grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, upon the request of the United States attorney for such district, an order requiring such individual to give any testimony or provide any other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

"(c) A United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, or any Assistant Attorney General, designated by the Attorney General, request an order under subsection (b) when in his judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination."

On page 85, strike out lines 1 through 11.

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from Arkansas.

The amendments were agreed to.

Mr. MCCLELLAN. Mr. President, I wish to thank the distinguished Senator from Iowa (Mr. HUGHES) for yielding to me at this time. I hope that we have not trespassed upon the courtesy that he has extended to us. We have tried to operate with expedition here, and I appreciate it very much, because I understood that possibly it would take sometime to dispose of the amendment which the Senator from Iowa has proposed.

I thank the Senator from Iowa very much again for his courtesy to me.

AMENDMENT NO. 451

Mr. HUGHES. Mr. President, I call up again my amendment No. 451 and ask the clerk to report it.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk proceeded to read the amendment.

Mr. HUGHES. Mr. President, I ask unanmious consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD at this point.

Amendment No. 451, as offered by the Senator from Iowa, is as follows:

AMENDMENT NO. 451

On page 64, beginning with line 8, delete all through line 20 and insert in lieu thereof the following:

"SEC. 602. (a) The Attorney General is authorized and directed to carry out educational and research programs directly related to enforcement of the control provisions set forth in this Act. Such programs may include—

"(1) educational and training programs on dangerous substance law enforcement for local, State, and Federal personnel;

"(2) studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;

"(3) studies or special projects designed to assess and detect accurately the presence of controlled dangerous substances in the human body, including the development of rapid field identification methods which would enable agents to detect micro-quantities of such substances;

"(4) studies or special projects designed to evaluate the nature and sources of the supply of illegal drugs throughout the country;

"(5) studies or special projects to develop more effective methods of manufacture or distribution to prevent diversion of controlled dangerous substances into illegal channels."

On page 64, line 22, immediately before "educational", insert "such".

Mr. HUGHES. Mr. President, section 602 of S. 3246 authorizes and directs the Attorney General "to carry out educational and research programs necessary for the effective enforcement of this Act." Because of the broad scope of this legislation, it is extremely unclear whether this language provides for any effective limitation at all upon the Attorney General's authority in research and educational areas. It authorizes a broad charter to undertake programs designed to establish and carry out methods of assessing the effects of controlled dangerous substances and of identifying and characterizing controlled dangerous substances with a potential for abuse—functions more properly committed to the department of the Government charged with the conduct of medical research and medical education.

Language in subsection (a) of section 602 gives the Attorney General broad authority to "enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, or special projects which bear directly on misuse and abuse of controlled dangerous substances." Again, his authority to enter into such contracts is not limited to projects directly related to law enforcement.

Mr. President, I do not think that anyone here disagrees with what section 602 was intended to do. Attorney General Mitchell, testifying before the Juvenile Delinquency Subcommittee of the Judiciary Committee, on September 15, 1969, stated:

In this legislation . . . we have not sought to incorporate all of the Government's research and educational efforts, but only those which relate to the functions of the Department of Justice. Crucial areas, such as the provision for treatment and rehabilitation of addicts and abusers, have not been included. It is believed that these are subjects which should be handled as separate and distinct legislative efforts.

Mr. Creed Black, Assistant Secretary for Legislation, Department of Health, Education, and Welfare, testifying before the special Senate Subcommittee on Alcoholism and Narcotics, which I chair, stated:

The Department of Health, Education, and Welfare has the primary responsibility to develop research in drug abuse; to train the skilled manpower necessary to operate effective treatment and rehabilitation programs; and to support educational efforts at all levels of our society on the specific risks and dangers of illicit drugs.

No one here, including myself, wants to tie the hands of reasonable and effective law enforcement. The amendment which I propose should in no way affect the Attorney General's ability to enforce the act in the manner he has requested. It would prevent duplication of already scarce health, educational, and scientific expertise; and it would assure the retention of the primary burden of our educational and research effort in the Department of Health, Education, and Welfare.

The amendment would strike subsection (a) of section 602 and would substitute a new subsection authorizing and directing the Attorney General to carry out educational and research programs, but more specifically limiting his charter to those programs directly related to enforcement of the control provisions of the act. Subject to this minor limitation, the authority granted by the substitute subsection is quite broad. It would authorize the Attorney General to undertake all of the following:

First, educational and training programs on dangerous substances law enforcement for local, State, and Federal personnel;

Second, studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;

Third, studies or special projects designed to assess and detect accurately the presence of controlled dangerous substances in the human body, including the development of rapid field identification methods which would enable agents to detect microquantities of such substances;

Fourth, studies or special projects designed to evaluate the nature and sources of supply of illegal drugs throughout the country; and

Fifth, studies or special projects to develop more effective methods of distribution to prevent diversion of controlled dangerous substances into illegal channels.

Mr. President, I am not proposing to hamper in any way the provisions in the bill giving the Attorney General the primary assignment for the education and training of law enforcement personnel and for conducting research projects that deal primarily with that area. However, at the same time my amendment would preserve the jurisdiction of the Secretary of the Health, Education, and Welfare in the areas of educational and research programs.

I think that the testimony, at least before my subcommittee, indicates that this is where this type of expertise should remain.

I think the testimony of the Attorney General himself indicates that it was not the intent of the Department of Justice in any way to get into these other fields that concern me.

All I am trying to do is to assure in this particular piece of legislation that we implement the intent apparently expressed before both of the subcommittees and in a colloquy had last week among the Senator from Nebraska, the Senator from Connecticut, and me.

Mr. President, I do not intend to belabor the amendments I will propose. I intend to call up as rapidly as possible and call for a rollcall vote on each one. I express that for the benefit of the Senators present.

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

The yeas and nays were not ordered.

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

The yeas and nays were ordered.

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

Mr. HUGHES. I yield.

Mr. DODD. Mr. President, I wonder if we could possibly get an agreement on time.

Mr. HUGHES. I am finished on this amendment.

Mr. DODD. I did not understand that the Senator was through.

Mr. HUGHES. Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. DODD. Mr. President, did the Senator from Nebraska wish to be heard? I have some brief comments to make, but I had understood that the Senator from Nebraska also wanted to be heard.

Mr. HRUSKA. I do wish to be heard. I will speak in due time. Does the Senator wish to precede me?

Mr. DODD. Either way.

Mr. HRUSKA. The Senator may go ahead.

Mr. DODD. Mr. President, I have talked with the Senator from Iowa about this and his other amendments. I wish that I could agree to accept this one as one of those responsible for the pending bill. However, I cannot do so.

The Senator from Nebraska and I both agree that we would like to do this. But this amendment actually will strike at the heart of the bill, and I want to explain why.

The amendment would divest the Attorney General of authority to conduct programs assessing the effects of controlled dangerous substances, identifying those substances having a potential for abuse.

This authority is an important aspect of the Attorney General's work. The amendment would further limit the Attorney General's educational and research activities to special projects directly related to the control provisions of the act, such as training programs, detection methods, better prevention of diversion, and comparisons of the deterrent effects of different law enforcement strategies.

An additional provision would limit the Attorney General's authority to enter into research contracts to only those activities authorized in subsection 602(a).

It is absolutely essential, I believe, that the Attorney General be authorized to carry out research on the effects of these

controlled dangerous substances and to identify those substances having a potential for abuse since he has the primary responsibility of determining whether or not a drug shall be brought under control. He is the person under the law who must make that decision.

If we deny him this authority, it would, in effect, be compelling him to make a determination without having the facts available concerning the drug in question. In addition, it would significantly slow down the control procedure if all information must be culled from other sources.

This amendment would frustrate our purpose here, which is to control a drug before widespread use occurs, not after.

Last April when I introduced a bill I had prepared, it contained several provisions having to do with items similar to this amendment. Those provisions were all eliminated, and the Senator from Nebraska and I, with others, worked on this matter for a long time.

We tried to delete from that bill that which realistically belonged in the Department of Health, Education, and Welfare or in any other agency. But we are of the opinion that one person, the Attorney General, has to be in charge of enforcing the Federal narcotics law.

The Department of Health, Education, and Welfare voiced no objection to the original subsection 604(a) and, in fact, agreed to it as written.

This is an enforcement bill. It is neither a rehabilitation bill nor a research bill. This is a law enforcement bill. That is what I intended when I drafted and perfected it and I am sure that is what the Senator from Nebraska intended when he worked on it. That is what all of us had in mind. Let us give the Attorney General those tools he needs so that he can crack down on the drug peddlers and pushers in this country, those people who make addicts out of others with drugs imported from abroad.

Therefore, with all respect to the distinguished Senator from Iowa, I say this amendment would gut this bill and impair the Attorney General in his execution of his duties and responsibilities under it.

I ask the Senator from Iowa, who knows so much about this general subject, to wait until we can get to his necessary next piece of legislation which will have to do with drug rehabilitation and prevention; but for now, let us stay with the law enforcement aspect of the problem.

Mr. President, I should point out that the powers which the Attorney General would have under this bill are powers which are already reposed in the Bureau of Narcotics and Dangerous Drugs under his direction. They are part of the Federal law now, and that must be so. I have here the organizational chart of the aforementioned Bureau under the direction of Mr. John Ingersoll. Included thereon is an Office of Science and Education. The Director of that office is responsible for educational and science work. There is an Educational Programs Division, a Laboratory Operations Division, and a Drug Sciences Division. This education and research effort goes on all the time and they deal most particularly in the area of narcotics. It is all a part of the task of law enforcement. That is why I plead with the Senator that he not press his amendment. Finally, I think it goes without saying we would not have effective law enforcement if the authority were divided.

I ask that we give the Attorney General the tools and say to him, "Mr. Attorney General, here are your tools. Here is everything you need to work with. You make the decisions. It is your responsibility. You do not have to rely on anyone else." I believe this is the way it should be done.

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

Mr. DODD. I yield.

Mr. MONTOYA. Would the Senator note the line of demarcation between the amendment offered by the Senator from Iowa and the provisions in the bill? In other words, is the amendment offered by the Senator from Iowa complementary to the enforcement provisions of the bill by providing rehabilitative action and education, or is the amendment derogatory to the enforcement provisions of the bill? I would like to know.

Mr. DODD. Mr. President, the way in which the Senator frames the question makes it difficult to answer precisely. However, I shall attempt to answer factually and accurately. It is true that the amendment would complement the bill if it added to it; however, it limits the authority of the Attorney General with respect to research and education.

I would not say it is derogatory, but it represents impairment when the authority is taken from the law enforcement officer and placed in the hands of the Secretary of Health, Education, and Welfare, his qualifications and expertise notwithstanding.

Mr. MONTOYA. Is this not strictly for rehabilitative or educational purposes?

Mr. DODD. I am sorry, will the Senator repeat his question?

Mr. MONTOYA. The vesting in the Secretary of Health, Education, and Welfare is only confined to rehabilitative and educational action which is triggered by the Hughes amendment. Is that not correct?

Mr. DODD. It would not give authority to anybody, really. It would divest from the Attorney General his authority to a great degree.

Mr. MONTOYA. Is there anything in the Hughes amendment that would inhibit or disrupt or break down any part of the enforcement functions delegated to the Attorney General by the Senator's proposal?

Mr. DODD. Yes.

Mr. MONTOYA. I would like to have the specifics in that regard.

Mr. DODD. I do not think the Senator was in the Chamber when I tried to explain the ongoing functions of the Attorney General in the area of narcotics enforcement, education, and research. The organization chart of the Bureau of Narcotics and Dangerous Drugs is rather detailed and specific in this regard. These research and education efforts are historically the task of law enforcement, and it is a job they have long carried out.

Mr. MONTOYA. Is there anything in the Hughes amendment that would take that away from the Attorney General?

Mr. DODD. Yes.

Mr. MONTOYA. What is it?

Mr. DODD. The authority to conduct many of these programs would be divested. It would place them in another department. That would be an impairment of his law enforcement responsibility.

Mr. MONTOYA. Can he continue to do the same things?

Mr. DODD. I would say he could not if this amendment were agreed to.

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

Mr. DODD. I yield.

Mr. HRUSKA. Is it not true that section 602(a) as it exists in the bill is present law?

Mr. DODD. The Senator is correct.

Mr. HRUSKA. It is a restatement of present law and it furnishes a basis for the Attorney General to determine the problems that relate to enforcement of the law and control of drugs deemed harmful which should be subject to sanctions if they are used or trafficked in.

Mr. DODD. That is correct.

Mr. HRUSKA. The amendment of the Senator from Iowa would repeal that and strike it.

Mr. DODD. The Senator is correct.

Mr. HRUSKA. Here would be a man charged with enforcement of the law, and he would be deprived of the right and statutory basis for enabling him to inquire or make inquiry into such scientific data that he needs to form a good evaluation of these drugs.

Mr. MONTOYA. That is the line of demarcation I am trying to develop in order to make up my mind. I want to know what effect the Hughes amendment has on the bill.

Mr. DODD. I believe the Senator from Nebraska has helped me clarify it. It is existing law and it has been so for a long time. Now, if this amendment were agreed to, it would take authority from the Attorney General that he now has and repose it somewhere else.

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

The PRESIDING OFFICER (Mr. HOLLINGS in the chair). Does the Senator yield?

Mr. DODD. I yield.

Mr. HUGHES. Mr. President, would the Senator explain what this would take away from the Attorney General that he already has? What could he not do under this amendment that he does today?

Mr. DODD. I will tell the Senator what it would do. It would take away authority to conduct these programs.

Mr. HUGHES. What programs?

Mr. DODD. It would divest authority to undertake programs assessing the effects of these drugs. We have scientists and well informed people working in this field. They do scientific work on substances and advise the Attorney General of the effect of the substances; they identify them and they can determine what the potential abuse factor is. He has to know all these things to enforce this act.

## MESSAGE FROM THE PRESIDENT

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

## EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

## MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, 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. 15149) making appropriations for Foreign Assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes; that the House recede from its disagreement to the amendment of the Senate numbered 6 to the bill and concurred therein; that the House receded from its disagreement to the amendments of the Senate numbered 8 and 31 to the bill and concurred therein, each with an amendment, in which it requested the concurrence of the Senate.

## CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

The Senate continued with the consideration of 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.

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

Mr. DODD. I yield. May I make my answer to the Senator's question more complete?

Mr. HUGHES. Surely.

Mr. DODD. I said this in this Chamber last Saturday morning: The effective enforcement of this act requires knowledge of the effects of drugs as they apply to the operation of enforcement. That is true. And the effective enforcement of this act requires education and training of enforcement officers. I said it also involves education of the public regarding the law enforcement process in the drug field. I said these are research and educational activities that have been recognized as essential for the operation of any law enforcement agency in the country. They do not in any way infringe on the basic research, education, and treatment responsibilities of the Department of Health, Education, and Welfare. They are staff functions that are a recognized and necessary part of any administrative organization of the Department of Justice in this case.

I say to the Senator from Iowa that it is in the nature of assessing the effectiveness of the act and improving the execution of it. These really are the basic reasons.

Mr. HUGHES. Could the Senator from Connecticut explain to the Senator from Iowa how this amendment, No. 451, restricts the Department of Justice from performing those acts of education and research for the sufficiency of law enforcement that the Senator just described?

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

Mr. DODD. I yield.

Mr. HRUSKA. The answer is plain. For some time the Bureau of Narcotics and Dangerous Drugs, and its predecessor bureaus, have exercised authority such as included in section 602(b) in the bill. Subparagraph (1) thereof is particularly important because it bears upon the Attorney General being in a position, by virtue of the authority conferred therein, where he can determine the necessity to control certain drugs. This is the way he goes about it. The Attorney General must retain absolute decisional authority in this instance. It is not a scientific question. It is not a medical question. It is a law-enforcement question plain and simple.

I grant that, in the making of decisions, scientific findings and judgments may enter into the matter. Also, medical judgments enter into it. But the control of the developing law and having those procedures and processes are necessary because it is the Attorney General that is charged by the law with enforcing this particular statute.

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

Mr. HRUSKA. This necessary authority would be repealed by amendment 451 and in its place would be a very innocuous recital of many words, which would not get to the core of the problem. We cannot afford to let this bill be emasculated, not only by this amendment, but by the whole package of amendments which the Senator from Iowa will propose in due time. If those amendments were approved, they would have an effect and an outcome upon this bill which I do not think they should have.

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

Mr. DODD. May I respond, first of all, to the Senator from Nebraska, that he has put it very well. I quite agree with the Senator from Nebraska. The Senator from Iowa asked me how the amendment takes away anything. If the Senator will turn his attention to that part of the bill which he seeks to amend, he will see it just about wipes out everything in education and research that is available and should be available to the Attorney General.

Mr. MONTOYA. Mr. President, will the Senator yield at this point?

Mr. DODD. I yield.

Mr. MONTOYA. As I understand the tenor of the amendment offered by the Senator from Iowa, it strikes and deletes everything from line 8 through line 20 on page 64.

Mr. DODD. That is right.

Mr. MONTOYA. Let us go into it section by section. The bill, beginning on line 8 of page 64, reads as follows:

SEC. 602. (a) The Attorney General is authorized and directed to carry out educational and research programs necessary for the effective enforcement of this Act.

Mr. DODD. Yes.

Mr. MONTOYA. Let us look at the corresponding part of the amendment of the Senator from Iowa. It reads:

SEC. 602. (a) The Attorney General is authorized and directed to carry out educational and research programs directly related to enforcement of the control provisions set forth in this Act.

Mr. DODD. That is quite a difference.

Mr. MONTOYA. I would like to go further and analyze the other three provisions, if the Senator will yield to me.

Mr. DODD. I am listening.

Mr. MONTOYA. Subparagraph (1) reads:

Establish methods to assess accurately the effects of controlled dangerous substances and to identify and characterize controlled dangerous substances with potential for abuse.

Would not the Senator say that subparagraph (3) of the amendment of the Senator from Iowa would correspond materially or substantially with the subparagraph (1) which I have read? The latter reads as follows:

Studies or special projects designed to assess and detect accurately the presence of controlled dangerous substances in the human body, including the development of rapid field identification methods which would enable agents to detect micro-quantities of such substances.

Mr. DODD. The Senator skipped over subsections (1) and (2).

Mr. MONTOYA. Yes.

Mr. DODD. That is all a part of it.

Mr. MONTOYA. The reason why I skipped it——

Mr. DODD. What does the Senator say about (1)? That is a vast change. That is a gut change in this bill.

Mr. MONTOYA. The reason why I skipped over subsections (1) and (2) was that I think they are complementary to the Senator's bill, and not derogatory. Perhaps I am wrong in that assumption.

Mr. DODD. I am certain the Senator is wrong in that assumption.

Mr. MONTOYA. Subparagraph (2) of the Senator's bill reads that in connection with such programs, he—that is, the Attorney General—is authorized to:

Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, or special projects which bear directly on misuse and abuse of controlled dangerous substances.

Mr. DODD. Let me say to the Senator that unfortunately the substance of these amendments is intended to limit or restrict the authority of the Attorney General.

Mr. MONTOYA. The point I am trying to make is that as I read the amendments offered by the Senator from Iowa and as I read the contents of the original text of the bill to which the amendments are directed, I fail to find any departure which breaks down any material provision in section 602 of the bill.

Mr. DODD. Then why change it?

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

Mr. MONTOYA. But I find analysis that the Hughes amendment complements the particular section 602——

Mr. DODD. Let me ask what it does. Does it add more? Does it give the Attorney General more authority? Does it take something away from the Attorney General? Is it the same? We ought to know what we are really trying to do here.

Mr. MONTOYA. I am asking the Senator from Connecticut to be a little more explicit because I fail to find that this amendment breaks down any particular provision in section 602.

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

Mr. DODD. I yield.

Mr. HRUSKA. Mr. President, subsection (1) of section 602, as it is found in the bill, would be completely repealed and there is no recurrence of it in the material which the Senator from Iowa seeks to put in by way of his amendment. It is the very crux of the thing.

Now, if the Senator from New Mexico wants to talk in terms of supplementing, here is what we should do. We should allow section 602(a), as it is in the bill, to remain, and then add to it the material found in the amendment of the Senator from Iowa. That would be perfectly all right. Of course, I speak only for myself in that connection. This would be true supplementation.

But we do not have that situation here. The material now section 602(a) is stricken, and in its place there would be five subparagraphs, none of which contains the authorizing language to establish methods to accurately assess the effects of these dangerous drugs, and to identify and characterize controlled dangerous substances with potential for abuse. That is not to be found in the amendment that is proposed by the Senator from Iowa. It is just not there. Section 602(a) provides the means to get the information that the Attorney General needs in order to determine whether or not these substances should be put in a category that will be controlled. In this bill we charge the Attorney General with certain duties. We ought to give him the tools he needs to discharge this duty. We must not deprive him of these tools by placing innocuous language in here which gives him nothing that he does not already have.

It is just that simple, Mr. President.

Mr. MONTOYA. Mr. President, will the Senator from Connecticut yield?

Mr. DODD. I yield.

Mr. MONTOYA. I am inclined to agree with the Senator from Nebraska. I think he has put his finger on the crux of this controversy.

I think we are all agreed that it is not the intention of the Hughes amendment to run counter to any particular provision in section 602 of the original text of the bill, unless the Senator indicates otherwise.

Mr. DODD. But it does.

Mr. HRUSKA. It does, the way it is written now.

Mr. MONTOYA. That being the case, and I assume that it is, then there should be no inhibition against writing complementary legislation incorporating the Hughes amendment, which would not be detractive of the material provisions and the prime thrust of the original section 602 of the bill.

Mr. DODD. When I set out to complement something, I add something, I do not knock out something, if I understand the word "complementary." If the Senator wishes to offer this amendment to add to the language now in the bill, he might have a better case, I say most respectfully. But I cannot understand for the life of me why he is trying to do this. Is the Senator afraid of the Attorney General? Is he afraid of the law-enforcement people? He does not want them to do educational work, nor research work. How can the Attorney General find out what he needs to know unless he can go to a university or a laboratory and enter into contracts with them? He is going to have this problem, and I do not know how he can divest himself of it.

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

Mr. DODD. Surely.

Mr. HUGHES. I ask the Senator if he is under the impression that my amendment prohibits research projects?

Mr. DODD. Yes; I think it impairs the necessary research function of the Attorney General.

Mr. HUGHES. Does it prohibit it in relation to law enforcement?

Mr. DODD. Not altogether, but it restricts him, so that he will not be able to carry it out as he needs to. I do not say it wipes him out altogether, but why should he be restricted? Unless the Senator has something in mind, what is wrong with the way it is written?

Mr. HRUSKA. Mr. President, will the Senator yield.

Mr. DODD. I yield.

Mr. HRUSKA. Is it not true that under the legislative history, if the committee measure is enacted into law, we will start out with the proposition that the Attorney General has those research powers that are granted to him by subparagraph (1)?

Mr. DODD. That is right.

Mr. HRUSKA. If it is deleted and in its place in certain other subparagraphs are substituted five in number, it would be construed, that the Attorney General would be foreclosed from utilizing the methods that are now in the law, would it not? He would be limited to subparagraphs (1) to (5) in the proposed amendment, and in that sense there would be a prohibition of the Attorney General from engaging in that type of research?

Mr. DODD. Yes, of course.

Mr. HRUSKA. As outlined in subparagraph (1) of the present law?

Mr. DODD. There is no doubt about it. It must be understood that way. It does not make sense otherwise to strike out these sections and insert something else.

I keep asking, what is the reason, and I do not get an answer. I ask the Senator from Iowa, why does he want to do this? I know how earnestly he feels about the matter.

Mr. HUGHES. I say to the distinguished Senator from Connecticut that the reasons for doing this are obvious: to retain in the department that has the basic responsibility for medical science and research activities authority for research and scientific investigation relating to other than law enforcement education and procedures.

When the distinguished Senator from Connecticut mentioned education earlier and talked about the necessity of the Justice Department carrying out educational programs for the general public, I tried to get the floor to discuss it. I would like for him to describe for me the intent of the bill. What is he talking about, in regard to educational programs?

Mr. DODD. Oh, it is a very important part of law enforcement. I do not know of any law enforcement agency in this land that does not have an educational program—any good one, anyway. Even the smallest police departments do. It is an aspect of law enforcement, to influence the public about crime problems, about the laws which are in effect, about the dangers of innocent people becoming victims of criminals, and to talk about how the government, under the law, proceeds to run down criminal offenders, and how the public can help in enforcing the law.

Mr. HUGHES. If I understand the Senator correctly, then, if he will yield further——

Mr. DODD. I yield.

Mr. HUGHES. It is the intent of the education programs he is talking about that the Justice Department, by their own educational programs, assist local and State law enforcement agencies to educate the general public basically on recognition of crime, on how the law operates in these fields, and on how the public can cooperate with it?

Mr. DODD. We do it now.

Mr. HUGHES. I am not questioning that it is done now. I am asking if that is the intent of this provision.

Mr. DODD. Surely that is the intent. I do not know how to make it more explicit.

But I do know, and I ask the Senator to think about this, that as a matter of law enforcement, a law enforcement officer finds what is called education a very important arm of his law enforcement arsenal.

First, you have to have a willingness of people to cooperate in enforcement of the law. This is why we had the disaster with the prohibition law: The people did not believe in it. So education about the law is important in the enforcement of the law. It is intended to get people to accept it, and to want to work with it. That is what I mean.

Mr. HUGHES. Mr. President, I have asked the distinguished Senator from Connecticut to yield so that I might ask for a time limitation on this debate. What would be a suitable time limitation?

Mr. HRUSKA. Mr. President, reserving the right to object, and I intend to object. If this request was based on this amendment alone I would not be disposed to object, but it is not. What we are confronted with here, Mr. President, is a series of amendments, some five or

six in number, the adoption of which would serve to emasculate this bill. The adoption would change its thrust, its philosophy, and its rationale from one of law enforcement to one which provides diluted powers to law enforcement agencies which must be shared with sociologists, the scientists, and the medical men in the Department of Health, Education, and Welfare.

Mr. President, we have covered this before. We have covered it in a White House Leadership Conference. We covered it in the committee. We covered it in colloquy here Friday afternoon, and again on Saturday; and now we get into it all over again.

Of course, there is overlapping. There will be overlapping but the Attorney General, in making his decisions, turns to the scientists and the medical men in HEW, in the Advisory Council, and elsewhere to get his information which he needs to make the decisions.

I should like to discuss in a little while, this larger question, so that we can all understand the impact of these amendments. I do not feel free to consent to a limitation of debate, because we have not explored the larger picture sufficiently.

Earlier this afternoon I believe that violence was done to the proper consideration of the no-knock provision, both as proposed by the Senator from North Carolina and the one that ultimately was adopted. Had we not had a unanimous-consent limitation, I could well envision a different disposition of that matter. I do not know whether or not it would have been wiser, but I am confident that it would have been different.

At this point it would be highly premature to impose a time limit and allow this good bill to be eroded bit by bit. I believe that is imperative that the Members, of this body, are presented with the whole picture so that they can arrive at the appropriate decisions.

Mr. DODD. I understand the Senator's concern. Perhaps later, as we move along, we can reach some agreement. I will not belabor that matter any longer.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DODD. Mr. President, I would like to have the attention of the Senator from Iowa. I may be able to clarify the situation somewhat. There is an unnecessary controversy surrounding the question of who shall decide what drugs are to be controlled and how they are to be controlled.

If the Attorney General is to be held responsible—and he is responsible under the existing law—for controlling our drug problem, which is a terrible problem in this country, he must have the necessary authority to establish control measures.

It could be very strange indeed if we held the Attorney General accountable for drug law enforcement on the one hand and asked the Secretary of Health, Education, and Welfare to determine how that enforcement is to be carried out on the other.

It is important that we call to the attenion of all Senators the fact that this is the thrust of certain of the amendments before us. Yet, it is a position that has been rejected by the very Cabinet department that would be affected—the Department of Health, Education, and Welfare.

I neglected to mention this fact earlier. In the course of our hearings, Dr. Roger O. Egeberg, the Chief Medical Officer of that department, testified before us in public hearings. He said that the authority that is now at issue should be left with the Attorney General. I will read his testimony. He said:

> The hazard to society and to an individual posed by abuse of a drug must be assessed in the light of sound scientific information on the nature of a given drug, its physiological and psychological effects, trends in its use among various segments of the population, and other factors that are largely the province of the health sciences.
>
> But we must recognize that determination as to which drugs are to be brought under Federal control and in what manner are an essential element of the regulatory process and thus should logically be made by the agency responsible for such control.
>
> We think it is highly appropriate, indeed essential, that the Attorney General in the exercise of his control authority, be guided by the best available scienific information, and we fully support the provisions of S. 2637, requiring him to seek in writing the advice of this Department and a committee of scientists.
>
> I would remind the committee that Attorney General Mitchell, in his testimony before you on September 15 stated that he would exercise his authority to schedule controlled substances only "upon the advice in writing of a Scientific Advisory Committee and of the Secretary of the Department of Health, Education, and Welfare."

Mr. President, that in capsule form is the testimony that led to the reporting of the pending bill.

Not only do we have the support of the Attorney General and other officials of the Department of Justice, but also of the Secretary of Health, Education, and Welfare and that of its chief medical officer. That is the testimony on this question of authority.

The bill states that in adding, deleting, or rescheduling a substance as a controlled drug substance, the Attorney General shall request in writing the advice in writing of the Secretary of Health, Education, and Welfare and the Scientific Advisory Committee.

I do not know what more we could ask. Before he makes a decision, he must seek advice.

The Secretary of Health, Education, and Welfare does not have or want this authority.

We must have scientific determination as a part of the overall control function, and the Attorney General wants this advice. We do not have a man who says, "I am the only one who knows. I do not want any kind of advice."

We do not have that kind of an Attorney General. I think all who attended that hearing and heard him would agree to that. He said, "I want this advice. I am glad you are writing this into the bill." And the Secretary of Health, Education, and Welfare said he does not want it, that it belongs with the Attorney General.

The Attorney General said, "If I have the authority, I want the advice of a scientific committee."

That is why the provision was so written. I say that we are debating something about which we should not be troubled. I do not think there is any real issue. I wonder whether the Senator from Iowa would reconsider urging his amendment, since the Secretary of Health, Education, and Welfare does not want it, and the Attorney General needs it.

We must first address ourselves to the narcotics enforcement problem. Then the Senator from Iowa can come in with a bill for research, scientific endeavor, rehabilitation, and other related concepts that need to be enacted into law. We will be with him. We will be at his side, not only voting with him, but also helping in every way in the matter.

Let us get this done. Let us enact this law enforcement measure and then turn to the committee of the Senator from Iowa and say, "Give us a program for better reform, and better education."

We realize that this is a major problem in law enforcement. We have to rehabilitate narcotic addicts, not punish them. This is what we should be doing.

It is not that we are not sympathetic with these problems or that we think them unimportant. We believe it is of the greatest importance, but not in this measure. Let us have the law enforcement provision and then let us turn to the Senator's proposal as the next thing to do. I wish we could take up these matters simultaneously. In my judgment they are of equal importance, but we have to have priorities. Let us enact this law enforcement bill so that we can reach the peddlers who are molesting our people, making addicts of them, and violating the law almost with immunity.

That is what this law is all about.

I make a personal plea to my friend, the Senator from Iowa. Let us get through with this bill and then proceed to the Senator's proposal, which is a good suggestion.

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

Mr. DODD. I yield.

Mr. HUGHES. Mr. President, I appreciate the Senator's offer of support for legislation in fields of health, education, welfare, and in prevention of narcotic addiction and drug abuse. As the Senator knows, we have talked about this matter many times, and we have had colloquy on the floor of the Senate about it. We are in general agreement in the entire field. However, when the Senator says that people are violating the law "almost with immunity," I had understood him to say that the existing law had been written into this bill. If that is so, why should they be violating the law almost with immunity?

Mr. DODD. My answer is that part of our narcotic laws have been rendered useless by court decision. However, we

have added new features to the bill which would make it possible for us to do a much better job in connection with law enforcement in the narcotics field.

Mr. HUGHES. Mr. President, will the Senator yield further?

Mr. DODD. I yield.

Mr. HUGHES. Mr. President, I do not disagree totally with the thought that the Attorney General needs extensive research capabilities. He needs research into detection and identification of microscopic particles, and he needs to know whether people may or may not be supplying narcotic drugs that are illegally in their possession.

I abhor the actions of those who are pushing and selling these illegal drugs. We all recognize the fact that this is one of the greatest problems pervading the social structure of this Nation. We could go on at length about the insidious effect on almost every school and almost every prison in the country. I know the Senator from Connecticut has done a great deal of research in connection with prisons in this country. We all concur and agree with that.

However, where we disagree on this particular matter is the fact that the distinguished Senator from Connecticut and apparently the Committee on the Judiciary feel that these things should be directly under the control of the Attorney General, whereas I feel, and I am sure many of my colleagues on the Committee on Labor and Public Welfare feel, that the research and scientific investigation should be done under the Department of Health, Education, and Welfare and made available to the Attorney General at his request. The only technical difference is whose payroll the scientists and researchers are on at the time they do the work.

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

Mr. HUGHES. I yield.

Mr. HRUSKA. The suggestion is made that there should not be a bar to consulting with HEW on these things. There is no bar present in the committee bill but one would be created by adopting amendment 451. Mr. President the amendment of the Senator from Iowa would take away the power of decision from the Attorney General, who is charged with enforcement of this bill and transfer it to the Secretary of Health, Education, and Welfare. The area affected is not educational or scientific. It is a law enforcement tool which would be taken.

Mr. HUGHES. Mr. President, will the Senator yield on that point?

Mr. HRUSKA. I yield.

Mr. HUGHES. What determines whether a drug should be controlled or not?

Mr. HRUSKA. The sum total of medical and scientific data, which must be related to law enforcement, if they are to be subject to controls.

Mr. HUGHES. After the research and a host of medical data is available, the law-enforcement agent makes a decision about control?

Mr. HRUSKA. Exactly, and that is what the committee decided. Let us go back a little bit. There is in this bill a delegation of legislative power. It is proposed there be delegated to the Attorney General certain powers to designate certain substances as dangerous. Normally we would prohibit use or control use by statute. We could do it in this case. We named dangerous substances by the dozens. We also delegate to the Attorney General the power to make decisions in the future with respect to drugs. He can shift the drugs from one schedule to another and introduce new substances into a schedule. He cannot delete them from the bill without following very precisely defined administrative procedures. These are some of the powers which we have delegated to the Attorney General.

Now, we are confronted with an effort to shift that power from the Attorney General to the Secretary of Health, Education, and Welfare. We have traveled that road before. We went through that in 1968 in connection with Reorganization Plan No. 1 of President Johnson when HEW jurisdiction over dangerous substances was taken out of HEW and placed in the Department of Justice. Also the Bureau of Narcotics was taken out of the Treasury Department and placed in the Department of Justice. That was done for a number of sound reasons, not the least of which was the recognition that drug-abuse control is primarily a law-enforcement matter and as such should be handled by the Attorney General.

Now, after all that reorganization and codification of certain parts of that reorganization into this bill, we are now confronted with a series of amendments which say, "Let us not delegate to the Attorney General, the law-enforcement officer of America; let us rather delegate to HEW decision as to whether certain drugs or substances should be prohibited or controlled." It simply does not make sense.

Mr. DODD. Mr. President, I am glad the Senator referred to the reorganization plan.

Mr. HUGHES. Mr. President, may I ask who has the floor?

Mr. HRUSKA. The Senator from Connecticut has the floor.

Mr. DODD. Mr. President, I would be glad to yield to the Senator from Iowa, if he desires. I shall be finished in just a moment. I was going to suggest that we place this Reorganization Plan No. 1 of 1968 in the RECORD.

Under that plan what we are talking about here today has already been accomplished. It states, "The Attorney General will have full authority and responsibility for enforcing the Federal laws relating to narcotics and dangerous drugs." It goes on to say what he will do. I will place this in the RECORD but it states he has to "conduct an extensive campaign of research and a nationwide public education program on drug abuse and its tragic effects." It is spelled out in the plan. Actually, that is the law now.

I ask unanimous consent that Reorganization Plan No. 1 of 1968 be printed at this point in the RECORD.

There being no objection, the document referred to was ordered to be printed in the RECORD, and is as follows:

REORGANIZATION PLAN NO. 1 OF 1968—CREATING A NEW BUREAU OF NARCOTICS AND DANGEROUS DRUGS

(Message from the President of the United States transmitting message on reorganization plan No. 1 of 1968 for creating a new Bureau of Narcotics and Dangerous Drugs, February 7, 1968)

*To the Congress of the United States:*

In my first Reorganization Plan of 1968, I call for the creation of a new and powerful Bureau of Narcotics and Dangerous Drugs.

With this action, America will serve notice to the pusher and the peddler that their criminal acts must stop.

No matter how well organized they are, we will be better organized. No matter how well they have concealed their activities, we will root them out.

Today, Federal investigation and enforcement of our narcotics laws are fragmented. One major element—the Bureau of Narcotics—is in the Treasury Department and responsible for the control of marihuana and narcotics such as heroin. Another—the Bureau of Drug Abuse Control—is in the Department of Health, Education, and Welfare, and is responsible for the control of dangerous drugs including depressants, stimulants, and hallucinogens such as LSD.

Neither is located in the agency which is primarily concerned with Federal law enforcement—the Department of Justice.

This separation of responsibilities—despite the relentless and dedicated efforts of the agents of each Bureau—has complicated and hindered our response to a national menace.

For example, more than nine out of ten seizures of LSD made by the Bureau of Drug Abuse Control have also turned up marihuana—but that Bureau has no jurisdiction over marihuana.

In many instances, we are confronted by well organized, disciplined and resourceful criminals who reap huge profits at the expense of their unfortunate victims.

The response of the Federal Government must be unified. And it must be total.

Today, in my Message on Crime, I recommended strong new laws to control dangerous drugs. I also recommended an increase of more than thirty percent in the number of Federal agents enforcing the narcotic and dangerous drug laws.

*I now propose that a single Bureau of Narcotics and Dangerous Drugs be established in the Department of Justice to administer those laws and to bring to the American people the most efficient and effective Federal enforcement machinery we can devise.*

Under this Reorganization Plan the Attorney General will have full authority and responsibility for enforcing the Federal laws relating to narcotics and dangerous drugs. The new Bureau of Narcotics and Dangerous Drugs, to be headed by a Director appointed by the Attorney General, will:

Consolidate the authority and preserve the experience and manpower of the Bureau of Narcotics and the Bureau of Drug Abuse Control.

Work with states and local governments in their crackdown on illegal trade in drugs and narcotics, and help to train local agents and investigators.

Maintain worldwide operations, working closely with other nations, to suppress the trade in illicit narcotics and marihuana.

Conduct an extensive campaign of research and a nationwide public education program on drug abuse and its tragic effects.

The Plan I forward today moves in the direction recommended by two distinguished groups:

The 1949 Hoover Commission.

The 1963 Presidential Advisory Commission on Narcotic and Drug Abuse.

This Administration and this Congress have the will and the determination to stop the illicit traffic in drugs.

But we need more than the will and the determination. We need a modern and efficient instrument of Government to transform our plans into action. That is what this Reorganization Plan calls for.

The Plan has been prepared in accordance with chapter 9 of title 5 of the United States Code.

I have found, after investigation, that each reorganization included in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code.

I have also found that, by reason of these reorganizations, it is necessary to include in the accompanying plan provisions for the appointment and compensation of the five new positions as specified in section 3 of the plan. The rates of compensation fixed for these new positions are those which I have found to prevail in respect of comparable positions in the Executive Branch of the Government.

Should the reorganization I propose take effect, they will make possible more effective and efficient administration of Federal law enforcement functions. It is not practicable at this time, however, to itemize the reduction in expenditures which may result.

I recommend that the Congress allow this urgently needed and important Reorganization Plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *February 7, 1968.*

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REORGANIZATION PLAN NO. 1 OF 1968

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 7, 1968, pursuant to the provisions of chapter 9 of title 5 of the United States Code

NARCOTICS; DRUG ABUSE CONTROL

SECTION 1. *Transfer of functions from Treasury Department.* There are hereby transferred to the Attorney General:

(a) Those functions of the Secretary of the Treasury which are administered through or with respect to the Bureau of Narcotics.

(b) All functions of the Bureau of Narcotics, of the Commissioner of Narcotics, and of all other officers, employees and agencies of the Bureau of Narcotics.

(c) So much of other functions or parts of functions of the Secretary of the Treasury and the Department of the Treasury as is incidental to or necessary for the performance of the functions transferred by paragraphs (a) and (b) of this section.

SEC. 2. *Transfer of functions from the Department of Health, Education, and Welfare.* There are hereby transferred to the Attorney General:

(a) The functions of the Secretary of Health, Education, and Welfare under the Drug Abuse Control Amendments of 1965 (Public Law 89–74; 79 Stat. 226), except the function of regulating the counterfeiting of those drugs which are not controlled "depressant or stimulant" drugs.

(b) So much of other functions or parts of functions of the Secretary of Health, Education, and Welfare, and of the Department of Health, Education, and Welfare, as is incidental to or necessary for the performance of the functions transferred by paragraph (a) of this section.

SEC. 3. *Bureau of Narcotics and Dangerous Drugs.*

(a) There is established in the Department of Justice an agency which shall be known as the Bureau of Narcotics and Dangerous Drugs. The Bureau shall be headed by a Director who shall be appointed by the Attorney General to a position in the competitive service. The Director shall perform such duties as the Attorney General shall prescribe, and shall receive compensation at the rate now or hereafter provided for Level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(b) There are hereby established in the Department of Justice, in addition to the positions transferred to that Department by this Plan, four new positions, appointment to which shall be made by the Attorney General in the competitive service. Two of those positions shall have compensation at the rate now or hereafter provided for GS–18 positions of the General Schedule and the other two shall have compensation at the rate now or hereafter provided for GS–16 positions of the General Schedule (5 U.S.C. 5332). Each such position shall have such title and duties as the Attorney General shall prescribe.

SEC. 4. *Abolition.* The Bureau of Narcotics in the Department of the Treasury, including the office of Commissioner of Narcotics (21 U.S.C. 161), is hereby abolished. The Secretary of the Treasury shall make such provision as he may deem necessary with respect to terminating those affairs of the Bureau of Narcotics not otherwise provided for in this reorganization plan.

SEC. 5. *Performance of transferred functions.* The Attorney General may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any officer, employee, or organizational entity of the Department of Justice.

SEC. 6. *Incidental transfers.* (a) There are hereby transferred to the Department of Justice all of the positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, (1) of the Bureau of Narcotics, and (2) of the Bureau of Drug Abuse Control of the Department of Health, Education, and Welfare.

(b) There shall be transferred to the Department of Justice, at such time or times as the Director of the Bureau of the Budget shall direct, so much as the Director shall determine of other positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds of the Department of the Treasury and of the Department of Health, Education, and Welfare employed, used, held, available or to made available in connection with functions transferred by the provisions of this reorganization plan.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided in this section shall be carried out in such manner as he may direct and by such agencies as he shall designate.

Mr. HRUSKA. Mr. President, I would like to give my version of the impact of amendment 451 on this bill and then go to the major proposition which I think the Senate is confronted with.

Amendment 451 is a good example of what will be done.

I ask unanimous consent that section 602(a) of the bill be printed in the RECORD at this point. That section is on page 64 of the bill, lines 8 through 20.

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

EDUCATION AND RESEARCH

SEC. 602. (a) The Attorney General is authorized and directed to carry out educational and research programs necessary for the effective enforcement of this Act. In connection with such programs he is authorized to—

(1) establish methods to assess accurately the effects of controlled dangerous substances and to identify and characterize controlled dangerous substances with potential for abuse;

(2) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, or special projects which bear directly on misuse and abuse of controlled dangerous substances.

Mr. HRUSKA. Mr. President, I ask unanimous consent that there be printed in the RECORD at this point the text of the amendment proposed by the Senator from Iowa, consisting of the material to be designated by reason of that amendment as section 602(a), subparagraph 1 through 5 inclusive.

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

AMENDMENT NO. 451

On page 64, beginning with line 8, delete all through line 20 and insert in lieu thereof the following:

"SEC. 602. (a) The Attorney General is authorized and directed to carry out educational and research programs directly related to enforcement of the control provisions set forth in this Act. Such programs may include—

"(1) educational and training programs on dangerous substance law enforcement for local, State, and Federal personnel;

"(2) studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;

"(3) studies or special projects designed to assess and detect accurately the presence of controlled dangerous substances in the human body, including the development of rapid field identification methods which would enable agents to detect micro-quantities of such substances;

"(4) studies or special projects designed to evaluate the nature and sources of the supply of illegal drugs throughout the country;

"(5) studies or special projects to develop more effective methods of manufacture or distribution to prevent diversion of controlled dangerous substances into illegal channels.".

Mr. HRUSKA. Mr. President, with this matter before us, we can see that the Attorney General is being deprived of the statutory authority which he now has and which he should have. The text of section 602(a) to, "Establish methods to assess accurately the effects of control over dangerous substances and to identify and characterize control over dangerous substances with potential for abuse," is completely left out of the proposed amendment. In my mind, with this legislative history, it would be prohibitive to him to engage in that kind of research and effort.

The Attorney General is charged with certain adjustments between schedules. There are four schedules of narcotics or dangerous substances. He is charged with adjusting among those schedules. He cannot delete any without congressional action or without following very precisely prescribed procedures. He can also add to them.

It is for the purpose of making these decisions that he is given power to devise methods of assessing accurately the effects of controlled dangerous substances and to identify and characterize controlled dangerous substances with potential for abuse.

We would be charging him with that duty and we would be taking away the tool. Where does the tool go? That tool

goes to the Department of Health, Education, and Welfare.

A while ago I suggested this constitutes in some measure a delegation of legislative authority by way of administrative action of the Attorney General. So it does. We have devoted pages to the different laws with respect to narcotics, derivatives, and dangerous substances, but we cannot cover them all. Future decisions will have to be made concerning other substances not included in this bill.

We delegate to the Attorney General the authority to constantly canvass this field, to find new substances as they appear, and put them in if they have potential for abuse and have no medical purpose or use.

It seems to me that when we, in this kind of delegation we now face in an amendment, say, "Oh, no, we do not mean the law enforcement officer." We want to put that delegation in a different agency, created and operated from a totally different point of orientation. It does not make good legislative sense.

I have every confidence that if that proposal had been made in committee, it would have been summarily rejected, because it runs counter to President Johnson's Reorganization Act No. 1 of 1968. It runs counter to the President's Crime Commission and to the Hoover Commission. It just does not make sense.

Law enforcement should stay in the Department of Justice. All of the necessary tools that he needs to clear the deck and line things up so that he can effectively enforce this bill, when enacted into law, should remain in it.

This amendment would divest the Attorney General of authority to conduct and establish methods to assess accurately the effects of controlled dangerous substances and to identify and characterize those controlled dangerous substances with potential for abuse. The substitute provision would transfer from the Attorney General the educational and research activities and special authority related to the control provisions, such as a program for detection methods, better prevention of diversions of substances, effects of different law enforcement techniques, and so forth. The substitute provision would limit the Attorney General's authority to enter into research contracts.

It is necessary for the Attorney General to be authorized to carry out research on the effects of controlled dangerous substances and to identify controlled dangerous substances with a potential for abuse, since he is primarily responsible for the determination of whether or not a drug should be brought under control.

The amendment proposed would deny him such authority, but would compel him to make a control determination without having all the facts available concerning the drug in question. It will significantly slow down the control procedures if all the information must be gleaned from other sources. This would defeat our purpose, which is to control a drug before we decide on abuse controls, and not after.

The Department of Health, Education, and Welfare voiced no objection to the original section 604(a), and, in fact, agreed with the proposition.

Mr. President, referring to the subject at hand, the Senator from Nebraska has never been an obstructionist on the matter of obtaining unanimous consent agreements to limit debate where such consent was in order, but here we have a series of five or six amendments, and all of them, with the exception of those dealing with penalties, are calculated to dilute some of the powers and rights and duties enjoined upon the Attorney General.

That is their impact. They would change the bill from a bill which has its thrust in law enforcement to a bill which has orientation in the realm and jurisdiction of health, education, and welfare.

The case has been made, and I think every Senator in this body is convinced, that one of the most pressing problems in crime legislation is a modernized and effective act to deal with drug abuse and drug, traffic. That would be diluted by this amendment and the bill's main thrust changed to something else. That should not be allowed to happen.

I do not know that it would serve any purpose to go into the matter any further in this regard, but it would not be my intention to agree to a unanimous-consent limitation until I was sure that all of the Members of this body were fully aware of the real significance of adoption of this amendment. This amendment would destroy the effectiveness of this bill. That is what is involved.

The education and research goals vested in the Department of Justice do not conflict with those in the rightful realm of the Department of Health, Education, and Welfare. The goals of the Department of Justice are clearly defined, within the act itself, to highlight the importance of this area in the overall law enforcement service and law enforcement efforts.

The bill in no way detracts from the predominant role of the Department of Health, Education, and Welfare in the areas of education and research. The bill allows the Department of Justice to contract for specific research projects relating directly to drug abuse and the enforcement of the act; and that is the way it should be.

It would be a grave mistake to depart from that concept in favor of these amendments.

I suggest that we consider S. 3246 as a law enforcement measure, because that is what it is. It is badly needed. It is long overdue. Rehabilitation and other health factors are outside the scope of this legislation.

Health factors relating to drugs should be and are considered by the Committee on Labor and Public Welfare as separate legislation. The Department of Justice is a law enforcement agency. Therefore, the complete responsibility for all facets of this law enforcement bill should be exercised by the chief law enforcement officer.

Drug control is basically a law enforcement matter and it has been recognized as such for years.

Starting in 1949, for instance, the Hoover Commission, appointed by President Truman, recommended that the functions of drug control be transferred to the Department of Justice. That was 21 years ago. That idea is something that has been kicking around here for all that time. It is of age this year—21 years later.

The recommendations of the Hoover Commission, the President's Advisory Commission on Narcotics and Drug Abuse, the President's Crime Commission, and also his reorganization plan, all of them—all of them with no exception—say that this is the road to travel. This is the highway to follow. Notwithstanding the recommendations of these commissions we are now faced with these amendments which say, "Oh, no, we really did not need this. What we want to do is separate, fragmentize, and compartmentalize the law enforcement functions, with a veto in another department."

I believe that would be a grave mistake, Mr. President, and I believe that the Senate will reject it.

I might say that when we got into the reorganization plan that was considered in March of 1968, here are some of the witnesses who appeared and testified in favor of this concept:

Ramsey Clark, as Attorney General.

John H. Finlaytor, Director, Bureau of Drug Abuse Control.

Henry L. Giordano, who for years was Commissioner of the Bureau of Narcotics.

Phillip Hughes, the Deputy Director of the Bureau of the Budget.

Dr. Phillip Lee, Assistant Secretary of HEW for Health and Scientific Affairs.

Secretary of Health, Education, and Welfare Wilbur Cohen was quoted on the House floor as wholeheartedly supporting the plan.

The continuation of overall Justice Department jurisdiction over the drug abuse field has the complete support of the present administration.

Neither President Johnson's plan nor S. 3246 preempt the drug field. There is room for rehabilitation and health-oriented legislation and, of course, some is needed. In fact, Mr. Ingersoll stated at the White House Conference that the administration recognizes" the need for better rehabilitation techniques, and at the present time we are reviewing the Narcotics Addict Rehabilitation Act with the view in mind of perhaps recommending in the near future some amendments."

Mr. President, I would suggest that we take all these things into consideration with reference to this entire block of amendments. I think the suggestion of the Senator from Connecticut is good, that we ought to lay these amendments aside and proceed to enact this bill quickly. It is well processed, it is well reasoned out, and we should leave these other facets and these other features to another bill at another time.

Mr. HUGHES. Mr. President, I think the point has been very clearly identified here today, and I thank the distinguished Senator from Nebraska for eloquently stating the position of the Department of Justice and the committee and describing very aptly the point of contention and disagreement on this

amendment. He has, indeed, with great eloquence described the need for this particular law enforcement package, which I intend to support wholeheartedly; but I think the points of dispute need to be clarified.

I think it is quite evident that this debate is important to the American public. I think the fact that the chief law enforcement agent of this country has a determining authority over what affects the general health of the people of this country in the way of a narcotic or a drug is the wrong approach. Although he does have, and should have, the right of research and development in the areas that are related directly to law enforcement, it would be better to leave the determining of dangerous substances and changing in schedules of classification up to the Department of Health, Education, and Welfare.

I agree with the distinguished Senator from Nebraska that this scene is rapidly changing, that what the major problem is this year may be a different problem next year. We all saw the rise and decline of LSD, and now the gradual rise in the consumption of it again. We have watched the change in the appeal of the amphetamines—the "uppers" and the "downers." We are familiar with the fact that the drug scene does change rapidly.

But this does not impede the Attorney General in getting all of the scientific information that he needs, and having it readily available to him when he wants it. All the expertise of medical science and research is available to him from the Secretary of Health, Education, and Welfare; and there, in determining and protecting the public health of the citizens of this country, is precisely where it should be reposited.

Certainly all of us support law enforcement, and I know—as all these distinguished gentlemen have stated here today, on Saturday and yesterday—that it is their intention to support legislation in the fields of narcotics education, prevention, rehabilitation when it comes before the Senate. But I cannot agree that this is not a proper place to debate whether the repository of this scientific research and advisory capacity should be in one department or the other. And regardless of the testimony the departments have given, I think it is for the representatives of the people here in the U.S. Senate to reach a decision on where this authority should lie and where this basic thrust should be.

It was not my intention, as I have stated repeatedly, to hamper in any way the efficiency of the Attorney General or the Department of Justice. It was only my intention to more clearly define what I thought the Department of Justice was seeking to do, and on that basis I think the distinguished Members of this body, Mr. President, should be informed. I think the debate here this afternoon, regardless of how it comes out, should be very informative, not only to the Members of this body, but to the American public; and I believe, for that matter, that the question that lies before us is one of major importance. That is the reason I have pursued it.

Mr. President, I should like to ask that the subject matter of this amendment be considered en bloc.

The PRESIDING OFFICER. Does the Senator request unanimous consent?

Mr. HUGHES. I ask unanimous consent.

The PRESIDING OFFICER. Is there objection?

Mr. HRUSKA. Mr. President, a point of information. Is that amendment 451?

Mr. HUGHES. Yes.

Mr. DODD. I have no objection.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. How was the amendment presented in the first place?

The PRESIDING OFFICER. It was presented in two parts. It amends page 64 in two different places.

Is there objection to the request of the Senator from Iowa? The Chair hears none, and it is so ordered?

Mr. HUGHES. Mr. President, I am ready for the vote.

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

Mr. HRUSKA. Mr. President, a point of order. There is a request for recognition on the part of the Senator from Connecticut, and I have a request of similar nature in due time.

Mr. DODD. Mr. President, I can get through in 1 minute.

The fact of the matter is that what we are discussing here is presently the law of the land. It was put into effect in 1968 by an Executive Order of President Johnson. All these things we are discussing the Attorney General needs to carry out his enforcement function. The Secretary of Health, Education, and Welfare has not objected to this. The chief medical officer of that department came before us in a public hearing and supported these provisions in S. 3246. The Attorney General says he wants to consult with the Department of Health, Education, and Welfare, and with a scientific advisory committee, and he will do so.

We say give him the authority. He will consult with all these people. Let him enforce the law. I hope the amendment will be rejected.

Mr. HRUSKA. Mr. President, no one would quarrel with the general proposition that public health is the function of the Department of Health, Education, and Welfare. No one would quarrel with that. But there is a mistaken opinion here that the control of dangerous drugs under this bill is purely a scientific and medical determination. There is involved the decision as to whether and to what extent control of dangerous drugs should be exercised, and this is not a question purely scientific and medical in nature.

In addition to the report of the scientific advisory committee, knowledge of actual street abuse of the drugs in question comes from agent investigations which are conducted and carried out by the Bureau of Narcotics and Dangerous Drugs of the Justice Department. In short, all the basic information, medical, scientific, and actual abuse flows to the commitee from many diverse sources.

The committee itself, as an independent body, makes its recommendations. Once such recommendations are made, it is a policy determination as to whether or not a drug should be controlled. At that point in time, since the control of the drug will require enforcement, it is necessary to evaluate that recommendation, along with practical problems of enforcement, to determine whether the drug should be placed under control. This is not something that the Secretary of Health, Education, and Welfare is as qualified to perform as is the Attorney General. As the Senator from Connecticut observed, the Department of Health, Education, and Welfare testified that they did not want that responsibility. We should not engage in a process of giving them something they do not want.

The Department of Health, Education, and Welfare is not enforcement oriented, as has been clearly pointed out in the staff papers. Yet the control of a dangerous drug is an enforcement matter since such control results in investigations and regulations to insure against illicit diversion and illicit trafficking. The control of a particular drug also can raise antitrust considerations, as well as international questions. All these factors must be brought together and decided upon. The Attorney General is best able to make such a judgment and in point of fact, has been doing so at the present time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa (Mr. HUGHES).

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 Louisiana (Mr. ELLENDER), the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from Minnesota (Mr. MCCARTHY), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

On this vote, the Senator from Texas (Mr. YARBOROUGH) is paired with the Senator from Louisiana (Mr. ELLENDER).

If present and voting, the Senator from Texas would vote "yea" and the Senator from Louisiana would vote "nay."

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), and the Senator from Minnesota (Mr. MCCARTHY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. PROUTY), the Senator from Alaska (Mr. STEVENS) and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The Senator from New York (Mr.

JAVITS), the Senator from Maryland (Mr. MATHIAS) and the Senator from Illinois (Mr. PERCY) are absent on official business.

The Senator from Arizona (Mr. FANNIN) is detained on official business.

If present and voting, the Senator from South Dakota (Mr. MUNDT), would vote "nay."

On this vote, the Senator from Illinois (Mr. PERCY) is paired with the Senator from Arizona (Mr. FANNIN). If present and voting, the Senator from Illinois would vote "yea" and the Senator from Arizona would vote "nay."

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

The result was announced—yeas 42, nays 41, as follows:

[No. 14 Leg.]

YEAS—42

| | | |
|---|---|---|
| Anderson | Harris | Montoya |
| Bayh | Hart | Moss |
| Brooke | Hartke | Muskie |
| Burdick | Hughes | Nelson |
| Byrd, W. Va. | Inouye | Proxmire |
| Case | Jackson | Randolph |
| Church | Kennedy | Ribicoff |
| Cooper | Long | Russell |
| Cranston | Mansfield | Spong |
| Eagleton | McGee | Stennis |
| Ervin | McIntyre | Symington |
| Fulbright | Metcalf | Tydings |
| Goodell | Miller | Williams, N.J. |
| Gore | Mondale | Young, Ohio |

NAYS—41

| | | |
|---|---|---|
| Aiken | Dole | Pastore |
| Allen | Eastland | Pearson |
| Allott | Fong | Pell |
| Baker | Griffin | Saxbe |
| Bellmon | Gurney | Schweiker |
| Bennett | Hansen | Scott |
| Bible | Hatfield | Smith, Maine |
| Boggs | Holland | Smith, Ill. |
| Byrd, Va. | Hollings | Sparkman |
| Cannon | Hruska | Talmadge |
| Cook | Jordan, Idaho | Thurmond |
| Cotton | Magnuson | Williams, Del. |
| Curtis | McClellan | Young, N. Dak. |
| Dodd | Murphy | |

NOT VOTING—17

| | | |
|---|---|---|
| Dominick | Jordan, N.C. | Percy |
| Ellender | Mathias | Prouty |
| Fannin | McCarthy | Stevens |
| Goldwater | McGovern | Tower |
| Gravel | Mundt | Yarborough |
| Javits | Packwood | |

So Mr. HUGHES' amendment was agreed to.

Mr. DODD. Mr. President, I move to reconsider——

The PRESIDING OFFICER. The Senator did not vote with the prevailing side and therefore is ineligible to make that motion.

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

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HUGHES. Mr. President, I send to the desk an amendment——

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Arkansas will state it.

Mr. McCLELLAN. I thought I heard a motion to reconsider.

Mr. METCALF. Mr. President, I move to reconsider the vote——

Mr. YOUNG of Ohio. Mr. President, a point of order. It is too late because the matter of the pending business has——

Mr. McCLELLAN. We can do it some other time, if we do not wish to do it now. We have the whole day to do it in, if we do not want to do it now.

Mr. METCALF. Mr. President, I voted on the majority side and I move to reconsider——

Mr. YOUNG of Ohio. Mr. President, a point of order.

Mr. MOSS. Mr. President, I move that the motion to reconsider be laid on the table.

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

Mr. HRUSKA. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Nebraska will state it.

Mr. HRUSKA. Will the Chair please state the question?

The PRESIDING OFFICER. The question is on the motion to table the motion to reconsider.

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

The yeas and nays were ordered.

Mr. SYMINGTON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Missouri will state it.

Mr. SYMINGTON. As I understand it, on a motion to table a motion to reconsider, would not a vote of "yea" be in favor of the Hughes amendment, or would it not?

The PRESIDING OFFICER. A vote of "yea" on the motion to table the motion to reconsider would have the effect of keeping the amendment in the bill.

Mr. SYMINGTON. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to reconsider.

Mr. DODD. Mr. President, would not a "nay" vote be for reconsideration of the vote?

The PRESIDING OFFICER. That is correct.

Mr. HRUSKA. Mr. President, would not a "no" vote be to sustain the committee in its text of the bill?

Mr. McCLELLAN. No, no, Mr. President. Am I not correct that a "no" vote only brings about a reconsideration? It does not sustain or reject the committee. We would have to have another vote on that. Am I not correct?

The PRESIDING OFFICER. The Senator is correct.

The question is on agreeing to the motion to table the motion to reconsider.

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 Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from North Carolina (Mr. JORDAN), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from North Carolina (Mr. JORDAN) and the Senator from Texas (Mr. YARBOROUGH) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. PROUTY), the Senator from Alaska (Mr. STEVENS) and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS) and the Senator from Illinois (Mr. PERCY) are absent on official business.

The Senator from Arizona (Mr. FANNIN) is detained on official business.

If present and voting, the Senator from South Dakota (Mr. MUNDT) would vote "nay."

On this vote, the Senator from Illinois (Mr. PERCY) is paired with the Senator from Arizona (Mr. FANNIN). If present and voting, the Senator from Illinois would vote "yea" and the Senator from Arizona would vote "nay."

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

The result was announced—yeas 38, nays 46, as follows:

[No. 15 Leg.]

YEAS—38

| | | |
|---|---|---|
| Bayh | Hart | Muskie |
| Brooke | Hartke | Nelson |
| Burdick | Hughes | Proxmire |
| Byrd, W. Va. | Inouye | Randolph |
| Case | Jackson | Ribicoff |
| Church | Kennedy | Russell |
| Cooper | Mansfield | Spong |
| Cranston | McCarthy | Stennis |
| Eagleton | McGee | Symington |
| Ervin | McIntyre | Tydings |
| Fulbright | Mondale | Williams, N.J. |
| Goodell | Montoya | Young, Ohio |
| Gore | Moss | |

NAYS—46

| | | |
|---|---|---|
| Aiken | Eastland | Murphy |
| Allen | Ellender | Pastore |
| Allott | Fong | Pearson |
| Anderson | Griffin | Pell |
| Baker | Gurney | Saxbe |
| Bellmon | Hansen | Schweiker |
| Bennett | Hatfield | Scott |
| Bible | Holland | Smith, Maine |
| Boggs | Hollings | Smith, Ill. |
| Byrd, Va. | Hruska | Sparkman |
| Cannon | Jordan, Idaho | Talmadge |
| Cook | Long | Thurmond |
| Cotton | Magnuson | Williams, Del. |
| Curtis | McClellan | Young, N. Dak. |
| Dodd | Metcalf | |
| Dole | Miller | |

NOT VOTING—16

| | | |
|---|---|---|
| Dominick | Jordan, N.C. | Prouty |
| Fannin | Mathias | Stevens |
| Goldwater | McGovern | Tower |
| Gravel | Mundt | Yarborough |
| Harris | Packwood | |
| Javits | Percy | |

So the motion to lay on the table the motion to reconsider was rejected.

The PRESIDING OFFICER. The question recurs on the motion to reconsider.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The clerk will call the roll.

The legislative clerk called the roll.

Mr. KENNEDY. I announce that the

Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Georgia (Mr. RUSSELL), and the Senator from Texas (Mr. YARBOROUGH), are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Georgia (Mr. RUSSELL), would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. PROUTY), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are absent on official business.

On this vote, the Senator from South Dakota (Mr. MUNDT) is paired with the Senator from Illinois (Mr. PERCY). If present and voting, the Senator from South Dakota would vote "yea" and the Senator from Illinois would vote "nay."

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

The result was announced—yeas 47, nays 38, as follows:

[No. 16 Leg.]

YEAS—47

| | | |
|---|---|---|
| Aiken | Eastland | Miller |
| Allen | Ellender | Murphy |
| Allott | Fannin | Pastore |
| Anderson | Fong | Pearson |
| Baker | Griffin | Pell |
| Bellmon | Gurney | Saxbe |
| Bennett | Hansen | Schweiker |
| Bible | Hatfield | Scott |
| Boggs | Holland | Smith, Maine |
| Byrd, Va. | Hollings | Smith, Ill. |
| Cannon | Hruska | Sparkman |
| Cook | Jordan, Idaho | Talmadge |
| Cotton | Long | Thurmond |
| Curtis | Magnuson | Williams, Del. |
| Dodd | McClellan | Young, N. Dak. |
| Dole | Metcalf | |

NAYS—38

| | | |
|---|---|---|
| Bayh | Harris | Moss |
| Brooke | Hart | Muskie |
| Burdick | Hartke | Nelson |
| Byrd, W. Va. | Hughes | Proxmire |
| Case | Inouye | Randolph |
| Church | Jackson | Ribicoff |
| Cooper | Kennedy | Spong |
| Cranston | Mansfield | Stennis |
| Eagleton | McCarthy | Symington |
| Ervin | McGee | Tydings |
| Fulbright | McIntyre | Williams, N.J. |
| Goodell | Mondale | Young, Ohio |
| Gore | Montoya | |

NOT VOTING—15

| | | |
|---|---|---|
| Dominick | Mathias | Prouty |
| Goldwater | McGovern | Russell |
| Gravel | Mundt | Stevens |
| Javits | Packwood | Tower |
| Jordan, N.C. | Percy | Yarborough |

So the motion to reconsider was agreed to.

The PRESIDING OFFICER. The vote will now recur on the adoption of the amendment of the Senator from Iowa.

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

The PRESIDING OFFICER. The yeas and nays are automatic. 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 California (Mr. CRANSTON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Georgia (Mr. RUSSELL), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. ANDERSON), the Senator from California (Mr. CRANSTON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from Georgia (Mr. RUSSELL), and the Senator from Texas (Mr. YARBOROUGH) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. PROUTY), the Senator from Alaska (Mr. STEVENS) and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS) and the Senator from Illinois (Mr. PERCY) are absent on official business.

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

On this vote, the Senator from Illinois (Mr. PERCY) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Illinois would vote "yea" and the Senator from South Dakota would vote "nay."

The result was announced—yeas 36, nays 46, as follows:

[No. 17 Leg.]

YEAS—36

| | | |
|---|---|---|
| Bayh | Hart | Moss |
| Brooke | Hartke | Muskie |
| Burdick | Hughes | Nelson |
| Byrd, W. Va. | Inouye | Proxmire |
| Case | Jackson | Randolph |
| Church | Kennedy | Ribicoff |
| Cooper | Mansfield | Spong |
| Eagleton | McCarthy | Stennis |
| Ervin | McGee | Symington |
| Goodell | McIntyre | Tydings |
| Gore | Mondale | Williams, N.J. |
| Harris | Montoya | Young, Ohio |

NAYS—46

| | | |
|---|---|---|
| Aiken | Byrd, Va. | Ellender |
| Allen | Cannon | Fannin |
| Allott | Cook | Fong |
| Baker | Cotton | Griffin |
| Bellmon | Curtis | Gurney |
| Bennett | Dodd | Hansen |
| Bible | Dole | Hatfield |
| Boggs | Eastland | Holland |
| Hollings | Murphy | Smith, Ill. |
| Hruska | Pastore | Sparkman |
| Jordan, Idaho | Pearson | Talmadge |
| Long | Pell | Thurmond |
| Magnuson | Saxbe | Williams, Del. |
| McClellan | Schweiker | Young, N. Dak. |
| Metcalf | Scott | |
| Miller | Smith, Maine | |

NOT VOTING—18

| | | |
|---|---|---|
| Anderson | Javits | Percy |
| Cranston | Jordan, N.C. | Prouty |
| Dominick | Mathias | Russell |
| Fulbright | McGovern | Stevens |
| Goldwater | Mundt | Tower |
| Gravel | Packwood | Yarborough |

So Mr. HUGHES' amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 453

Mr. HUGHES. Mr. President, I call up my amendment No. 543.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. The Senator from Iowa (Mr. HUGHES) proposes amendment No. 453, as follows:

On page 66, line 20, immediately before the period, insert a comma and the following: "*Provided*, That no such agency or instrumentality shall be required to furnish the name or other identifying information about a patient or a research subject whose identity it has undertaken to keep confidential".

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

The PRESIDING OFFICER. The Senate will be in order.

Mr. HUGHES. Mr. President, section 603(b) of S. 3246 provides that, when requested by the Attorney General, "it shall be the duty of any agency or instrumentality of the Federal Government to furnish assistance, including technical advice, to him for carrying out the purposes of this act." The bill imposes no limit on the information which the Attorney General may demand and which the agency would then be required by law to provide.

This amendment, which is intended to insure the confidentiality of certain types of patient records, would add a qualification to this section to the effect that no agency shall be required to furnish the name or other identifying information about a patient or a research subject whose identity it has undertaken to keep confidential.

Mr. President, I do not think that there will be much argument against this limitation. Without it, data collected for legitimate medical and scientific purposes could be demanded by the Department of Justice for use in connection with criminal prosecutions. Even the possibility of such use would seriously inhibit, if not prevent, doctors and hospitals from providing such information, which is privileged by law.

I should point out that the amendment would not prevent the Department of Justice from obtaining such information by other means. It would only permit a Government agency to withhold a patient's name or identifying information in those instances where it had agreed to do so as a condition of obtaining the data in the first place.

Mr. President, I think it is vitally important to preserve the confidentiality of

information that arises in and continuing research projects, out of patient-doctor relationships. This is so essential if we are to obtain an adequate amount of information in any of the areas with which we are coping.

I think all of us have recognized the need, as we have heard it stated here time and time again, for research in all these areas. We have even been debating, in connection with the last amendment that I offered, some restrictions on the amount of research and identifying the areas of research that the Justice Department could engage in.

Mr. President, I think it is imperative that if we are to be able to continue this medical and scientific research, if we are to be able to involve the people we need to involve, for purposes of determining factors relating to the various drugs and narcotics that are on these schedules and for the purposes of enforcement of the law—we have to preserve the confidentiality of the patients or the people being used as research subjects. The purpose of this amendment is thrust to that point.

I do not wish to belabor the point. I simply wish to point out what I think is basically an accepted medical and research fact—that confidentiality should be protected. I cannot see this as any hindrance whatever to the Justice Department or the Attorney General, in the enforcement of this act.

I ask the Senator from Connecticut, who is managing the bill, if this particular amendment adversely affects the enforcement of this act.

Mr. DODD. Mr. President, my disposition is to accept this amendment.

The thrust of the amendment is to protect the integrity of scientific research and is obviously directed toward protecting research conducted by NIH.

Limited grants of immunity from prosecution and disclosure are the function and responsibility of the Attorney General. Any research conducted by the Federal Government itself should be available to the Attorney General unless agreement is reached in advance as to nondisclosure. This should be done on a case-by-case basis.

As to research grants and studies paid for by the Federal Government but done by outside investigators, such immunity can be obtained under the bill in section 602 (c) and (d). Once again, this is on a case-by-case basis. The Department of Justice has for years objected to any form of blanket immunity provisions relating to potential prosecutions or disclosure.

However, I do not feel this particular amendment adversely affects the enforcement of the act and for that reason, I think we ought to accept this amendment.

Mr. HUGHES. The Senator is willing to accept this amendment?

Mr. DODD. Yes.

Th PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment was agreed to.

Mr. HUGHES. Mr. President, I sent to the desk earlier an amendment which I would like to call up and explain. I do not have the identifying number of it.

The PRESIDING OFFICER. The amendment has no number.

Mr. HUGHES. I ask that the clerk state the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

AMENDMENT NO. 464

On page 12, line 8, delete "upon his own motion" and insert in lieu thereof the following: "upon the recommendation of the Secretary of Health, Education, and Welfare, or the Scientific Advisory Committee established in title VI of this Act.".

On page 12, line 12, delete "Before so doing, the Attorney General" and insert in lieu thereof the following: "If the Attorney General acts pursuant to the petition of an interested party, before so doing, he".

On page 14, beginning with line 7, strike out all through line 10.

On page 35, line 20, immediately after "determine", insert a comma and the following: "after requesting and considering the technical advice of the Secretary of Health, Education, and Welfare,".

On page 41, line 19, immediately after the word "finds", insert a comma and the following: "after requesting and considering the technical advice of the Secretary of Health, Education, and Welfare,".

On page 41, line 23, immediately after the word "finds", insert a comma and the following: "after requesting and considering the technical advice of the Secretary of Health, Education, and Welfare,".

Mr. MANSFIELD. Mr. President, will the Senator yield, without losing his right to the floor?

Mr. HUGHES. I yield.

The PRESIDING OFFICER. Does the Senator ask unanimous consent that the amendments be considered en bloc?

Mr. HUGHES. I make such a request.

Mr. HRUSKA. Mr. President, reserving the right to object, the amendments are not printed. The membership of this body will not be able to follow their content without their being printed. To allow the consideration of the amendments en bloc is a little difficult for this Senator to understand.

The PRESIDING OFFICER. Is there objection?

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

Mr. MANSFIELD. Without the Senator from Iowa losing his right to the floor.

The PRESIDING OFFICER. Does the Senator yield for this purpose?

Mr. HUGHES. I yield.

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

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, will the distinguished Senator from Iowa, who has the floor, yield to me briefly?

Mr. HUGHES. I am happy to yield to the distinguished majority leader.

Mr. MANSFIELD. Mr. President, I understand that this amendment will take some time to consider. It is the pending business.

## ORDER FOR ADJOURNMENT TO 10:30 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, in view of the fact that this has been a long day, I ask unanimous consent that when the Senate completes its business this evening, it stand in adjournment until 10:30 tomorrow morning.

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

## ORDER OF RECOGNITION OF SENATOR HANSEN TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at 10:30 tomorrow morning, the distinguished Senator from Wyoming (Mr. HANSEN) be recognized for not to exceed one-half hour.

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

## TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that following the speech by the distinguished Senator from Wyoming tomorrow, there be a period for the transaction of routine morning business, with a time limitation of 3 minutes therein.

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

## AGREEMENT WITH CANADA RELATING TO THE OPERATION OF RADIOTELEPHONE STATIONS—REMOVAL OF INJUNCTION OF SECRECY

Mr. MANSFIELD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from executive A, 91st Congress, second session, an agreement with Canada on operation of radiotelephone stations, signed November 19, 1969, transmitted to the Senate today by the President of the United States, and that the agreement, together with the President's message, be referred to the Committee on Foreign Relations and ordered to be printed, and the President's message be printed in the RECORD.

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

The message from the President is as follows:

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith an agreement between the Government of the United States of America and the Government of Canada relating to the operation of radiotelephone stations, signed at Ottawa on November 19, 1969.

It is provided in the agreement that it will enter into force upon the exchange of instruments of ratification.

Upon entry into force of the agreement, a person holding a valid license issued by the Canadian Department of Communications for a station in the General Radio Service may be authorized by the Federal Communications Commission to operate that station in the United States. Reciprocally, a person holding a valid license issued by the Federal Communications Commission for a Class D station in the Citizens Radio Service may be authorized by the Canadian Department of Communications to

operate that station in Canada. The primary object of the agreement is to facilitate emergency assistance and road service communications while traveling on highways of the two countries.

I also transmit for the information of the Senate a report by the Secretary of State relating to the background and purpose of the agreement.

I urge that the Senate give early and favorable consideration to the agreement.

RICHARD NIXON.

THE WHITE HOUSE, *January 27, 1970.*

## SENATOR MURPHY SUPPORTS THE DRUG CONTROL BILL

Mr. MURPHY. Mr. President, last week the Senate acted on the administration's Organized Crime Control Act, a bill designed to accelerate the Nation's battle against organized crime.

Today, Mr. President, we have before us another important administration bill to deal with a problem which I have said has reached epidemic proportions both in California and in the country. I am speaking, of course, of the drug problem.

This measure seeks to control drug abuses and I am sure it will be welcomed by all of our citizens. National statistics show:

That the narcotics and marihuana arrests have risen an astronomical 322 percent in the decade of the 1960's;

That arrests in 1968 were 64 percent greater than 1967, primarily involving marihuana;

That marihuana arrests nearly doubled in the last 2 years according to the FBI;

That there are between 100,000 and 125,000 narcotic abusers and an estimated 12 million citizens have tried marihuana;

That 50 percent of the more than 8 billion amphetamine pills produced annually are diverted to illegal traffic;

That as high as 50 percent of the students in some areas have had some experience with marihuana according to an NIH survey.

In California the magnitude of the drug problem can be seen by the following drug arrests statistics which show:

That in 1968, 6,400 adults were arrested, a figure representing a 65 percent increase over 1967 and a 200 percent increase over 1960;

That juvenile arrests total 29,947 in 1968, a figure representing a 115 percent increase over 1967 and a 2,000 percent increase over 1960;

That in 1967 there were over two thousand more arrests for marihuana violations than in the previous 6 years combined.

These State and National statistics dramatically demonstrate that the drug problem has reached the crisis stage and that action such as S. 3246 is needed. Particularly alarming is the fact that the average median age for drug arrests keeps getting lower and lower.

At one time marihuana was a phenomenon of citizens in slum areas and certain jazz musicians. More recently there has been a growing concern over drug abuse with our college students. As bad as this was and is, we know now that drug use is spreading to our high schools and junior high schools. Testimony has been received indicating that the problem has even reached the elementary grade level. Confirming this frightening development, in my testimony in Los Angeles on September 27, 1969, before the Special Subcommittee on Alcoholism and Narcotics of the Labor and Public Welfare Committee, I quoted from a letter from the coordinator of a drug abuse information center in Fresno, Calif., saying:

> I can assure you that drug abuse has not decreased at our high schools—it has increased tremendously at junior high levels—and has extended into the fifth and sixth grades.

In my testimony previously referred to, I made various recommendations, including acceleration of research, particularly in the marihuana area, a stepped-up education campaign designed to make drugs the "out" thing rather than the "in" thing, the enactment of legislation to protect the general public and our young citizens from the illicit diversion of drugs from legitimate channels, and to make certain that there is a greater accountability of drugs from the Nation's pharmaceutical companies. Also I recommended that our approach to criminal activity with respect to marihuana should be the same as that used in connection with other crimes; that is, an increase in the severity of the law as the severity of the offense increases.

In addition, I urged the creation of an International Drug Commission as embodied in Senate Joint Resolution 142, which I introduced. Further, I praised the administration's determined effort to crack down on drug abuse, a pledge made by candidate Nixon on September 16, 1968, in Anaheim, Calif. Operation Intercept, now Operation Cooperation, and the bill before us today indicate that the administration means business in its crackdown on drug abuse.

I am pleased to strongly support the measure before the Senate today which would: First, coordinate and codify our present fragmented drug laws into one comprehensive legislative package; second, deal with the serious problem of the legal drug traffic being channeled into illegal channels through a greater accountability of regulations of the manufacture, distribution, importation, and exportation of these drugs; third, classify the drugs subject to the bill's provisions into four schedules according to their chemical properties, psychological and physical effects, and their abuse potential; fourth, establish a more realistic penalty structure, making a more rational relationship between the offense committed and the penalties imposed—for the pushers and those who traffick in drugs, the bill would allow more severe sentences; for mere possession the bill gives judges and law-enforcement officers the needed flexibility—fifth, create a committee, which would be required to report its findings and recommendations within 2 years to both the Congress and the President, to study all aspects of marihuana.

Mr. President, on July 17 of last year, the San Diego Union in a lead editorial pointed out the need for action now in the drug battle. The cartoon on the editorial page depicted the drug and dope problem as "the fifth horseman" galloping destructively across our country with a hypodermic gun labeled "dope." This is an apt description as evidenced by the frightening possibilities raised in the editorial's conclusion, which states:

> Time as well as vigor is of the essence. Unless something is done quickly, parents may not be able to send their children to the playground without exposing them to narcotics.

Time is running out and Congress must respond to the challenge of drug abuse in our country now.

While this will not be the only measure needed, this is an important step if we are to reverse these statistics.

Mr. President, I ask unanimous consent that the text of my testimony before this special subcommittee of the Senate Labor Committee on September 27 of last year, be printed in the RECORD. In addition, I ask unanimous consent that a copy of my statement made on the introduction of Senate Joint Resolution 142 be made part of the RECORD.

Finally, I ask unanimous consent that responses I made to a survey conducted by the Los Angeles Times dealing with marihuana be printed in the RECORD.

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

[From CONGRESSIONAL RECORD, Sept. 30, 1969]

SENATOR MURPHY SAYS DRUG ABUSE REPRESENTS CLEAR AND PRESENT DANGER TO COUNTRY

Mr. MURPHY. Mr. President, at my request the Special Subcommittee on Alcoholism and Narcotics of the Committee on Labor and Public Welfare held hearings in California on the drug-abuse problem, which has reached epidemic proportions. The hearings were held on September 27 in Los Angeles.

I ask unanimous consent that testimony I gave be printed in the RECORD.

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

"Mr. Chairman, first I want to welcome the Subcommittee to California. Earlier this year—I wrote to Senator Yarborough—the Chairman of the Senate Labor and Public Welfare Committee—and after the new Special Subcommittee on Alcoholism and Narcotics was created—to Senator Hughes urging that hearings be held in California on the drug problem. I therefore appreciate very much the Subcommittee coming to California.

"The hearing today focuses on a subject which has reached epidemic proportions and which is foremost on the minds of Californians—the growing use and abuse of drugs. Frankly, Californians are deeply alarmed and—rightfully angry—over this problem.

"In California the magnitude of the drug problem can be seen by the growing number of drug arrests.

"In 1968—6,400 adults were arrested—a figure representing a 65 per cent increase over 1967—and a two hundred per cent increase over 1960.

"Juvenile arrests totaled 29,947 in 1968—a figure representing a 115 per cent increase over 1967 and a two thousand per cent increase over 1960.

"In California in 1967—there were over two thousand more arrests for marihuana violations than in the previous six years combined.

"These statistics dramatically demonstrate the drug problem has reached the crisis stage. Even more alarming than the numbers is the fact that the average median age for drug arrests keeps getting lower and lower.

"At one time, marihuana, for example, was a phenomenon of citizens in the ghetto areas

and certain jazz musicians. More recently, there has been a growing concern in California and in the country over drug abuse by our college students. As bad as this was—and is—we now know that drug use is spreading to our high schools and junior high schools. This Special Subcommittee has heard testimony that the drug problem has reached the elementary grade levels. Recently reported in the press was a story claiming that a third grader made $40,000 trafficking in drugs. That drugs have reached the elementary level is frightening—but correspondence that I have received confirms this invasion. For example, I received a letter from Mr. Arthur H. Suddjian—Coordinator—Drug Abuse Information Center of the Fresno Unified School District—and I quote: 'I can assure you that drug abuse has not decreased in our high schools—it has increased tremendously at junior high levels—and has extended into the fifth and sixth grades.'

"On July 17—the *San Diego Union* in a lead editorial pointed out the need for action *now* in the drug battle. The cartoon on the editorial page for the same day depicted the drug and dope problem as 'The Fifth Horseman' galloping destructively across our country with a hypodermic gun labeled 'Dope'. This is an apt description as evidenced by the frightening possibilities raised in the editorial's conclusion which states: 'Time as well as vigor is of the essence. Unless something is done quickly parents may not be able to send their children to playgrounds without exposing them to narcotics'.

"On September 16, 1968—then Presidential candidate Richard Nixon made an important speech to the American people in Anaheim, California. In this speech—Mr. Nixon made a pledge to the American people that he—if elected—would act on the urgent national drug abuse problem. President Nixon did act—appointing in February—a Special Presidential Task Force on Narcotics—Marihuana—and Dangerous Drugs. The Task Force began its work in March and on June 6, the Task Force report was sent to the President. On September 1, 1969, the first implementation of President Nixon's Task Force took place under the name 'Operation Intercept'. The FAA regulations were amended to provide, among other things, that all flights from Mexico into the United States must henceforth be made on a flight-plan basis. The regulations further provided for revocation of the license of any pilot convicted of a drug abuse offense and—where a private aircraft is used to smuggle drugs into the United States—the certificate of airworthiness for the plane may be revoked so that the plane may no longer be legally flown by anyone.

"So less than a year after he took office, President Nixon launched what I called D-day in the nation's war against illegal drugs and narcotics.

"A study of this Task Force report reveals that it represents a virtual battle plan of sweeping proportions. The entire US-Mexico border is under surveillance in an effort to cut off and control illicit narcotic and drug traffic. Mexico is estimated to supply about 85 to 90 per cent of marihuana in the United States and is also a source of a substantial amount of other drugs. President Nixon thus has launched the crackdown of drugs and narcotics that he promised he would do in Anaheim, California, in 1968. Certainly 'Operation Intercept' will have the overwelming support of the American people.

"I was pleased that many of the recommendations in the Task Force report followed recommendations and suggestions that I have submitted to the President and to the Administration. I do wish to comment on some areas that seem to me most pressing.

"I believe it is essential that we increase research in the whole drug and—particularly—the marihuana area for it's quite clear that although—for example—we have known of marihuana for some time—we have in the words of the President's Task Force 'comparatively little sound research on the drug.' Therefore, I believe that research is necessary to provide us with the soundest possible facts on the causes and effects of marihuana.

"In addition, we must step up our education programs and give our citizens and our young people scientifically accurate information regarding the dangers of drugs. A crash anti-drug program comparable to the anti-smoking campaign should be undertaken. In addition—we must work within the schools and the communities to make drugs the 'out thing' rather than the 'in thing.'

"We must enact legislation as proposed by the Administration to protect the general public from the illicit diversion of drugs from legitimate channels and to make certain that there is a greater accountability of drugs from the nation's pharmaceutical companies. The President's Task Force report and testimony before committees of Congress have indicated that there are considerable quantities of drugs being legally manufactured in the United States—sold and exported to Mexico—and then smuggled back to this country. Action in this area is particularly critical for the 1968 report of the Justice Department of the State of California shows a decrease in the percentage of drug arrests for marihuana in both the adult and juvenile categories—but an increase in the percentage of dangerous drug use. Therefore, I strongly urge that the Administration's recommendations to curb and regulate dangerous drugs be acted upon immediately.

"No one likes the situation resulting from the border checks. It is harmful to business on both sides of the border—inconveniences the tourist and our citizens—and it is potentially harmful to the good relationship enjoyed by our governments and our peoples.

"I have introduced in the Senate S.J. Res. 142, which urges the creation of an International Drug Commission to get international coordination, cooperation and unified action with respect to the drug problem. In the past, the Mexican government has resisted such an international body, but I still believe that we should keep working and pushing the Mexican government on this.

"We have often said that our young people represent the nation's greatest national resource. This expression may be trite—but it is nevertheless true. I strongly believe it. Therefore, we are not about to allow drugs to continue their insidious endangering of the mental and physical health of our young people and the undermining of the moral fibre of this great nation.

"In short—the American people are angry over the drug problem and are demanding that action be taken to stop the drug traffic which only profits those who don't care how they make a buck.

"This rightful anger and demand for action can be seen in the approximately one hundred cities in California who passed resolutions urging the closing of the Mexico-US border to minors unless accompanied by their parents.

"This rightful anger and demand for action can be seen by the action of the California State Legislature in enacting legislation restricting the border-crossing of resident minors to occasions when they are accompanied by a parent, have parental written consent or have a passport.

"This rightful anger and demand for action can be seen in New York where in a study this week by the *New York Times* it was reported that addict victims were turning vigilante and that residents in areas with large numbers of addicts now 'regard retribution preferable to promises of protection and plans for therapeutic programs never seem big enough, prompt enough or workable.' This disturbing article went on to estimate that there are one hundred thousand heroin users in New York and that they figure the addicts might be stealing as much as $2.6 billion a year in property to support their habits. The article also told of the United States Post Office paying $360,000.00 in overtime pay just to provide additional postmen for safety reasons in some of the heavy drug areas. It seems these added postmen are needed twice a month when welfare checks are mailed since narcotics addicts have come to regard these checks as a potential source of money with which to buy heroin.

"In conclusion, Mr. Chairman, I believe the drug problem represents a clear and present danger to our citizens and our country and I certainly am pleased that you have come to California. I am hopeful that as a result of these hearings and as a result of the vigorous action taken and recommendations made by the Administration, we might begin to put an end to this terrible problem."

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[From the CONGRESSIONAL RECORD, July 28, 1969]

SENATE JOINT RESOLUTION 142—INTRODUCTION OF A JOINT RESOLUTION TO ESTABLISH A DRUG COMMISSION BETWEEN THE UNITED STATES, MEXICO, AND CANADA

Mr. MURPHY. Mr. President, I introduce a joint resolution which urges the President to seek and work for the establishment of a permanent International Drug Commission between the United States, Mexico, and Canada.

The drug problem is a clear and present danger to the health and morals of our Nation and our people.

President Nixon recognized this grave danger and has sent to the Congress a strong cure for this national menace. Along with Congressman BOB WILSON, DON CLAUSEN, and BOB MATHIAS of California, I wrote President Nixon making various recommendations for action in this field. I ask unanimous consent that our letter to the President be printed in full at the conclusion of my remarks. Naturally, I was pleased that the administration's recommended legislation incorporates some of the suggestions that we made.

Prior to that time I had also written to Assistant Secretary Charles A. Meyer, who also serves as a chairman and U.S. representative on the United States-Mexico Commission for Border Development and Friendship, after I discovered, upon reviewing the brochure of the Border Commission, that the drug problem was not even on the agenda of the U.S.-Mexico Border Commission. In my June 26 letter to Mr. Meyer, I urged not only that the drug problem be placed on the agenda, but that it be placed in a priority position.

On July 9, Secretary Meyer wrote to me saying that he had decided against my suggestion. I ask unanimous consent that my letter to Secretary Meyer and his response be printed at this point in the RECORD.

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

"JUNE 26, 1969.

"Hon. CHARLES A. MEYERS,
*"Assistant Secretary for Inter-American Affairs, Department of State, Washington, D.C.*

"DEAR MR. SECRETARY: I am writing you because of your chairmanship of the U.S.-Mexico Commission for Border Development and Friendship. I was pleased that Mr. Frank B. Dean stopped by my office to discuss Senate Joint Resolution 119, which would authorize an appropriation for expenses of the Commission.

"Naturally as a representative of a state which shares a border with Mexico, I will be pleased to support the resolution. Certainly I

applaud joint efforts to foster friendship and improve relations between our countries and our people.

"In examining your brochure, 'A New Pattern for Borderland Development,' I observed that after studies and conferences, the Commission decided to work in the following eleven areas: housing, manpower, community centers and services, libraries, industrial and economic development, health and sanitation, transportation, recreation, planning and technical assistance, education and point disaster relief. I was, however, concerned with what I regard as a most serious omission. I am referring to the fact that the drug problem does not appear to be on the agenda.

"The drug problem, as you well know, is already serious and seems to be growing daily. This year, the Senate Health Subcommittee, on which I serve, heard testimony that the drug problem was spreading to the elementary school. Frankly, citizens in my state as well as in other parts of the country are rightfully getting angry over the continuous and apparently growing quantities of drugs coming into the United States. There is a feeling that Mexico is not doing everything it can to prevent the illicit and illegal traffic in drugs. Indicative of this feeling is the fact that over one hundred cities in my state have separately passed resolutions urging Congress to close the border to minors unless they are accompanied by a parent or a responsible audit. I have urged the Senate Labor and Public Welfare Committee to hold hearings in Southern California to examine the drug abuse problem in general and the border question in particular, and I am hopeful that the Committee will be coming to California in the near future.

"In summary, the alarming increase in drug traffic and drug use is not only harmful to its victims, but it also is harmful to the good relations between Mexico and the United States, I would, therefore, urge that drugs be added to your agenda and that it be a first order of business of this most important Commission.

"With best wishes, I am,

"Sincerely,

"GEORGE MURPHY."

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"UNITED STATES-MEXICO COMMISSION FOR BORDER DEVELOPMENT AND FRIENDSHIP,

*"Washington, D.C., July 9, 1969.*

"Hon. GEORGE MURPHY,
*"U.S. Senate,*
*"Washington, D.C.*

"DEAR SENATOR MURPHY: Thank you for your letter of June 26, 1969 concerning the role of the U.S.-Mexico Commission for Border Development and Friendship. I am delighted that we can count on your support of Senate Joint Resolution 119 which would authorize an appropriation for the Commission.

"In your letter you outline your great concern about the increasing problem of narcotics, dangerous drugs and marihuana trafficking, and you urge that this problem be added to the agenda of the Commission. I have given full consideration to this proposal and have decided against it, for three reasons:

"First, we are attempting to limit the scope of the Commission to problems within the immediate geographic area of the border. The narcotics problem transcends such a geographic area, and as such, lends itself more readily to treatment through regular diplomatic channels, as well as through the arrangement of informal cooperation which already exists between the enforcement authorities of both countries.

"Second, the Mexican Government has on repeated occasions resisted suggestions to have narcotics enforcement problems placed under a joint U.S.-Mexico commission. We estimate that a proposal to place narcotics problems on the CODAF agenda would be opposed by the Mexican Government.

"Third, narcotics enforcement in Mexico is highly centralized under the Federal police. One of the principal aims of the Commission is to stimulate action on the local level in border communities. There appears to be little likelihood that meaninful local action on narcotics enforcement in Mexico is possible under present conditions.

While I oppose the inclusion of the narcotics problem as a separate item on the agenda of CODAF. I most certainly feel that it can and should be a part of certain other activities conducted by CODAF. For example, educational programs developed for primary and secondary-level schools should include information on narcotics and drug abuse. Similarly, there may be good possibilities of including rehabilitation of drug users and traffickers in certain community action programs. In any case, you may be assured that we will be alert to exploit any appropriate opportunity to emphasize to our Mexican counterparts our deep interest in eliminating the narcotics, dangerous drugs and marihuana problem from our border area.

"In the meantime, I can assure you that efforts to solicit more effective Mexican assistance on enforcement are not being overlooked. A high level meeting of enforcement officials of both countries was held in June, and we are very hopeful this will be the basis of greatly increased cooperation in combatting the present situation.

"I appreciate your taking the time to write to me on this matter, and I hope that I will continue to receive your guidance and suggestions whenever you deem it appropriate.

"Sincerely yours,

"CHARLES A. MEYER,
*"Chairman."*

Mr. MURPHY. Mr. President, for some time, I have been deeply concerned about the drug problem, and in my capacity as a member of the Subcommittee on Health I supported last year, the Drug Abuse and Control Act. In addition to making the possession of stimulant, depressant, or hallucinogenic drugs a crime, the bill also increased the penalties for those who push and traffic in illegal drugs. Yet it is obvious, Mr. President, that additional steps are needed and new strategies need to be devised to deal with the alarming use of drugs. For, as President Nixon warned—

"It is doubtful that an American parent can send a son or daughter to college without exposing the young man or woman to drug abuse."

The National Institute of Mental Health estimated that one-third of our college and high school students have used marihuana or dangerous drugs. Surgeon General Williams Stewart told the Subcommittee on Health that drug use has spread to the elementary grades.

On July 17, the San Diego Union in a lead editorial pointed out the need for action now in the drug battle. The cartoon on the editorial page depicts the drug and dope problem as "the fifth horseman" galloping destructively across our country with a hypodermic gun labeled "dope." This is an apt description as evidenced by the frightening possibility raised in the editorial's conclusion which states:

"And time as well as vigor is of the essence. Unless something is done quickly parents may not be able to send their children to playgrounds without exposing them to narcotics."

I ask unanimous consent that the editorial be printed at the end of my remarks.

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

(See exhibit 1.)

Mr. MURPHY. Mr. President, during the past 6 years, customs officials have increased the seizure of drugs by 2000 percent. While undoubtedly these increased seizures result from increased surveillance and controls, they also, I am certain, result from increased traffic in drugs. For drugs seized might be compared with the tip of the iceberg, allowing us to see the dangers, but not its size, real danger, or magnitude.

Mr. President, there is no doubt about it. The production of drugs in Mexico has become big business, and we must do all we can to stem this flood of narcotics which is entering our country. To be successful, we must have greater cooperation with the Mexican Government. For that reason, I am today submitting a resolution which urges the President of the United States to "seek of the President of Mexico and the Prime Minister of Canada the formation of a permanent commission to investigate ways and means of reducing the illicit traffic of narcotics and dangerous drugs within and between the United States, Mexico and Canada." Representative GONZALES, of Texas, introduced this measure on the House side on July 23.

Although in the past, there have been indications that the Mexican Government has not been receptive to this approach, I believe that the growing concern in both countries and the great danger posed by the alarming drug increase will result in the Mexican Government being more agreeable to cooperative action. In any event, it is incumbent upon this Nation to emphasize to Mexico the growing concern in the Nation about the rising use of drugs. The drug problem clearly has the potential of harming the good relationships we have enjoyed with our neighbors. This can be seen from the fact that over one hundred cities in California have passed resolutions urging Congress to close the United States-Mexican border to minors unless accompanied by an adult.

In short, Americans are rightfully angry over the problem and are demanding that action be taken to stop the big drug business and traffic which is big profit to those who do not care how they make a buck.

I ask unanimous consent that an article written by veteran correspondent Francis B. Kent, published in last Sunday's Los Angeles Times, be printed in the RECORD.

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

"[From the San Diego Union, July 17, 1969]

"PRESIDENT WRITES PRESCRIPTION: DRUG ABUSE NEEDS LEGAL CURE

"The most sobering part of President Nixon's message which urged a massive, concerted attack on the runaway narcotics problem in the United States of America was the paragraph relating to youth.

" 'It is doubtful,' Mr. Nixon said, 'that an American parent can send a son or daughter to college today without exposing the young man or woman to drug abuse.'

"Reams of statistics are available to support the President's inference that the national drug problem already has a strong grip on the emerging generation.

"The National Institute of Mental Health estimates that more than one-third of all college and high school students today have used marijuana or a dangerous drug. It is estimated the number will nearly double before this decade ends.

"Clearly this is a menace that will require a strong prescription. The days of mollycoddling an overt danger and exploring its social implications instead of taking strong legal cures must end. Otherwise the problem will be so immense that it may not be susceptible to either doses of law or of reason.

"Mr. Nixon's prescription for control of the narcotics problem is both strong and timely medicine.

"He recommends for approval of Congress a comprehensive program that will bring together for the first time all federal and state laws dealing with sale, possession, manufacturing and distribution of narcotics.

"Especially pertinent, Mr. Nixon classes marijuana in the same general category as LSD, cocaine or heroin—which is realistic. The comprehensive approach should focus the energies of the federal establishment against the narcotics cancer which is eroding individual character and the national moral fiber.

"Certainly the President's clear labeling of marijuana as a great danger should serve to halt a swelling attitude of permissiveness to this insidious threat.

"It is ironic, but essential, that part of the fight against dangerous drugs has to be directed against decisions of the Supreme Court, which struck down sections of registration acts last year. Mr. Nixon's proposal to pattern laws requiring licensing and registration of persons possessing dangerous drugs is patterned after New York State law and should serve this purpose.

"But implicit throughout the President's vigorous attack upon the dangerous drugs is the thought that it is a road that the federal government should not travel alone.

"The visible part of the narcotics cancer is but a fraction of the total. The problem is so immense that it will require the full effort and cooperation of the federal government, states, institutions and families.

"And time as well as vigor is of the essence. Unless something is done quickly parents may not be able to send their children to playgrounds without exposing them to narcotics."

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"[From the Los Angeles Times, July 27, 1969]

"DRUGS SEIZED AT BORDER UP 2,000 PERCENT IN 6 YEARS; RISE REFLECTS NOT ONLY TIGHTER CONTROLS BUT MORE DEMAND FOR MEXICO'S NARCOTICS

"(By Francis B. Kent)

"MEXICO CITY.—The body in the coffin looked ordinary enough but there was something about the men accompanying it across the border into the United States that bothered the customs agents.

"An informal autopsy revealed extraordinary contents: a fortune in heroin.

"Not everyone connected with the illicit drug traffic goes to such bizarre lengths. Simpler techniques have been far more successful. Yet the incident serves to illustrate what U.S. customs men are up against and their task gets more difficult all the time.

"In the past six years, according to customs officials in Washington, the quantity of narcotic drugs seized at border points has increased by 2,000%. Joseph Jenkins, the Customs Bureau's director of investigations, said this increase reflects not only intensified control efforts but a sharp rise in the dope traffic as well.

"As a result of the growing demand among U.S. users, the production of illict drugs has become a big business in Mexico. Just how big, no one knows, but the figures are sizable.

"CUSTOMS AGENTS

"For example, U.S. customs agents along the 1,500 miles of border between Mexico and California, Arizona, New Mexico and Texas seized more than 32 tons of marijuana last year, plus more than 50 pounds of heroin, morphine and cocaine.

"Mexican authorities, meanwhile, destroyed more than 7,500 fields of poppies, the source of opium and its derivatives, and burned off hundreds of acres of marijuana.

"How much managed to get across the border and into the hands of users is anybody's guess. The consensus: considerable:

"Illicit drugs cross the border in every conceivable manner. The young, long-haired marijuana smoker may smuggle it over concealed in his surfboard. The professionals are more likely to use trucks with false bottoms, boats or airplanes. Unpoliced coastal landings and airstrips proliferate on both sides of the border.

"Arrests and stiff prison sentences appear to be no more than a minor factor in slowing the traffic. Border arrests for trafficking in marijuana alone numbered 945 in 1965, and by last year had risen to 2,273. Conviction, under the Narcotics Control Act of 1956, brings a mandatory 5- to 20-year prison sentence with no hope of probation or parole. A second offense means 10 to 40 years.

"On the Mexican side the law is even tougher and Mexican jails are not renowned for their luxurious facilities.

"Until relatively recently, narcotics had not been much of a criminal problem in Mexico. Indians had smoked what is now called marijuana and munched on hallucinatory mushrooms long before the Spanish arrived in the early 16th Century. Marijuana came into more popular usage about 100 years ago when the peasant took it up to ease his hunger pangs.

"Now its use has been noted among secondary-school students, and an occasional homicide has been attributed to organized crime's efforts to control distribution, not only of marijuana but the so-called hard narcotics such as heroin as well.

"Just one thing keeps the international traffic alive: money. And, according to agents of the U.S. Treasury Department's Bureau of Narcotics, not all of it flows into the hands of that sinister organization known as the Mafia.

"'Dope smuggling,' one agent told The Times, 'is about as exclusive as betting on the ponies.'

"LARGE PROFITS

"Profits are enormous. The 2-pound brick of marijuana that nets its grower about $4 in Mexico sells for as much as $300 in the United States. The usual price in, say, Los Angeles or New York, is $150. Much more profitable are the hard drugs: morphine, heroin, cocaine. They come in smaller quantities and provide vastly more effective results.

"Calculating the profit margin on hard drugs is next to impossible, since they are invariably diluted at every stage of processing and handling and the price varies not only geographically but according to the balance between supply and demand. Almost any illicit narcotic, though, is worth at least twice as much on the U.S. side of the border.

"Controlling the production and processing of drugs in Mexico is no easy task. Much of the interior is virtually inaccessible except by Jeep or burro. Yet the authorities here have mounted what is generally considered to be the most effective grassroots campaign in Latin America.

"Under the supervision of Asst. Atty. Gen. David Franco Rodriguez, federal agents work closely with the army and with local and state police departments. Each spring, when the opium poppy is ripe for milking, mixed teams move out into the eight-state area where cultivation of the poppy is concentrated. Traveling by whatever means is necessary, often on foot, they descend on illegal plantations that have been spotted from the air, destroy the growth and arrest the grower.

"Equally tough measures are directed against those in Mexico who serve as links in the narcotics traffic that originates in South America, the Middle East and the Orient. The South American countries of Bolivia and Peru are a major source of cocaine, a derivative of the cocoa leaf that is chewed by Indians. The Mideast and the Far East produce heroin.

"TURKISH HEROIN

"Heroin is a particularly nettlesome problem because it is manufactured legally, under government license, in Turkey and India. U.S. officials estimate that up to 15% of the Turkish heroin finds its way into the contraband market.

"Getting narcotics across the border into the United States, despite increasingly strict controls, presents no great challenge. Literally millions of U.S. and Mexican nationals cross the border every year and to search every one would be physically impossible.

"'If we did,' a customs agent observed, 'cars would be lined up for miles and the congestion at airports would be outrageous.'

"Still, the number of U.S. agents along the border has almost doubled, to a total of 92 since 1965, and the combined efforts of U.S. and Mexican authorities have produced results, as can be seen by the increase in seizures and arrests.

"MEETINGS HELPFUL

"Jenkins, the bureau's investigations chief, is convinced that further cooperation will pay even greater dividends in the future. Joint meetings such as the recent roundtable conducted here between U.S. and Mexican experts have been particularly helpful, he said.

"What the authorities on both sides hope for and expect is a change of attitude on the part of young people, especially in the United States, where marijuana has acquired widespread acceptance.

"Medically, according to a Narcotics Bureau agent, it has yet to be established that marijuana is harmless or not habit-forming, and the evidence indicates that its use often leads to hard narcotics.

"'About 80% of our confirmed addicts,' he said, 'started with marijuana.'

"Jenkins, who was with the Customs Bureau in Los Angeles for 10 years before his transfer to Washington in January, recalls a grim courtroom scene in which a 37-year-old offender had just been sentenced to 40 years in prison.

"'I don't think I'm going to make it,' the defendant said.

"'Son, you just do the best you can,' the judge replied.

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"JULY 10, 1969.

"The PRESIDENT,
*"The White House*

"DEAR MR. PRESIDENT: We, the undersigned, members of the California Congressional Delegation, having read the news accounts appearing in yesterday's Washington Post, wish to compliment and commend you for your bold and forthright proposals with regard to combatting the nation's drug problem.

"Of particular significance, we believe, are the reported measures calling for stiffer penalties for habitual offenders and those involved in the illegal traffic and sale of drugs; and tighter restrictions, to include Federal licensing, of U.S. manufacturers of drugs, stimulants, and depressants.

"As Californians, each of us has been actively involved for some time in trying to find a solution to our State's common and unique problems of drug abuse. As such, we wish to bring to your attention and urge you to consider the following additional recommendations which we believe should be included in the Administration's position on this critical subject:

"1. *Border Surveillance:* As you know, California and other states bordering on Mexico have a unique and compelling narcotics problem as it applies to the illegal traffic in dangerous drugs and narcotics into and out of Mexico. We believe a concerted effort must be made to expand and strengthen our border surveillance activities so that a more effective program of 'reducing the supply' can be waged.

"2. *Relations with Mexico:* Since full cooperation and continued friendship between the U.S. and Mexico is seriously affected by the situation which exists, we urge that our mutual narcotics problems be included as a priority item of discusson at the up-coming meetings of the U.S.-Mexico Border Commission for Friendship and Development. At present, it is our understanding that this

matter is not included on the proposed agenda for these meetings.

"3. *Drug Abuse Education:* It is our common view, as well as your own, that any all-out effort to combat the spreading menace of drug addiction and 'experimentation' cannot rely on law enforcement alone. Therefore, we strongly support and join you in emphasizing the dire national need for more effective drug abuse education. The 1962 White House Conference on Narcotics and Drug Abuse reported the 'failure of schools to recognize the problem and provide instruction of equal quantity and quality as that provided for other health hazards'. In our collective judgment, no significant or meaningful role has been assumed by the Federal Government to assist our schools in providing effective drug abuse education and the need for such education for students and adults alike has now become acute.

"Please be assured, Mr. President, that we speak for a vast majority of the Members of Congress in saying that we stand ready and willing to assist you and your Administration in any way possible in helping combat this growing menace to the young people of America, their parents, and to the very moral fiber of our society.

"Respectfully,

"GEORGE MURPHY,
*"U.S. Senator, California.*
"ROBERT B. MATHIAS,
*"18th Congressional District, California.*
"BOB WILSON,
*"36th Congressional District, California.*
"DON H. CLAUSEN,
*1st Congressional District, California."*

Mr. MURPHY. Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

The joint resolution (S.J. Res. 142) for the establishment of a Drug Commission between the United States, Mexico, and Canada, introduced by Mr. MURPHY, was received, read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

"S.J. RES. 142

"Whereas the illicit traffic in narcotics and dangerous drugs exists; and

"Whereas this problem is of international consequence; and

"Whereas despite the border efforts of the United States, Mexico, and Canada the flow of the illicit drug traffic continues at a dangerously high rate; and

"Whereas this illicit traffic adversely affects the lives of young people who use barbiturates, marihuana and other dangerous drugs: Now, therefore, be it

*"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States is authorized, requested, and directed to seek with the President of Mexico and the Prime Minister of Canada the formation of a permanent commission to investigate ways and means of reducing the illicit traffic in narcotics and dangerous drugs within and between the United States, Mexico, and Canada."

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RESPONSE OF SENATOR GEORGE MURPHY (R-CALIF.) TO SURVEY OF LOS ANGELES TIMES ON MARIJUANA

Q. Because of the dramatic rise in the use of marijuana in all levels of society, would it be wise to legalize the sale of marijuana, perhaps with controls similar to those applying to liquor?

A. I strongly oppose legalizing the sale of marijuana. The nation has witnessed a dramatic increase in the use of marijuaua and legislation legalizing this drug would tend to encourage its further use, thus aggravating what the Presidential Task Force report on Narcotics, Marijuana and Dangerous Drugs called a "significant mental health problem." The task force report further stated "There is no known beneficial result from the use of marijuana; there are, on the other hand, definite detrimental effects." We must remember that marijuana is really a phenomenon of the young and the very young, for whom a responsible Government must take a protective posture.

Q. If not, do you still feel the present marijuana laws should be changed? For instance, to take marijuana out of the dangerous drug category? Or to make the use or sale of marijuana a misdemeanor instead of a felony?

A. There is no single "marijuana law". There are separate laws in 50 states and the Federal Government. There is ample evidence to support the designation of marijuana as a dangerous drug which is, in fact, the position of the American Medical Association. Our approach to criminal activity in respect to marijuana should be the same as that used in connection with other crimes, that is, an increase in severity of the law as the severity of the offense increases. For example, I would distinguish between the mere possession of a small amount of marijuana for personal consumption and the possession of a large amount for the purpose of sale or disseminating to others. It seems logical, also, to distinguish between the sale of marijuana to an adult and someone under 21. The simple possession of marijuana, I believe, in small quantities for personal use might well be treated as a misdemeanor, and unquestionably the sale of it to a minor should be treated as a serious felony.

Q. Is the widespread use of marijuana in your view a more dangerous social and medical problem than the widespread use of alcohol?

A. The use of marijuana today does not even approach the degree of the use of alcohol in the United States. I believe that if it did, it would be a far more dangerous social and medical problem. There are some very important distinctions between the use of the two: Although there is a substantial number of alcoholics in the United States, the vast majority of persons who use alcohol do not intend by the taking of a drink to intoxicate themselves. On the other hand, marijuana is nearly always used for the express purpose of obtaining a "high", a disorienting intoxication. As the Special Presidential Task Force on Narcotics, Marijuana and Dangerous Drugs points out: "While alcoholism constitutes a major social problem, surely it is not valid to justify the adoption of a new abuse on the basis that it is no worse than a presently existing one. The result could only be added social damage from a new source." Again, I want to emphasize the involvement of young people in the use of marijuana. Adolescence is a difficult time of life in which the child should be learning to cope with life's stresses. If, instead of learning to face up to and overcome the problems of everyday life, a child substitutes the warding off of reality through the use of marijuana or other drugs, his future ability to cope with the demands of life in a complex society become seriously compromised, if not crippled entirely.

Q. Have you noticed in recent years a change in the attitude among your constituents about marijuana? If so, how has it changed?

A. Yes. The concern of Californians, particularly parents, has increased with the growing use of marijuana. They are rightfully angry and demand action to stop the drug traffic which only profits those who do not care how they make a buck. I am pleased that the Administration has launched a campaign to stop this traffic.

Q. Has marijuana traffic and consumption increased significantly in your district?

A. Yes. Traffic in and consumption of marijuana has now reached epidemic proportions. 1968 juvenile drug arrests for marijuana in California show an increase of more than two thousand per cent since 1960.

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## PROGRAM TOMORROW

Mr. MANSFIELD. Mr. President, for the information of the Senate, the Senate will resume with the consideration of the pending amendment to the drug control bill sometime tomorrow morning or afternoon, but it is the intention of the leadership—and this has been discussed with the other side of the aisle—that some time around noon, or shortly thereafter, the conference report on the foreign aid bill will be taken up.

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## ORDER OF BUSINESS

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.

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## PRESIDENT NIXON'S ADDRESS REGARDING VETO OF LABOR-HEW APPROPRIATIONS BILL

Mr. GRIFFIN. Mr. President, in an address to the Nation carried over radio and television last night, President Nixon spelled out clearly and convincingly why he has vetoed the Labor-HEW appropriations bill.

I ask unanimous consent that the text of the President's address be printed in the RECORD.

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

REMARKS OF THE PRESIDENT IN A RADIO AND TELEVISION ADDRESS REGARDING VETO OF THE LABOR-HEW-OEO APPROPRIATIONS BILL

Good evening, my fellow Americans.

I would like to share with you tonight a decision that is one of the most difficult decisions I have made since I assumed the office of the Presidency a year ago.

I have here on my desk a bill, a bill which been passed by the Congress and sent to me for signature. For the first time, I am exercising tonight the Constitutional power of the President to veto a bill and send it back to the Congress for further consideration.

This decision is particularly difficult because this bill provides funds for the Department of Health, Education and Welfare.

Now let us clearly understand the issues. The issue is not whether some of us are for education and health and others are against it.

There are no goals which I consider more important for this nation than to improve education and to provide better health care for the American people.

The question is: how much can the Federal Government afford to spend on these programs this year?

In April I asked the Congress to appropriate more for the Department of Health, Education and Welfare than it has ever appro-

priated before. This means that this year the Federal Government will spend 13 percent more on programs for health, education and welfare than it spent last year. For Federal programs that affect education, we will spend over $10 billion. Now in this bill that I have before me, the Congress has increased the amount that I recommended by a billion-two-hundred and sixty million dollars. Over one billion of this increase is in the field of education.

Now, why, in an election year, particularly, would a President hesitate for one moment to sign a bill providing for such politically popular causes as this one? For the reason is this: The President of the United States has an obligation to consider all the worthy causes that come before him and he is to consider them having in mind only one principle: What is best for all the people of the United States?

I believe that the increase over the amount that I recommended, the increase which is contained in this bill passed by the Congress, is not in the best interests of all the American people, because it is in the wrong amount for the wrong purposes and at the wrong time.

Let me address myself first to the questions of the amount of spending involved.

This nation faces a crisis which directly affects every family in America—the continuing rise in the cost of living. From 1960 to 1970, the cost of living went up 25 percent in this country. Now, for the average family of four in America that meant an increase of $2400 a year in the items that go into your cost of living—your grocery bills, your housing, your transportation, your medical costs.

A major reason for this increase in the cost of living is that in that same ten-year period from 1960 to 1970, the Federal Government spent $57 billion more than it took in in taxes.

I think this was wrong. That is why as your President I intend to do everything that I can to see that the Federal Government spends less in Washington so that you can have more to spend at home. If we are to stop the rise in the cost of living which is putting such a strain on the family budgets of millions of Americans, we have to cut the Federal budget.

That is why I ordered cuts of $7 billion in Federal spending in 1970. That is why, for example, the budget I will submit to Congress for 1971 will call for a smaller percentage of Federal spending for defense than in any year since 1950.

For the first time in 20 years the budget will provide more funds for human resources than for defense.

Now, if I approved the increased spending contained in this bill, I would win the approval of many fine people who are demanding more spending by the Federal Government for education and health. But I would be surrendering in the battle to stop the rise in the cost of living, a battle we must fight and win for the benefit of every family in this nation.

A second reason I am vetoing this bill is that I believe that it increases spending for the wrong purposes. The increased spending ordered by Congress for the most part simply provides more dollars for the same old programs without making the urgent new reforms that are needed if we are to improve the quality of education and health care in America.

I believe that when we consider how much we are putting into education in the United States that we are entitled to get more out in terms of better quality of education. That is why in my education message which I shortly will be submitting to the Congress I will propose a new and searching look at our American school system. In this examination we will look at such basic questions as to why millions of our children in school are unable to read adequately; we will put emphasis on improving the quality of education for every child in America.

An example of the unfairness of this bill is the Impacted Aid Program which is supposed to help areas which need assistance because of the presence of Federal installations. The bill provides $6 million for the one-half million people who live in the richest county in the United States, and only $3 million for the three million people that live in the 100 poorest counties in the United States.

President Eisenhower, President Kennedy, President Johnson all criticized this program as being unfair. And yet the Congress in this bill not only perpetuates this unfair program, it adds money to it.

The third reason I am vetoing this bill is because it requires the money to be spent at the wrong time. We are now nearly three-quarters of the way through the school year. This bill forces us to spend the money it appropriates—and we would have to spend it all before June 30.

When money is spent in a hurry, a great deal is wasted. There is no good time to waste the taxpayers' money, but there is no worse time to waste it than today.

The Congress will determine on Wednesday whether it will sustain or override my veto of this legislation. If the veto is sustained, I will immediately seek appropriations which will assure the funds necessary to provide for the needs of the nation in education and health.

You can be sure that no school will need to be closed. No school child will be denied an education as a result of the action I take tonight. I will work with the Congress in developing a law that will ease the transition to education reform and do so without inflation.

I realize that a number of Congressmen and Senators, as well as many who are members of what is called the education lobby, disagree with the views I have expressed tonight. I respect their different viewpoint. I deeply share the concerns of those who want more funds for education, and for health and for other worthy causes in this country.

But it is my duty to act on behalf of the millions of Americans, including teachers and students, as well as patients in our hospitals, who will pay far more in the rise in the cost of living than they will receive from the increased spending provided for in this bill.

We spend more for health and education than any nation in the world. We are able to do this, and I hope we can continue to do so in the future, because we have the great good fortune to be the richest nation by far in the whole history of the world.

But we can spend ourselves poor. That is why no matter how popular a spending program is, if I determine that its enactment will have the effect of raising your prices or raising your taxes—I will not approve that program.

Now, for these reasons, for the first time, tonight, instead of signing a bill which has been sent to me by the Congress, I am signing this veto message. My fellow Americans, I believe this action is in the long range interests of better education and improved health care. But most important, I believe that this action that I have just taken is in the vital interests of all Americans in stopping the rise in the cost of living.

Thank you, and good night.

## MARIHUANA RESEARCH

Mr. MOSS. Mr. President, Congress has been talking and legislating too long about marihuana without knowing very much about it. Some young people believe marihuana is practically harmless while many of us fear that its use can lead to tragic consequences. But neither side of the marihuana controversy has conclusive evidence.

Last week I learned firsthand from the marihuana experts of this basic lack of information. I attended a conference on marihuana at the Salk Institute in La Jolla, Calif., where the medical experts readily admitted that their research thus far has been very primitive.

The results of more sophisticated research are now beginning to come in. What we now need is a careful evaluation of this information which will soon become available. I am very pleased to see that included in the pending bill is my proposal for a Committee on Marihuana. It is my hope that the committee will come up with an authoritative report that will help to resolve this controversy. We cannot go on with this two-sided credibility gap much longer.

## THE BLAME FOR INFLATION

Mr. ALLOTT. Mr. President, I was interested to hear my colleagues from the other side of the aisle discussing with such vigor the problems of inflation.

It was intriguing to hear them place the blame for today's inflation on the President of the United States who now occupies the White House. I suppose I cannot blame them—as much as I disagree with them. After all, it is so much simpler to blame the administration now in power on the old theory that the best defense is a good offense.

Or, to be a bit more blunt—when you have made a complete mess of things, attack the guy trying to clean up after you.

Yes, my Democratic colleagues have 8 years of performance which they hope to conceal by attacking the person who inherited the whirlwind they sowed.

Mr. President, you will recall that in 1960 the Democrats rode to power in the presidential election on the slogan: "Let's Get America Moving Again." In an effort to make good on that promise the administration in 1961 launched itself on a deliberate policy on two fronts.

First, they decided that a little inflation is good for the American people. And so they set out deliberately to foster inflation at the rate of about 2 or 3 percent a year.

And, second, they set out on a policy of getting the United States more deeply involved in the affairs of South Vietnam—and the fantastic war which followed.

Both of these policies bore fruit.

It is with that bitter fruit we are attempting to deal today.

Let us examine first the fallacies of that policy of inflation.

In the early 1960's it was decided that the only way to get the American economy steamed up was by adopting a policy of inflation. To do this, the Democratic administration set about making money easy to come by. They set out to overspend the Federal budget—to create continuing deficits. They got through Congress a tax bill permitting tax incentives and credits for businessmen who wanted to expand their capital equipment. They

adopted a tax policy of lowering tax rates for individuals to increase the flow of money into the consumer markets.

Voluntary wage and price guidelines were adopted which they claimed would permit a "controlled" spiral of prices and wages. It was determined that a couple of percentage points a year of inflation were good for America. It was further decided that inflation could be controlled without any real effort at discipline.

Now, Mr. President, let me observe here that having a little inflation is just like being a little bit pregnant. There just "ain't" no such thing.

Once the pot began to bubble it inevitably came to a boil. There was no other course open.

When the spiral of inflation took hold, it was inevitable that it should grow and burgeon into the awful monster that today grips the American economy.

There was no other course it could follow.

Now, Mr. President, this engulfing inflation could have been brought under control with comparatively little hardship several years ago. Except for one thing.

And that one thing is the war in Vietnam.

For too many years the Johnson administration treated the war in Vietnam as though it were something separate from the rest of America.

During 1965 and 1966 and 1967, the Johnson administration did not even attempt to give the Congress and the American people an estimate of what the war in Vietnam was costing when the budget was submitted. It was not until the fiscal 1969 budget came to Congress that an effort in this direction was made—and then the President said the war would cost us about $25 billion per year. Actually, it cost a whole lot closer to $35 billion than $25 billion. But at least by 1968 the administration was willing to admit that there was a war going on, that it was costing money, and that the money had to come from somewhere.

But even so, the Johnson administration—the Democratic administration—refused to go directly to the American people and get the money for Vietnam in the form of higher taxes. Nor was the Johnson administration willing to discipline its own spending excesses in the slightest bit to help pay for the Vietnam war.

Perhaps this was all due to the fact that the previous administration in the White House had sort of inched its way into the Vietnam morass. Under President Kennedy and then President Johnson we got a little further involved with each passing month. First, a little in 1961. When our men in Vietnam stopped being trainers and technicians and began to be field advisers to the South Vietnamese Army. Then in 1962 we got in a little deeper as more Americans were being shot at and killed—and we needed more troops in Vietnam to protect those we already had there. And then in 1963 we found ourselves with 16,000 Americans in Vietnam and 78 dead.

By 1964, we still had only 23,000 troops in Vietnam. At this point, let me remind the Senate that it was in that year of 1964—which also happened to be an election year—that the President actually submitted a proposed cut in the defense budget. I am not saying that the forthcoming elections of that year actually had anything to do with the President's decision, but the coincidence seems mighty strong.

By 1965 the war was beginning to be an American war in Vietnam. We had nearly 200,000 troops committed. We had started spending money at the rate of nearly $2 billion a month.

But still the war was treated almost as if it existed on another planet in another time. It was not allowed to interfere with the domestic policies of the Johnson administration.

The Democratic Congress continued to spend money for the domestic programs that the Democratic administration kept demanding. With every new appropriation bill that was passed there came a need to find the money somewhere because the administration still refused to go directly to the American people.

So it was that the Democratic administration of Lyndon B. Johnson began more and more to finance its fantastic spending programs by going to the money market.

The idea was to spend and borrow. To borrow and spend.

No thought was given to the morrow.

No effort was made to impose self-control and self-discipline.

By this policy of borrowing, the Great Society forced up the interest rates. The law of supply and demand worked in the money market and when the Federal Government was in that market with both feet—borrowing some $30 billion over the past half decade, the cost of money could do only one thing—go up.

And it has gone up. And up. And up.

Mr. President, my colleagues have made much over the President's threats to veto the tax bill and some of the more irresponsible spending bills that Congress has approved.

Let me say this, plainly and flatly—medicine is never very pleasant, but economic medicine is perhaps the least pleasant of all because it applies to all of us.

The dreadful disease of inflation was allowed to go unchecked and rampant throughout the decade of the 1960's by the Johnson administration, and the Kennedy administration before that. Now the medicine has to be applied. It has to be swallowed. And, as bitter as that medicine tastes, we must face up to its need.

In another sense, this business of trying to control inflation is somewhat like trying to rear a child. It is possible, without too much fuss and feathers, to discipline the child when he is young. It gets more and more difficult—if the child is allowed to have his own way at all times and in everything—to discipline him as he grows. Finally, when the undisciplined child reaches the age of manhood, it takes the severest kind of measures to curb his behavior.

Had the Kennedy administration acted with restraint some eight years ago, the problem could have been easily curbed at that time.

Had the Johnson administration acted to curb inflation just 5 years ago, it would have been a little uncomfortable for the American people, but the job could have been accomplished with a modicum of pain.

But neither President Kennedy nor President Johnson chose to act.

Now, after 8 years of unbridled inflation, President Nixon is facing up squarely to his responsbility to the American people. He is trying to bring inflation back under control. And it is painful.

As I said, Mr. President, I do not blame my colleagues for wanting to place the blame for the present situation on someone else. I just want to set the record straight and place the full responsibility where it belongs; and that is on the shoulders of the Democratic Party which had complete control of all three branches of Government, the White House, the Congress and the courts, from 1961 through to January of this last year—all through the decade of the sixties.

In closing, I should like to recall a Latin proverb which goes: "Serpens nisi cum nederit serpentent non sic Draco."

Translated it means a serpent, until he has eaten another serpent, cannot become a dragon.

Likewise, until inflation feeds upon itself it cannot become a dragon.

The food for this dragon was supplied by the two Democratic administrations that ruled America in the sixties.

## THE MIDDLE EAST

Mr. HART. Mr. President, I rise to speak very briefly and not from a text.

Yesterday I was visited by a delegation of distinguished leaders of the Jewish community from Michigan. They had joined other similar groups from across the country in assembling in Washington in the past few days.

The assembly was a result of the continuing concern and unease that the U.S. policy with respect to Israel and the negotiations seeking to bring peace to the Middle East had been changed, changed not only to the disadvantage of Israel, but also, as they fear, to the disadvantage of the United States.

Since that visit, and partly as a result of the concerns voiced to me by those distinguished Michigan citizens, I have again reviewed the sequence of events.

I share their concern and rise to state that it would serve poorly the interest of America, the interest of Israel, and, indeed, the interest of the Arab states if our country sought in collaboration with the Soviet Union to impose or to indicate specific settlement conditions that should attach to the resolution of the current troubles in that area of turmoil.

Our national interests have dictated in the past—and I insist they continue to dictate—that we stand firm behind the principle of direct negotiations between Israel and the Arab Governments, negotiations in which all major issues are decided.

This has long been the policy of this

country. Indeed, one of the bitter lessons we learned in the middle fifties after the Suez campaign was the inappropriateness of a settlement that would be imposed by our country and the Soviet Union as a substitute to direct negotiations between the parties immediately concerned.

Then in June 1967, after the 6-day war between Israel and her Arab neighbors, we made it very clear that our official U.S. position on the Middle East peace settlement was based on the principle that a lasting settlement could only be achieved through direct negotiations between Israel and the Arab Governments on all matters of substance.

The concern that somehow or other we are turning away from that position was the result of statements made in December by our Department of State. Our Secretary of State confirmed reports that there were several proposals made by us to the Soviet Union suggesting terms for an Israeli-Egyptian and Israeli-Jordanian settlement.

As I understand it, our Secretary of State indicated that these proposals did exist and they bore on such basic questions as permanent boundaries, status of Jerusalem, and refugee resettlement.

That indeed would be a turnaround in our policy, and an unwise one. And difficult as the search for peace in that troubled area of the world is, peace will not be found until all of the parties to that conflict want peace.

The Israelis are quite correct when they insist that willingness to negotiate directly is a test of commitment to a peaceful resolution of the differences. In the meantime, until that permanent peace for which all pray is at hand, it is essential that the United States make available to Israel the means, economic and military, which might be required to permit its survival. Our objective should be not just the survival of Israel, but its success to the degree that we can properly contribute to it. It rubs shoulder to shoulder with many Middle East governments. It is a free land, much in our own tradition, the success of which will contribute to our best interests as well as the interests of the Israeli citizens; and in the long haul will be of benefit to those Arab neighbors who, seeing the effectiveness of modern technology in a free land may then persuade their own governments to move them in the same direction.

I would state for the record that as a result of the concerned voices raised by my friends who visited me here yesterday from Michigan, it would be desirable that our Government reaffirm its support for direct negotiations between Israel and the Arab Governments, and that nothing could serve better the interests of peace at this moment.

Mr. President, I ask unanimous consent to have printed in the RECORD a resolution adopted by the delegates to the National Emergency Conference on Peace in the Middle East, which had assembled in Washington the past few days.

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

A RESOLUTION (REVISED)

Adopted by delegates to the National Emergency Conference on Peace in the Middle East, convened by the Conference of Presidents of Major American Jewish Organizations, January 25–26, 1970, at the Statler-Hilton Hotel, Washington, D.C.

The leadership of the American Jewish community, gathered in our nation's capital, expresses its deep anxiety over the direction of United States policy in the Middle East.

We do so as Americans profoundly concerned for our country's national interests; as Jews with a strong sense of kinship with our fellow Jews; as people who share all mankind's yearning for peace.

Since the founding of the State of Israel in 1948 the people and government of the United States have consistently affirmed that it is in America's national interest to support the sovereignty and security of Israel. We are truly gratified that we have received this day from President Richard M. Nixon a clear re-affirmation of this Administration's friendship, understanding and support for Israel. The President stated that "the United States does not intend to negotiate the terms of peace." Earlier, he made clear his belief that the Four Powers "cannot dictate a settlement in the Middle East."

We believe that the attempts of the Four Powers to draft the framework for a settlement have in fact impeded the progress toward a genuine peace.

We believe that the recent specific proposals submitted by our State Department to the Two Power and Four Power talks—which suggest: pre-determined Egypt-Israel and Jordan-Israel borders; that Jordan share in the administration of Jerusalem; and that the Arab refugees be repatriated under a formula that would flood Israel with those bent upon its destruction—endanger the security of Israel and imperil the cause of a just and lasting peace in the Middle East. These proposals should be withdrawn forthwith so that the Arab-Israeli negotiations which President Nixon has called for will indeed be undertaken without preconditions.

Peace in the Middle East can be attained only if Israel is recognized by her Arab neighbors as a sovereign state with mutually agreed upon secure borders; only if the nations which fought the war make the peace, negotiating freely; only if the Arab lust for vengeance is abandoned.

In light of the massive arms shipments to Arab states by the Soviet Union, France and other countries, it is imperative that the United States continue to support the security of Israel with the military equipment she so urgently requires.

We believe that the role of America in the Middle East is to bring the parties together in direct negotiations; to stand firm against Soviet pressure, and above all to provide Israel with sufficient economic and military strength to deter any Arab ruler from aggression.

We dedicate ourselves to the achievement of a just and lasting peace, fulfilling the divine promise spoken by the immortal prophet of Israel: Nation shall not lift up sword against nation, neither shall they learn war any more.

Mr. HART. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial entitled "Our Even-handed Policy Could Lose the Middle East," published on January 12, 1970, in the Detroit Free Press.

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

OUR EVEN-HANDED POLICY COULD LOSE THE MIDEAST

President Nixon's long-heralded "more even-handed policy" in the Middle East is sinking like a freighter in the Suez Canal, torpedoed from without and scuttled from within.

The policy was announced a month ago by Secretary of State Rogers. What he proposed was the return of nearly all the Arab territory occupied in the Six Day War of 1967; virtual internationalization of Jerusalem; return of an unspecified number of Arab Palestinian refugees, many of whom fled Israel 20 years ago in a combined military-political maneuver, and a binding peace accord between Israel and the major Arab states.

On paper, the policy might make theoretical sense. As in Vietnam and throughout Asia, Mr. Nixon wants a lowered U.S. profile in international affairs. He wants to move back from the brink of confrontation and limit U.S. intervention only to those areas of prime importance to our own security.

Further, Mr. Rogers was apparently hoping to force the Arabs and Israelis to the peace table by making Israel a little less militant. And he was holding out a bit of honey to Russia in an attempt to get Russia to sit down with us, Britain and France and work out a settlement, as well as to lower the level of Russian and French arms flows to the Arabs.

Those hopes were torpedoed for good this week when France confirmed it was negotiating an arms sales to Libya, newly rich off oil and newly militant. France switched sides under de Gaulle for economic reasons. It wants the Libyan oil.

The Nixon policy had been torpedoed earlier, in less militaristic stands, when it was rejected by Israel, Egypt and Jordan.

Mrs. Golda Meir, the Israeli premier, called it "appeasement," which might not have been diplomatically correct but was close to the mark. The Arab states rejected it because they have no intentions of signing binding agreements at all, and certainly no intentions of doing anything peaceful until Israel gives up the occupied land. So long as Russia picks up the bill they can afford that stance.

At home, it has brought the Nixon administration the wrath of the Jewish community—which can swing elections in several states—and of non-Jews who see, as the Miami Herald said, that the "security of Israel as it involves the national interests of the United States is an issue 10 times clearer than Vietnam."

The issue has even caused a break in diplomatic relations between the huge Chase Manhattan Bank and the Tensor Corp. In an ad in Thursday's New York Times, Jay Monroe, the president of Tensor, announced he is closing his firm's account at Chase Manhattan because the bank's president, David Rockefeller, warned the President last month of declining U.S. influence in the Arab world. Mr. Rockefeller's family is interested in oil and, said Mr. Monroe, Mr. Rockefeller has decided "to put his mouth where his money is."

The Tensor action, Mr. Monroe said, was a protest against "a dollar diplomacy based on oil interests," and he hoped that "our former friends at Chase Manhattan may learn that free men do not live by oil alone."

The simple fact is that Israel is the only friend the United States has in the Middle East and Mr. Rogers' policy statement seemed almost designed to lose that friendship.

Israel, as is well known, has shown a talent for neutralizing growing Arab strength. The great gunboat caper eluded the French embargo on military sales to Israel. During that same week, the Israelis made a daring raid across the Suez and literally hijacked a brand-new seven-ton Russian radar installation. The Israelis airlifted it out in pieces, and even took along the four Egyptian technicians.

But this, coupled with the growing intensity of border raids conducted by both sides, brings renewed war, not peace, closer

by the day. And the United States, by being "even-handed" when no one else is, makes another Israeli victory that much more uncertain.

Israel, unlike Egypt or the other Arab nations, cannot afford a defeat. If it loses a war it loses its nation, and no good intentions of the UN or the U.S. could then restore it.

As Mrs. Meir said in her criticism of Mr. Rogers' policy, it misses the main point. "There's no recognition of statehood in these documents."

That is the whole key. Egypt's Nasser and the Jordanian commandos are both still vowing to destroy Israel and drive the Israelis into the sea. Until the Arabs are convinced that they can't do it and will only lose by trying, no peaceful settlement can be obtained. No outside force can impose a lasting peace, and no armed occupation can end the hatred.

The United States, by drawing back, serves neither its own interests nor the cause of peace.

## ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

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 10:30 tomorrow morning.

The motion was agreed to; and (at 5 o'clock and 24 minutes p.m.) the Senate adjourned until Wednesday, January 28, 1970, at 10:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate, January 27, 1970:

### In the Coast Guard

The following-named officers of the Coast Guard for promotion to the grade of rear admirals:

James A. Palmer
Ellis L. Perry
John F. Thompson, Jr.
Edward D. Scheiderer
Albert A. Neckman

The following-named officers to be a member of the permanent commissioned teaching staff of the Coast Guard Academy as a professor in the grade of captain:

Otto E. Graham, Jr.

### In the Army

I nominate the following-named officers for appointment in the Regular Army of the United States to the grade indicated under the provisions of title 10, United States Code, sections 3284 and 3307:

*To be major generals*

Maj. Gen. George Edward Pickett, xxx-xx-x... xxx..., Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Roger Merrill Lilly, xxx-xx-xxxx, Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Woodrow Wilson Vaughan, xxx-... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Gilbert Hume Woodward, xxx-... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Glenn David Walker, xxx-xx-xx... xxx-... Army of the United States (brigadier general, U.S. Army).

Lt. Gen. Melvin Zais, xxx-xx-xxxx, Army of the United States (brigadier general, U.S. Army).

Maj. Gen. William Charles Gribble, Junior, xxx-xx-xxxx Army of the United States (brigadier general, U.S.. Army).

Maj. Gen. Edward Leon Rowny, xxx-xx-xxxx xxx-... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. John Norton, xxx-xx-xxxx, Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Walter James Woolwine, xxx-xx-x... xxx-... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. James William Sutherland, Junior, xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Elmer Hugo Almquist, Junior, xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Leo Bond Jones, xxx-xx-xxxx, Army of the United States (brigadier general, U.S. Army).

Maj. Gen. William Albert Becker, xxx-xx-x... xxx-... Army of the United States (brigadier general, U.S. Army).

Lt. Gen. Frederick Carlton Weyand, xxx-... xxx-xx-x... Army of the United States (brigadier general, U.S. Army).

Lt. Gen. George Irvin Forsythe, xxx-xx-xx... xxx-... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Orwin Clark Talbott, xxx-xx-xx... xxx-... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Walter Philip Leber, xxx-xx-xxxx, Army of the United States (brigadier general, U.S. Army).

Maj. Gen. John Hancock Hay, Junior, xxx-... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Richard Joe Seitz, xxx-xx-xxxx, Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Clarence Joseph Lang, xxx-xx-xxxx xxx-... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Ellis Warner Williamson, xxx-... xxx-xx-x... Army of the United States (brigadier general, U.S. Army).

Lt. Gen. William Eugene DePuy, xxx-xx-x... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Richard Thomas Knowles, xxx-... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. John Russell Deane, Jr., xxx-x... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

### In the Marine Corps Reserve

The following-named officer of the Marine Corps Reserve for temporary appointment to the grade of major general:

John R. Blandford.

The following-named officers of the Marine Corps Reserve for temporary appointment to the grade of brigadier general:

Louis Conti.
Verne C. Kennedy, Jr.

# HOUSE OF REPRESENTATIVES—*Tuesday, January 27, 1970*

The House met at 12 o'clock noon.

Rev. Myroslow J. Lubachivsky, of the Immaculate Conception Ukrainian Catholic Cathedral, Philadelphia, Pa., offered the following prayer:

O God and Heavenly Father of us all, the Creator of the entire universe, turn Your merciful eyes upon this earth and upon us, Your unworthy children. We dare to call upon You, our loving Father, asking humbly that You grant us, and the entire world, lasting peace and freedom.

Bless, all-powerful Creator, these United States of America, which so willingly opened its heart to so many persecuted refugees. Advise, infinitely wise Father, the Government, enlighten the minds of the leaders that they may always make the right decisions; help them to find the best ways to overcome all difficulties, so they may further enhance the well-being of this entire Nation.

Thanking You for the freedom and liberty we enjoy in this country, we pray to You for all the enslaved peoples and nations. We implore You today, on this, the 52d anniversary of the independence of Ukraine, to turn Your benevolent eyes upon our enslaved and suffering people, and help them to carry their heavy cross of bondage. Comfort them, give them strength, and permit that their Golgotha may finally come to an end, so that they may soon rise as a sovereign nation among the free nations of this world. Amen.

## THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

## MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1653. An act to amend the Interstate Commerce Act, with respect to recovery of a reasonable attorney's fee in case of successful maintenance of an action for recovery of damages sustained in transportation of property.

## THE LATE HONORABLE HARVE TIBBOTT

(Mr. SAYLOR asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. SAYLOR. Mr. Speaker, on the last day of 1969, my predecessor who served the people of Armstrong, Cambria, and Indiana Counties in the old 27th District of Pennsylvania, passed away quietly at his home in Ebensburg. He was 84. Former Representative Harve Tibbott served in the 76th and four succeeding Congresses from January 1939 to December 1948, and was a member on the Interstate Commerce, Flood Control, and Appropriations Committees.

In addition to serving as an elder, trustee, and president of the official board of the First Christian Church, Harve served as chairman of the Cambria County chapter of the American Red Cross and as president of the Ebensburg YMCA and Kiwanis Club of Ebensburg. He was illustrious potentate of Jaffa Shrine Temple of Altoona, and was elected president of the Pennsylvania