faction" with the Concorde, the article says. The airlines say the plane is too small, the article goes on, and "they expect to make a loss on Concorde however they fly it."

Furthermore, the crucial trials of the Concorde at cruising speed have been delayed. These trials will test two points where the Concorde is most vulnerable—fuel consumption and the aerodynamics of its wing. According to the Economist:

It either behaves fractionally less well than it should, so that it takes more power to push the aircraft, or more fuel to keep the engines up to the mark, then crossing the North Atlantic could be impossible for the Concorde.

I include the Economist article in the RECORD at this point:

WHAT TO DO WITH CONCORDE: SHOULD THE NEXT GOVERNMENT IN BRITAIN CONSIDER A MAJOR REDESIGN OF THE CONCORDE AIRLINER?

The formal announcement in a white paper* on Wednesday that all supersonic flying will be banned over Britain is important because it put on the record what everyone has assumed was bound to happen. It is a decision all reasonably developed countries are expected sooner or later to take. In the United States, already acutely pollution-conscious, the British lead will stiffen the political opposition to the American supersonic programme. That opposition has gained momentum this year. Support for America's proposed supersonic airliner (SST) had never been cordial. But this year the amount of money required has jumped sharply, to $290 million. This has coincided with growing reports that the Boeing design is altering for the worse—with its weight going up and its performance going down, just as on the first prototype abandoned early last year. It has also coincided with reports of increasing airline dissatisfaction with Concorde, which has made Americans less afraid of the possibility that Concorde would sweep the American market and make huge inroads into the balance of payments, although the Department of Transportation still says it will.

The result is that the American SST's budget has been scraping through its various congressional stages by increasingly and uncomfortably narrow votes. On Wednesday, the House of Representatives finally passed it without cuts but it might have been rougher had the Russians not helpfully flown their supersonic transport at its designed speed of twice the speed of sound for the first time on Tuesday. But the SST's budget still has to go through the Senate, where the opposition is tougher and better organised, and where some pessimists in the aviation press are even beginning to suspect that it could be voted down altogether.

If the American programme is visibly in trouble, is this the time for the next British government to get together with the French and talk seriously about whether they should concede some airlines' request to redesign Concorde—since there could now be less urgency about putting it into the market before an American competitor and more to be gained from offering an aircraft with improved performance? The present complaint is that Concorde is too small. The two manufacturers are currently proposing that airlines should reduce the seats in it to 110; and fly it as an all-first class service, charging first class or marginally less than first class fares (which on the North Atlantic are high: £213 return). On the manufacturers' figures, this would show a profit; on the airlines' calculations, it would not. They expect to make a loss on Concorde however they fly it.

The proposal that has been put by some airlines is that Concorde's fuselage should be widened so that an extra row of seats can be run down its length. This would increase the seating from four to five abreast and get numbers up closer to 200. Technically, this would be easy to do, and it also looks as if it might even improve flying performance by giving the aircraft a bigger surface area. It is not thought, at this preliminary stage, that it would involve any of those costly changes to the wing that lengthening the fuselage would. Lengthening Concorde's fuselage, without also changing the wings, would make the fuselage stick out at the back and wag dangerously. It is a ploy to be avoided in a narrow, delta-shaped aircraft.

The Government appeared to set its face against late major changes 12 months ago. It said that if Concorde costs were to rise more than 15 per cent above the estimated £730 million it was then taking to develop—a figure which still holds, thanks to the effects of French devaluation—this would be tantamount to a major redesign. The unspoken implication was that Mr. Wilson was unwilling to agree to go back to the drawing board. But 15 per cent of £730 million is over 100 million. And engineers believe that the proposed modification of the fuselage could be kept within £100 million.

There are two catches. The most obvious is that only the naive are still prepared to accept estimates by the aircraft industry, here or in the United States. But the more important one is that Concorde has not, unlike the Soviet SST, yet flown at twice the speed of sound. It should have been doing so any time now. Instead it has been grounded for a variety of reasons; most obviously strikes at Bristol (see page 61). These trials at cruising speed are crucial. No amount of work in wind tunnels and on computers can substitute for them. They will test the two points where Concorde is most vulnerable: the fuel consumption of its engines at normal cruising, and the aerodynamics of its wing. If either behaves fractionally less well than it should, so that it takes more power to push the aircraft, or more fuel to keep the engines up to the mark, then crossing the North Atlantic could be impossible for the Concorde. That is, unless the airlines and the government regulatory bodies behind them are prepared to compromise on the size of the fuel reserve that any aircraft is required to carry for possible diversion to another airport. In lay language, this would be translated as cutting safety margins, and may therefore be politically unacceptable.

The two governments need the result of these trials before they can know what sort of Concorde they have on their hands, or whether it is even worth discussing a modification. The airlines would cordially support them if they did think of changes. It would save the airlines from having to decide how to pay for so expensive an aircraft during that period of the mid-1970s when most of them will be staggering from the losses they are going to make on jumbos until the traffic catches up with the new capacity. Some airlines will simply not be able to, a fact that must cut sales of Concorde. What airlines would most like is that the present Concorde design be treated as a prototype for a bigger 200-seater; the latter would then not be ready until, at a guess, 1976, as against a probable 1974 for the aircraft in its present form. To make the decision easy for the two governments, the airlines might, with arm-twisting, take perhaps 40 of the present Concordes: just as they took a small version of the original 707 from Boeing 13 years ago, in order to ease the introduction to jets. This is a let-out that should be seriously considered after June 18th.

* The Protection of the Environment. Cmd 4373.

SENATE—*Tuesday, June 9, 1970*

The Senate met at 11 a.m. and was called to order by Hon. THOMAS F. EAGLETON, a Senator from the State of Missouri.

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

O Lord of all our days, grant that we may live this one day, free from fear and frustration, in command of all our powers, with compassion and charity toward all men. So rule over us that we may be channels of Thy mind and spirit, serving this Nation's welfare and advancing Thy kingdom, to the glory of Thy holy name. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. RUSSELL).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., June 9, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. THOMAS F. EAGLETON, a Senator from the State of Missouri, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

Mr. EAGLETON thereupon took the chair as Acting President pro tempore.

REPORT OF A COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of February 7, 1969, as amended, Mr. BYRD of West Virginia, from the Committee on Appropriations, reported favorably, with amendments, on June 8, 1970, the bill (H.R. 17399) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes, and submitted a report (No. 91-917) thereon, which was printed.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. EAGLETON) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, June 8, 1970, be dispensed with.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the order of yesterday the Chair now recognizes the distinguished Senator from Arizona (Mr. FANNIN) for 45 minutes.

Mr. MANSFIELD. Mr. President, will the Senator from Arizona yield briefly, without losing his right to the floor or any of the time allocated to him?

Mr. FANNIN. I am very happy to yield to the Senator from Montana.

ORDER OF RECOGNITION OF SENATOR YOUNG OF OHIO TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, following the remarks of the distinguished Senator from Arizona, the distinguished Senator from Ohio (Mr. YOUNG) be recognized for not to exceed 20 minutes.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the remarks of the distinguished Senator from Ohio (Mr. YOUNG) today, there be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

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

ORDER FOR ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10:30 a.m. tomorrow.

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

ORDER FOR RECOGNITION OF SENATOR HRUSKA TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on tomorrow, following the disposition of the Journal, the distinguished Senator from Nebraska (Mr. HRUSKA) be recognized for not to exceed 1½ hours.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ROBERT H. FINCH'S NEW ASSIGNMENT AT THE WHITE HOUSE

Mr. MANSFIELD. Mr. President, I would like to express my regret over the departure of Robert H. Finch as Secretary of the Department of Health, Education, and Welfare. I think that he has operated under trying circumstances and has done his very best in a difficult position. His loss will be felt.

At the same time, I am happy that the distinguished Under Secretary of State, Elliot Richardson, has been appointed Secretary of the Department of HEW. He brings to his new position integrity, understanding, and experience. As I recall, during the Eisenhower years, he was an Assistant Secretary in that Department and he made a commendable reputation at that time. I know that he will do a good job in this new and difficult post.

May I say, though, that we will miss Mr. Richardson who has been a very able Under Secretary of State. I would like to express the hope that his successor will be just as qualified, just as capable, and just as experienced in that arduous position as well.

At the same time, I am delighted that although Secretary Finch is leaving HEW he is moving to the White House and will be one of the President's counselors with Cabinet rank. I think that in that position, based on his experience, friendship, and knowledge of events throughout the country, he can be of inestimable assistance to the President of the United States and, in so doing, be of great assistance to Congress and the people of the Nation as a whole.

I thank the distinguished Senator from Arizona for yielding to me.

Mr. FANNIN. Mr. President, I thank the distinguished Senator from Montana. I concur with his statement regarding former Secretary of HEW Robert H. Finch.

It was my good fortune to spend some time with Mr. Finch. He is a native of Arizona, as I am. A few days ago, he appeared on the university campus at Tempe, Ariz., the place of his birth, and also at the Bob Finch Post of the Veterans of Foreign Wars—a post which was named after his father. It was very encouraging to me to witness the reception that Mr. Finch received during his visit there.

I have great admiration for Mr. Finch. He has worked under adverse circumstances and I think that he has rendered commendable service to the Nation.

I, too, wish him well in his new assignment and am very much pleased to join the majority leader in expressing best wishes to him.

Mr. MANSFIELD. I thank the Senator from Arizona.

COMPULSORY UNIONISM IN POSTAL REFORM BILL

Mr. FANNIN. Mr. President, more than 10,000 miles from here, thousands of American soldiers are fighting to preserve freedom of choice for the people of South Vietnam.

That effort has cost this country many billions of dollars, thousands of lives, contributed greatly to the turmoil of our college campuses, and politically polarized the people of this country.

All of this has been reported in infinite detail by the Nation's media, and debated strenuously and at length on the floor of this legislative body.

Yet, while we are engaged in efforts to preserve freedom of choice for the people of South Vietnam, the Congress of the United States is being asked to quietly preside over the loss of freedom of choice for 750,000 of our own people. Parenthetically, the failure of the Nation's mass media to explain to the American people what is happening to freedom on the home front makes this Senator wonder if our so-called mass circulation national newspapers, magazines, and TV networks are better defined as "a controlled" press than a "free" press.

Mr. President, as you and my colleagues know, a behind-the-scene domestic controversy is raging down the corridors, in the offices, and now on the floor of the Congress. That controversy is over the union shop position of the so-called postal reform bill.

Yes, while we fight for freedom in many parts of the world, Postmaster General Winton Blount and AFL–CIO President George Meany are asking this Congress to approve legislation that would authorize compulsory unionism for 750,000 postal workers—250,000 who by their own free choice have elected not to belong to a union. Such action, if approved by Congress, would also establish a dangerous precedent which would quickly spread to all the rest of the Federal service and right down to government employees at the State, county, and local levels. As the Washington Star's authoritative Federal reporter, Joe Young, said on May 18—

> The prospect of a union shop in government depends to a great extent upon the outcome of the union shop provision in the postal reform bill.

At this point, it seems logical to question the failure of our national TV networks to devote even 5 seconds of air time to the issue. Could the fact that most of the network commentators are union members under AFTRA contracts requiring membership or the loss of their jobs have anything to do with the lack of coverage? Be assured I am only speculating, not accusing. I do not know the answer to that one. Perhaps ABC, CBS, and NBC do.

To avoid what appears to be a deliberate attempt to confuse this issue and to clarify it in your minds and for the benefit of the working press and American people, let me make two very clear statements that I am positive that Postmaster General Blount would not deny:

First, under present law, every Federal employee—including postal employees—is guaranteed the right to join a union or refrain from joining a union. This right was guaranteed to postal employees by Presidents Kennedy and Johnson and cannot be abrogated by

agreement between union officials and the Post Office Department.

Second, under S. 3842, as reported by the Senate Post Office Committee, the officials of the postal administration and the postal unions can negotiate union shop contracts which require postal employees to join or pay dues to the union in order to keep their jobs.

There are some people who insist that "right to work" is not an issue in postal reform. Let me say here and now that right to work is an issue in postal reform. It is the most important issue. And it is an issue which was needlessly interjected into legitimate postal reform efforts, at the insistence of the "labor bosses."

Mr. President, in the opinion of many people postal reorganization with compulsory unionism is not reform—which virtually everybody in this country feels is badly needed—and this U.S. Senator, for one, does not plan to sit idly by and watch the U.S. Congress pass legislation which can require an American citizen to join a union before he can work for his own Government. I cannot imagine that any Member of this legislative body would care to have the 91st Congress remembered in the history books for such action.

To set the record straight, the bill reported by the Post Office Committee will extend the provisions of the National Labor Relations Act for the very first time to Federal employment.

Under present Executive order there is absolutely no way for union officials and Federal management executives to negotiate or otherwise bring into existence a union shop in the Federal service.

To spell it out even more plainly, under the presently existing law, there can be no union shop or agency where Federal employees are concerned.

Under the provisions of S. 3842 as reported by the Senate Post Office Committee, for the first time the issue of a union shop or agency shop would be subject to negotiation. Likewise, it would be an issue subject to binding arbitration.

While it is true that section 14(b) of the Taft-Hartley Act which prohibits the negotiation of union shops in States having "right to work" laws, is incorporated into S. 3842 with the other provisions of the National Labor Relations Act, there are at least some States whose "right to work" laws are so worded that they would be inapplicable to this situation.

Then, of course, there are the Federal employees outside the 19 "right to work" States who now have the protection of Executive Order 11491. Section 1(a) of that order states:

> Each employee has the right, freely and without fear of penalty or repraisal, to form, join and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right.

On the more ominous side, the threat of a new mail strike is being readied as a bludgeon with which to club Congress into rubberstamp approval of the increasingly unpopular Blount-Meany "deal." That is the opinion of many Members of Congress and Capitol Hill observers.

Union officials are threatening to renew their illegal mail strike on June 14 unless their additional 8-percent pay raise—included in the postal reform package—has been approved in Congress by that time.

Very few knowledgeable persons accept George Meany's claim that he has no control over the strikers. Instead, the strike threat is seen as part of the power politics being manipulated by George Meany. He is getting set to accuse Congress of responsibility for the strike because of its failure to pass the reform bill. Meany will attempt to inflame public opinion to force Congress to endorse the Blount-Meany package in order to keep the mail moving.

In effect then we are faced with the prospect of an illegal strike against the U.S. Government to force Congress to yield to demands for a union shop authorization. If we yield we will have told potential Federal employees that if they want to work for their own Government they will first have to pay dues to a private organization. My friend and colleague, the Senator from New Hampshire (Mr. COTTON), said recently that if Postmaster Blount's idea of postal reform is adopted, "control of our postal services is bound to pass from the hands of Congress into the hands of the AFL–CIO."

Let us put this problem another way. Should we enact legislation here that would authorize the firing of loyal Federal employees who refuse to pay dues to a union which promotes illegal strikes?

President John F. Kennedy said "No."

His Labor Secretary Arthur Goldberg said "No."

The 1968 GOP party platform said "No."

And present Federal policy—Executive Order 11491—says no. It protects the freedom of all postal workers whether or not they pay money to a union. But Postmaster General Winton Blount and AFL–CIO President George Meany want to change that. They agreed to include a provision in the postal reform bill which will strip away postal employees' right-to-work protection.

At this point, Mr. President, let me quote from a Scripps-Howard newspaper editorial published in the Washington Daily News on April 17. It bears heavily on the announcement I have to make today. The editorial says:

> Mr. Blount says this agreement, if it goes thru Congress, would permit unions to negotiate for union shops. Union shops require all employees to join the union, whether they want to or not. This is common in private industry, but is it good public policy? In principle, no.
>
> The question for Congress is whether this is too stiff a price to pay for reform of the postal system, desperate as that need is. If the union shop possibility isn't in the package, the whole deal could be defeated by the union lobbies, even though an eight per cent pay raise is at stake.
>
> This is a sharp turn-around in public policy, which Congress should examine with extreme care; and on which outpouring of opinion from the public at large would be decidedly in order.

I also want to mention another so-called reform provision. As an editorial in the Washington Daily News on June 2 pointed out, this bill also imposes an additional burden on the taxpayer by eliminating the current practice of requiring postal unions to pay for the bookkeeping inflicted on the Government by the dues checkoff provision. I do not think that the taxpayer should have to subsidize the unions by paying for the collection of forced union dues.

It is an added insult that these dues are deducted before taxes. The unions are, in effect, provided with tax-free funds which are expended, at least in part, for political purposes—purposes with which the dues-paying union member may not agree.

Yes, Mr. President, the authorization of compulsory unionism for postal workers is a sharp turnaround in public policy, and for that reason it is imperative that this legislative body examine the issue with extreme care. I am sure all of you are already aware that the public has provided an outpouring of opinion. The mail on the union-shop aspect of postal reform is now running second only to Cambodia and virtually all of it is opposed to compulsory unionism.

So, Mr. President, since the issue was not examined with extreme care in committee—no hearings on a 134-page bill were held—it is my intention to hold the hearings on the floor of the U.S. Senate so that the American people can see that we are doing our duty on this issue and so they can know exactly where their own Senators stand on this issue.

A number of my colleagues in this legislative body have already agreed to join with me in informative discussion on this issue once the postal reform bill reaches the floor. It is our hope that when our hearings are ended this legislative body will refuse to approve any postal reform bill that authorizes compulsory unionism. Such action will be no more than a reflection of the will of the vast majority of Americans.

Finally, Mr. President, this informative discussion will be a bipartisan effort in the great tradition of Mr. 14(b), the late Senator Everett Dirksen, who when he announced in 1965 to President Lyndon Johnson that he intended to lead an effort to prevent repeal of section 14(b) of the Taft-Hartley Act said:

> Mr. President, I love Caesar, but I love Rome more.

Mr. President, it is not that we want to oppose the postal reform measure. In fact, I have told the Postmaster General I would support that measure, and I do. I am very hopeful we will have solid support for that measure, but with the postal unionism provision removed.

It seems ironic that, as I understand the situation, we have a great number of people threatening to strike that are not in agreement with adding this provision to the bill. They would like to see the measure approved as early as possible.

It is essential that we carry through and move forward with approval of this legislation at the earliest time possible. No one that I know of in this body questions the need for postal reform. I feel and many others feel it is just a matter

of the way in which it has been negotiated that is wrong. When we make this type of sacrifice, supposedly to accomplish a worthwhile objective, it can lead to considerable difficulties, and in this instance it could lead to the defeat of the postal reform measure. This we do not want to bring about. It is so important that we provide this protection not only to postal workers, but to the other Government workers that I am sure would be involved later if this legislation is approved.

Therefore, I feel it is highly essential that we thoroughly debate this measure so we can inform the American people in order that we might have their reaction.

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

Mr. FANNIN. I am pleased to yield to the distinguished Senator from Tennessee.

Mr. BAKER. Mr. President, I begin by commending our distinguished colleague from Arizona for his eloquent statement on this subject at this time.

I think it is important that we fully advise the Senate on the ramifications, importance, and significance of the various provisions of this proposal as considered by the legislative committee prior to the time it is reported to the Senate and we come to grips with the essence of the proposal itself.

I must confess that I am disturbed by the form this bill has taken. I believe I was one of the earliest formal advocates of postal reform in the Senate. It was one of the key issues in my campaign for election to the Senate from my State of Tennessee back in 1966.

The obvious plight of the postal service requires nothing less than a basic reorganization. I am firmly committed in published articles, in public statements, and in colloquy on the floor of the Senate to postal reorganization along these lines—a quasi-governmental corporation or a provision similar to this one—with the single glaring exception of the provision referred to as compulsory unionism.

I wish to state to my colleague from Arizona that my mail has been quite heavy on this subject. I frankly state that the volume, the extent, the distribution, and the nature of that mail convinces me it is not so-called generated mail but that it is mail of genuinely concerned constituents, most of whom are from Tennessee and who are opposed to the change in principle of the employment policy of the Government. Whether it is related to section 14(b) of the Taft-Hartley Act directly, by parallel, or indirectly, it is a change of policy and a change away from freedom of choice in terms of employment and membership in a union, whether in Government service or out.

In the case of private industry, I think my colleague would agree that there is a substantial difference in the nature, type, and responsibility of employment as compared to public employment by the Federal Government. Would the Senator agree with that statement?

Mr. FANNIN. I do agree with that statement.

Mr. BAKER. If we lay aside considerations of the parallelisms of section 14(b) of the Taft-Hartley Act, would the Senator agree there is a basic Federal policy by Executive order endorsed by the platforms of both of our national parties as late as the last national conventions that provides against any requirement that a person join or maintain membership in a union to gain or continue Federal employment?

Mr. FANNIN. The Senator is correct, and I know he is in agreement with it. Under existing law, the standards for examination and employment in competitive civil service are set forth in section 3301, title 5, of the United States Code, and apply to postal employees just as they do to employees in other parts of the Government.

We do have this protection with all of our employees of government and it is a protection we should retain.

Mr. BAKER. Am I correct in my recollection that the Republican National Convention in Miami and the Democratic National Convention in Chicago both include a reference to this provision in their national platforms?

Mr. FANNIN. Yes, and I know that as far as the Republican platform is concerned it was emphatically stated that this provision should be retained.

Mr. BAKER. And the Executive order now in effect has been approved and enforced by both Republican Presidents and Democratic Presidents. Is that not correct?

Mr. FANNIN. The Senator is correct; and the late President Kennedy, former President Johnson, and now President Nixon have so stated.

Mr. BAKER. It seems to me, then, important in connection with our colloquy to remember and keep in mind during the course of debate on this important subject that we are not just talking about the right to work and section 14(b) of the Taft-Hartley Act, but rather that we are talking about a basic and vital change in the policy of the Federal Government in the field of employment.

Mr. FANNIN. Yes. I agree it is a complete turnaround in a policy which over the years has been very acceptable and which has given protection to Federal employees entitled to have it, and it should be retained.

Mr. BAKER. I agree with the Senator. I commend the Senator for the effort he is making in this regard.

I wish to ask this final question. While I am from a so-called right-to-work State, the State of Tennessee, which has through due legislative process elected to avail itself of the provisions of section 14(b) and to outlaw union shops, even if we were not a right-to-work State I would still oppose this provision because I think there is such a distinction between Federal employment on the one hand, even Federal employment in a Government corporation, and private employment.

I fully support the statement of my colleague from Arizona and his proposal in this respect. I intend to support his amendment. I think he is doing a great service to our country in bringing this matter to our attention at an early date.

Mr. FANNIN. I express my gratitude to the distinguished Senator from Tennessee for his statement, and I appreciate his support. I agree we have a very serious problem involving the protection of our Federal employees throughout the land. We should see that they have that protection, just as they have had over the years. The Executive order now in effect is No. 11491, signed by President Nixon on October 29, 1969.

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

Mr. FANNIN. I am very pleased to yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I have listened to and read the statement of the Senator from Arizona with great interest. When the postal reform bill reaches the floor, as the Senator from Arizona suggested, there will be further discussion of this particular provision and of the proposal to be offered by the Senator from Arizona. I would ask the question raised by the Washington Daily News: Is this too stiff a price to pay for reform?

Every Senator feels the need for postal reform. Every Senator knows there should be reform. The question that will confront the Senate is: What price must be paid for reform? As far as I am concerned, the underlying principle is protection of the Federal employees.

The Senator from Arizona has made an excellent preliminary statement. I join in the statement made by the Senator from Arizona and the comments of the Senator from Tennessee, and suggest that when the bill does come to the floor I shall join in the discussion with the Senator from Arizona. It seems we desperately need postal reform. We also need, as the Senator has indicated, freedom of choice. It is not just the principle of "right to work" which is involved; it goes beyond that. Should Federal employees be fined because they might not choose to join a union? That is the question involved. Call it what you will, the issue involved is compulsory unionism. As the Senator from Tennessee had said, there is a vast difference between private employment and labor and Federal employment and labor policies.

I, too, commend the Senator from Arizona for his statement this morning.

Mr. FANNIN. I thank the Senator from Kansas for his forthright position in this regard. I feel it is too great a price to pay. I do not think it is necessary to pay that price, because I believe if we have the support of the administration on the reform bill with that stipulation removed, we can get it through Congress. I think the Executive order is important. I have referred to it. I would like to read what it says. Section 1 of its general provisions reads:

> Each employee of the executive branch of the Federal Government has a right freely and without fear of penalty or reprisal to join or assist a labor organization or to refrain from any such activity—

I think that is important—

> and each employee shall be protected in the exercise of this right.

In other words, this is a regulation that applies for all Federal employees in all the executive departments of the Government, and they all should have that protection.

I again express my thanks to the distinguished Senator from Kansas, because I think it is essential that at the time the bill comes before the Senate we thoroughly discuss the matter in order that the people of America can better understand just what is involved. I am sure there will be many times the mail that has already been forthcoming, with the amount of publicity that has been given over the news media, as the time arises for a vote on this issue. So I am very pleased to have had the opportunity to speak on this subject and to have the support of the distinguished Senator from Kansas and the distinguished Senator from Tennessee, who have entered into the colloquy.

Mr. THURMOND. Mr. President, I would like to associate myself with the position so eloquently stated by the able and distinguished senior Senator from Arizona. Senator FANNIN is to be commended for taking a role of leadership in the important fight to preserve the right of the American citizen to serve his Government without being forced to join a union; and, more significantly, to turn over a percentage of his salary to an organization whose motives he may doubt.

Mr. President, it is still a mystery to me that in this country we acquiesce in the establishment of union shops under any circumstances; this is bad enough. But if we allow this repressive device to spread from private industry to the postal union, it will be only a matter of time before it completely permeates the ranks of Federal, State, and local government.

Mr. President, I will have more to say on this subject in the coming days. At this point, however, I just wanted to congratulate the distinguished Senator on the excellent statement he has made and the fine work he has done in this vital area.

Mr. FANNIN. Mr. President, I express my appreciation to the distinguished Senator from South Carolina, and I commend him not only for the work he is doing now, but for the great services he has performed in the past. He has been a champion and protector of the freedoms of the people. We know the outstanding service that he performed when we were debating section 14(b) of the Taft-Hartley Act. He is continuously standing up for what is good for America, and I praise him for that effort and for his comments here this morning.

Mr. HANSEN. Mr. President, I join my distinguished, determined, and able colleague from Arizona (Mr. FANNIN) in opposing compulsory unionism in the postal reform bill as it was approved by the Senate Post Office and Civil Service Committee.

I will join the Senator from Arizona in the informative discussion he has proposed when that bill comes before the Senate and do all I can in support of his effort to preserve the right and guarantee every Federal employee now has to join a union or refrain from joining a union.

As the New York Daily News pointed out in an editorial yesterday:

> The system desperately needs new men, new equipment and new ideas to scour away the rust deposited during years of indifference and neglect. The Administration's plan, we feel, would do just that.

The editorial added a note of caution, however:

> Some labor bosses want to use the postal reform measure to break down the barriers that prevent unions from fastening the union shop yoke on federal employees. They must be thwarted.
>
> As matters now stand, government workers are free to join—or not join—unions according to their own desires. That right of free choice must be preserved.

The Dallas Morning News also had strong reservations about compulsory unionism as have hundreds of other newspapers across the country.

Compulsory unionism is not justified in any free society—much less the government, the editorial said.

Texas, like Wyoming, has a right-to-work law but, as the Dallas News has pointed out, the postal reform bill could very well preempt State laws.

If Texas and Wyoming and other States applied their right-to-work laws to postal employees, unionized workers would be likely to charge unequal protection of the laws in Federal court, arguing that a Federal law ought to apply with equal force to all postal workers and that nonunion members weaken bargaining.

Mr. President, I am greatly concerned over the provisions of this legislation which for the first time would permit a union shop within the Federal Government. I question the wisdom of forcing a citizen of this Nation to join an organization before he is permitted to work for his own Government. It is important that this question be thoroughly debated and the Congress recognize the consequences before any action is taken.

Mr. President, I am glad to join the distinguished Senator from Arizona in his determined effort to remove this grossly unfair requirement from the postal reform bill and preserve the rights of some 200,000 postal workers who do not belong to any union, as well as the laws of those States, including Wyoming, which have passed right-to-work laws for the protection of workers from just such compulsion as this bill proposes.

SENATOR GOLDWATER'S ENDORSEMENT OF NEIGHBORHOOD HEALTH CENTERS

Mr. FANNIN. Mr. President, yesterday the Senate agreed to the conference report on H.R. 11102, which includes authority for the establishment of neighborhood health centers. This measure is expected to be cleared for the President by the House shortly.

My colleague from Arizona (Mr. GOLDWATER) is among the original sponsors of the community health centers approach and he wanted very much to contribute to the legislative history being developed on this measure.

To this end, he had prepared remarks that he intended to give which would clarify the benefits of this program to Arizona. However, he has been detained on official business.

In order that my colleague's remarks might appear in the RECORD while the measure is still before Congress, I ask unanimous consent that the statement of the Senator from Arizona (Mr. GOLDWATER) be printed at this point in the RECORD.

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

REMARKS BY SENATOR GOLDWATER

Mr. President, it is a great pleasure for me to see that the hospital and medical facilities bill which has been reported by the Conferees includes two provisions nailing down the Congressional purpose to encourage and assist the establishment of neighborhood health centers.

These provisions are found in the new definition which the bill provides for an "outpatient facility" and in the increased sum authorized for the construction and modernization of such facilities.

This concept is one that has received my strong endorsement and sponsorship since early last year when I joined with the senior Senator from Illinois, Mr. Percy, in the introduction of S. 2037.

In June of 1969 I presented a detailed statement to the Senate Subcommittee on Health urging the adoption of our proposal either in the form of a separate Act or as a part of general legislation to amend the Public Health Service Act. I am extremely pleased that the Senate Committee approved almost all of our concept as an amendment to H.R. 11102 and that it was truly locked into the bill beyond any question thanks to the adoption of two Floor amendments offered during Senate consideration of the bill.

Today I wish to reaffirm my enthusiastic support for the neighborhood health center approach. Basically, I conceive of the idea as one which will offer a new departure towards the goal of meeting the health needs of all Americans, whatever their income and wherever they live.

To achieve this, in a sound and effective way, the legislation which I sponsored, and which is incorporated in the conference bill before us, would seek to improve the system through which health care is provided by giving to local communities and local groups the funding they need to construct or modernize comprehensive health care centers in the neighborhoods and areas where physician accessibility is lowest.

In effect, the neighborhood health care concept would bring health facilities as close as possible to those who need such services. Perhaps it is fair to say that the plan which I endorse would make health care facilities almost as accessible as the corner grocery store.

There are several important advantages to the neighborhood health centers program, and I would like to run down the major benefits as I see them.

1. Comprehensive neighborhood health clinics, staffed by physicians who can treat a wide range of diseases, can provide residents of low-income areas and rural communities with the primary care that is now unavailable to them.

2. This concept will provide a continuity of services by the same doctors to the same individuals in their own neighborhood—a situation that rarely exists at present for those who live in our rural and low-income areas.

3. The plan will concentrate the responsibility for the treatment of a wide range of illnesses at the same facility and by the same personnel, thus overcoming the present tendency for fragmentation of care among specialized clinics. I believe this would reverse the situation, which now occurs too often, in which a person who is sick is refused care because he has the wrong disease.

4. The provision of comprehensive outpatient care at neighborhood centers will re-

sult in a dramatic reduction of hospital utilization. Through immunizations, early diagnosis, and preventive medicine, many diseases will be prevented outright or diagnosed before the need for hospitalization arises. In addition, hospital admissions for diagnostic purposes will be avoided since such services will be given at the clinic.

5. The possibility for adding comprehensive facilities as part of a coordinated county delivery system will enable health officials to develop a network of clinics which will contribute to expanded and better services, both in counties where towns are remote and in counties where the present hospitals are small and might wish to supplement their facilities by contracting with associated clinics.

6. The establishment of neighborhood clinics on a large scale will definitely encourage and make it possible for insurance carriers to offer low-cost health programs because so many kinds of medical services can then be provided in lower-cost areas, with the accompanying factor of a decrease in the number of hospital days per number of covered persons.

7. The development of comprehensive health care clinics will help county and city governments get the most from their health dollar. It is more economical by far to contract for care to be handled by outpatient centers than by hospitals. This point is especially pertinent to our situation in Arizona where almost all of the counties lack a public county hospital and are required to contract for the provision of services with existing private hospitals.

8. The program of neighborhood health centers is sound. It has been proven to be effective where tested in the form of pilot projects and is probably the least costly Federal approach to bringing more and better health services to people in every walk of life.

9. The bill increases the ability of the States and localities to control the resources used for their health needs. The States can certainly adapt their powers and programs far more quickly and wisely to meet the varied needs of their people than it is possible for some administration to do who sits in Washington, D.C. The legislation takes account of this fact by giving local governments and groups one more option to choose from in setting their own priorities.

Mr. President, this completes my review of the general reasons why I am so strongly convinced that the approach set out in this proposal is worthwhile. But now I would like to develop a few thoughts about the intent of the legislation so that a clear history will be made to answer possible questions that may arise in the day-to-day operations under this law.

First, I want the record to be entirely clear that the benefits of the bill are equally intended for our rural areas and small towns as well as for the low-income urban communities. The State of Arizona is interested in this measure from both standpoints as are several other States.

As I see it, the Act will definitely be useful in Arizona by helping to bring health services closer to the indigent senior citizen, or Mexican-American, or American-Indian, or black citizen who resides in one of our urban centers. But it also will be of immense assistance to the citizens of Arizona because it will make comprehensive health care available in the sparsely built-up areas of the State which are remote from any major medical facilities. I would like to remind my colleagues that several counties in Arizona are larger in territorial size than many entire States and yet have a population too small to support more than one public hospital—if that.

In my State, trips of 25 and 30 miles to reach high-quality health centers are commonplace. And, it is not unusual to find the situation where even longer journeys are needed. For example, there is Mohave County which has one major facility located in Kingman, the county seat. Now this means that citizens of Wikieup in the same county must travel a distance of more than 50 road miles before they reach a hospital. Or, take the case of Yuma County where residents of Mohawk live over 40 miles from the closest hospital. And, in the northern half of this county, we have another typical situation in that the people of Hope have to go 50 miles in one direction to an Indian hospital at Parker or 50 miles in the other direction to get to the community hospital at Blythe, California.

Mr. President, I could fill the record with similar instances, but these are sufficient to make the point. The legislation must be interpreted broadly to enable the establishment under the Act of neighborhood centers far from the hospital with which they are associated. And, by "far," I want the record to show that I am talking about distances of 50 and 60, or even more, road miles. If this measure is to fulfill the purpose which we want, it is absolutely essential that an expanded construction be given its provisions in the manner which I am describing.

Next, Mr. President, I want to indicate another area where the bill must be interpreted so as to give the broadest meaning to its terms. I hope the regulations developed concerning the definition of "outpatient facility" establish that (a) a center can qualify for construction grants even if it is to be staffed by as few as two or three physicians, so long as these individuals alone or together can treat a wide range of diseases, and (b) a center need not be capable of caring for all or almost all the diseases to which individuals are susceptible in an area, but should merely be able to show that in fact it truly is not a specialty clinic restricted to one or a very few types of illnesses.

Mr. President, before ending my remarks, I would like to say a word about the exciting program which is underway for the operation of a comprehensive health center in Tucson. This pilot project is Arizona's first such neighborhood health center and its establishment indicates the foresight shown by health leaders in our State.

In particular, I want to single out Doctor Herbert Abrams, who is head of the Department of Community Medicine at the University of Arizona in Tucson. In this capacity he is definitely one of the major guiding voices in back of the program.

Also, I should give credit to the many medical leaders of Arizona who gathered together for a conference to explore the inadequacies of health services in both the sparsely settled areas of Arizona and some of the low-income urban centers. It is this conference which truly can be said to have generated the idea of developing a model neighborhood health center in Tucson as a means to provide a high quality of medical care to Arizona citizens near their homes, as well as in the hospital.

The Tucson program is expected to bring preventive and primary care to almost 10,000 residents, many of them for the first time, and I believe many communities throughout the nation will want to follow its lead by using the pending law.

In closing, Mr. President, I want to express my strong hope that the government administrators who are in charge of the new neighborhood health centers program will always keep in front of them the knowledge that the preeminent purpose of this law is to provide the delivery of high-quality health services to all citizens regardless of what they earn or where they live. The guidelines that are set up under the statute must not be so strict that communities which vitally need these services are written out of the bill by administrative decision.

To my mind, the approach used in the pending legislation represents a real opportunity for the nation to deal with one of the most deeply-felt of any human needs—the good health of each citizen. This need is basic to the enjoyment of each individual's personal freedom and I am very pleased that Congress is acting today towards this goal.

THE TRUTH ABOUT COMMUNISM

Mr. FANNIN. Mr. President, during the past several weeks many young persons have come to my office to discuss the war in Vietnam, the disturbances on campus, and the racial problems.

I have been dismayed to hear some of these young people say: "We would be better off under communism." "Communism distributes goods more evenly." "There is no discrimination under communism—it is perfect equality." "The repression in the United States is intolerable."

Communism as practiced in the world today is a totalitarian dictatorship employing all of the brutal, repressive denials of individual freedom which distinguished Nazi Germany and Fascist Italy.

In the Communist-governed countries there is no trial by jury, citizens may not travel without special permits—either inside their country or outside their country. Citizens are not free to choose their place of employment or where they want to live. There is no collective bargaining. The state holds monopoly power over the press, disciplines all writers. Millions of citizens are held as political prisoners, many of whom were convicted without a trial or without the formality of charges.

The Communists come to power by terror and continue in power by exercising terror.

The Communists believe the end justifies the means. Their ethical relativism commands them to lie, cheat, steal, kill, torture—do anything which will advance the Communist goal of world domination.

Western democracies declare that each individual was created by God, endowed with certain inalienable rights, and the objective of western governments is to protect and enhance the rights, privileges, and freedoms of the individual.

Western democracies believe the state should be the servant of the people, not the people the servant of the state.

Communism is not a political system or an economic system. It is a contradiction of all our assumptions concerning the nature of man.

The Communists use each human being as an economic unit and a physical unit and an intellectual unit created to serve the state. From Lenin to Mao, Communist theoreticians have stressed the necessity for the individual to subordinate his interests to the interests of the state.

Any examination of the Communist society reveals that an elite political class enjoys great privileges, that the workers are far worse off under communism than they have ever been under capitalism.

Consider the following facts:

Since the end of World War II, Communist dictatorships have been estab-

lished in all of these countries—Latvia, Estonia, Lithuania, Poland, Rumania, Czechoslovakia, Albania, Yugoslavia, Hungary, Tibet, the eastern half of Germany, Outer Mongolia, North China, South China, North Korea, Cuba, and North Vietnam. In every one of these countries the Communists came to power by the use of force and terror.

Peace was destroyed in our world with the commencement of World War II, and it was the nonaggression pact between Hitler's Reich and Stalin's Russia which signaled the beginning of that war.

Communist Russia has been involved as instigator, provocateur, and supplier in the takeover of China, the establishment of North Korea, the establishment of Communist rule in Southeast Asia, the maintenance of Communist rule in East Germany, the establishment and maintenance of Communist rule in Yugoslavia, Czechoslovakia, and Hungary, the takeover of Cuba, and the growing tense situation in the Middle East. Everywhere the Communist price for peace is surrender of individual freedom.

Three million North Koreans fled their country to escape communism. Four million Vietnamese left North Vietnam to escape the Communist dictatorship. The Berlin Wall was erected to keep the freedom-loving people of East Germany from escaping to the West.

The following quotations are taken from the statements of Communist leaders:

As soon as we are strong enough to defeat capitalism as a whole, we shall immediately take it by the scruff of the neck.—*Vladimir Lenin, 1920*

A fight is in progress between these two systems, a life and death combat, but we Communists want to win this struggle with the least losses, and there is no doubt whatsoever that we shall win.—*Nikita Khrushchev, 1963*

In a country where the sole employer is the state, opposition means death by starvation. The old principle, who does not work shall not eat, has been replaced by a new one: who does not obey shall not eat.—*Leon Trostsky*

The end is justifiable by any means. The individual has no rights. The individual is only a cipher. Let me tell you the democratic concept of man is false because it is Christian. The democratic concept of man holds that each man is a sovereign being. This is the illusion, dream and postulate of Christianity.—*Joseph Stalin*

In the materialistic society of the dialectics there is no confusion. Freedom manifests itself only in a classless society. Man's total significance is to be measured by his service to that society.—*Joseph Stalin*

Bortherhood is an expression only of the class solidarity. There are whole categories of men whom I do not care to recognize as brothers. All men are no longer brothers. There is no longer that merely human solidarity.—*Joseph Stalin*

Of law, morality, charity and love, Stalin said:

There are just so many bourgeois prejudices behind which lurk just as many bourgeois interests.

We have to destroy the present structure of power in the United States. We have to overthrow the government, and the only means possible is violent overthrow.—*Eldridge Cleaver, Minister of Information, Black Panther Party*

You must learn to fight in the streets, learn to revolt, learn to shoot guns. You may have to take that final step. You may ultimately be bathed in blood . . . so will others . . . but you will have to do it.—*William Kunstler, to students at New York's New School*

VIOLENT DEATH—HANDMAIDEN OF COMMUNISM

D. G. Stewart-Smith in his book "Defeat of Communism," estimates that between 1917 and 1964 international communism was directly responsible for 83,000,000 deaths—45,000,000 of these victims were Russians who died in the civil war, famines, liquidation of the kulaks, purge execution, and in concentration camps.

The Communist Moshe Pijade has declared:

In 1936, 1937 and 1938 over 3,000,000 people disappeared from the earth's surface in the Soviet Union.

If these figures appear to be exaggerations, examine your own memory:

Four to 8 million kulaks starved to death between 1932 and 1934 as a result of the program to collectivize Russian farms. Ten to 12 million in forced labor camps since the beginning of the terror—mortality rate in the camps 30 percent a year.

Eight to 10,000 Polish army officers executed at the Katyn Forest.

Thirty thousand Hungarian freedom fighters killed—100,000 to 200,000 sent to concentration camps in Russia.

At least 5,000,000—perhaps 15,000,000—Chinese executed or starved to death in mainland China.

Five hundred and twenty-five thousand Lithuanians exterminated between 1940 to the middle of 1949.

At least 30,000 Cubans executed by Castro.

Approximately 35,000 civilians executed by the North Koreans.

Sixty-five thousand Tibetans killed by the Communist Chinese.

The respected writer Eugene Lyons in his book "Workers' Paradise Lost" says:

The best way to visualize Soviet Russia is perhaps to see it as a single company town, rigidly dominated by the state employer, worse in that there is no escape for the worker—there is only one employer, the state, which is equipped with armies, security police, prison camps and arbitrary decrees to deal with recalcitrants.

Differences in income are as wide or wider than in bourgeoise industrial societies, plus extras for the privileged groups that do not show up in statistics.

Economic equality survives only in future tense rhetoric.

The inhabitants are hardly consoled by the fiction that they "own" all industry, and they do—in the same sense that a prisoner owns his prison cell.

Every American should know the truth about communism. As suggested reading: "Workers' Paradise Lost," Eugene Lyons; "Christianity and Communism," John C. Bennett; "You Can Trust the Communists," Dr. Fred Schwarz; "How the Far East Was Lost," Anthony Kubek; "Masters of Deceit," J. Edgar Hoover.

Mr. President, I appreciate the opportunity to present a statement of just what happens when a Communist takeover comes about. I know that the people of this great Nation of ours will work very hard to convince our youngsters that capitalism offers them a great future, communism no future.

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

Mr. FANNIN. I yield to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I commend the able and distinguished Senator for the meaningful remarks he has just made. I only wish the people of this Nation understood truly the nature of communism, the goals of communism, and the role it is playing today to dominate the world.

WHERE IS AMERICA GOING?

Mr. FANNIN. Mr. President, Dr. Welton P. Shofstall, superintendent of public instruction for the State of Arizona, recently addressed the men of the United Presbyterian Church of Sun City, Ariz. His topic was "Where Is America Going?"

I ask unanimous consent that his timely message be printed in the RECORD at this point.

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

WHERE IS AMERICA GOING?

(By W. P. Shofstall)

Rioting, guerrilla warfare and the use of narcotics (including alcohol) here in the United States are merely symptoms of a "neurotic generation" which will destroy free America unless there is a reverse in the current trends in education and government. Most student protestors, criminals, dope users and even some self-professed ministers, are trying to cure a contagious disease with which they, themselves, are seriously infected.

This disease is secular humanism. It is like a cancer in the body politic of western civilization. Secular humanism was the religion of Hitler: it is the religion of Castro and even the little Manson man who is charged with the Tate murders. It's the religion of the priests and nuns who are today breaking their sacred vows. *Secular humanism is the religion that allows men to play God.*

For example, the Hawaiian Legislature just introduced Senate Bill 1421–70 to take effect July 1, 1971; Section 2. Every physician attending a woman resident of this state at the time she is giving birth in the state shall, if the woman has two or more living children, perform such medical technique or operation as will render the woman sterile.

With the help of television and other news media, a small minority of people are succeeding in projecting a false image for everybody. At least we hope it is a false image. This small minority will, however, continue to project a false image so long as they are allowed to do so. You and I must assume the full responsibility for whatever we tolerate. The "silent" majority must act or perish.

Many people seem to accept the notion that our problems are absolutely new and especially that young people are completely different today. We seem to be ignoring all that man has ever learned in the past.

Why do people insist on trying to solve problems only by trial and error and disregard the personal experiences of a thousand lifetimes? Why do they try to learn by experiences in one short life, what it took mankind thousands of years to learn? How can we tell people whose land has never been occupied by an enemy, the importance of national defense? Why do both young and old people seem to believe that, *with only the five senses as a guide*, one learns only from his own trial and error? Why do so many

of us seem to ignore the wisdom of the ages? Regardless of the answer or the cause of this stupidity, the result is now-a-days misnamed the current revolution—the consequences of our "neurotic generation" seem to be upon us.

We seem to be expressing the ultimate tendency of civilization to move from adolescence to maturity and back to barbarism. We must break the cycle.

Those who read and believe history know also that future tyrants have *always* told the people their plans in great detail. Our present-day radicals tell us exactly what their plans are. They say the purpose of the guerrilla warfare is to destroy capitalism. Hitler told his plans in "Mein Kampf". Very few read it and fewer believed it. Men such as Marcuse of the University of California and Starsky of Arizona State University tell us exactly what they are trying to do and very few believe them.

We betray the public whenever and if we call this current guerrillla warfare mere dissent. The right to dissent is nearly *sacred* while giving aid and comfort to an enemy is *treason*. The right to dissent is nearly sacred but immorality, pornography and obscenity are anti-social, degenerate and barbaric behavior completely unrelated to dissent.

America is being destroyed and will continue to be destroyed so long as the point of view prevails that a little inflation is good: that our enemies are mellowing: that freedom is free: that our country is not in any serious danger: or that secular humanism is merely the modernization of "the old time religion". To repeat, we must take the full responsibility for whatever we tolerate. If we tolerate anarchy today we will have a police state tomorrow. When or if a police state comes we will plead ignorance but we can't escape responsibility. Ideas have consequences and ignorance of the consequences don't change them one whit.

But, unless and until there is a change, we will continue to demand our own particular brand of chains. Some obvious facts support this contention. For example, we, the voters, have already literally demanded and obtained a welfare state. And we have only seen the beginning of what politicians must promise the voters for the future in order to get elected. Government intervention is destroying the free market, government intervention is killing incentive of individuals to be either productive or constructive citizens and bringing inflation to all. This, most certainly, will destroy America as a free country. And all these things are being demanded by the voters. The black power advocates and the Chicano advocates are developing into militant racists and purveyors of hate who are destroying the United States as the great "melting pot" of the world. Organized labor and so-called liberals have succeeded in frightening Senators from confirming Judge Haynesworth and are trying the same tactics with Judge Carswell. We seem to be rapidly approaching a dope-oriented society. Yet I'll wager that politicians will soon legalize marijuana. Voters are forcing the legalizing of murder in the form of abortion and our mental health laws will soon legalize political persecution in the name of psychotherapy and the jailing of those who disagree with the party in power. Most serious of all is the fact that our universities are being politicalized. They are rapidly becoming non-educational institutions such as known in South America. A university is an educational not a political institution. This is the sole basis for "academic freedom."

Sidney Hook, in his book entitled *Academic Freedom and Academic Anarchy* highlights the politicalization of the university as follows: "We cannot intelligently believe that the mission of the university is to lead mankind to a New Jerusalem. Any attempt to do so would destroy, among other things, the University's historic function to serve as an intellectual sanctuary when the winds of popular passion blow, and as a center of experiment, heresy, and reflective dissent." He is saying that academic freedom can be destroyed in the name of academic freedom.

Some say that the only place a professor can damage or destroy academic freedom is *within* the clasroom. The logical person will ask how can you keep academic freedom within the classroom, and destroy the classroom which is the only place for academic freedom to exist? It is like saying a man's house is his castle while you burn it down or confiscate it. Some say a man who is a good teacher is doing no wrong as a professor. That's like saying a con-man is doing no wrong as a salesman. Or, that Hitler did no wrong as a politician. The professor is the only person who can reserve academic freedom. Those outside academe can only destroy it. Those trying to destroy the university because it represents the establishment, or for any other reason, are destroying and not preserving academic freedom.

Unless we reverse the suicidal trend toward the destruction of freedom, and we can if we know what we want and are as dedicated as our enemies, local autonomy will disappear in the public schools and universities. When anarchy comes people demand a police state in the name of common sense. Those who are creating chaos in our country know this fact and we had better learn it before it is too late. Why are we such a silent majority willingly being led like lambs to the slaughter by a pitifully few human judas goats?

If you tell the average person, young or old, that our enemy is atheism or secular humanism he will look at you and say, "so what? What's dangerous about atheism? Isn't humanism loving your brother? Humanists are at least not hyprocrites." The secular humanist won't even listen when you tell him that in the Soviet Union alone, at least 40 million innocent people have lost their lives in the last fifty years. More than 40 million innocent people in Red China were murdered in half that time. Furthermore he will demand that we withdraw our troops and turn the South Vietnamese over to be murdered by the hundreds of thousands. He gives no thought to the fact that the murderers of these hundreds of thousands will not be hypocrites. They are what Eric Hoffer calls "true believers." They are true secular humanists.

Perhaps Cicero put it best, "Not to know what has been transacted in former times is to be always a child. If no use is made of the labors of past ages, the world must remain always in the infancy of knowledge."

Max Eastman said, in his book, Reflections on the Failure of Socialism, "I still think the worst enemy of human hope is not brute facts, but men of brains who will not face them." The "brute facts" about the guerrilla warfare, to destroy capitalism and freedom, are not nearly so discouraging as the "men of brains who will not face them." And the first brute fact is that we are rejecting the Judaic-Christian tradition as our religion and substituting secular humanism. We don't have a revolution in America such as we had in 1776. We have a civil war. It is a civil war between those who believe in America and those who would destroy America. And, how many men of brains do you know who face this "brute fact?"

Many of the men of brains I know are horrified by the words Nazi and Fascist but see no great danger in socialism without the Ten Commandments. They seem unable to face the fact that socialism without the Ten Commandments is secular humanism and must ultimately become a police state. A benevolent dictator cannot remain benevolent and in power for long. Men who consider themselves no more than super-intelligent animals will eventually act like animals.

We already worship man much more than we worship God. We have already lost the battle for men's minds and souls when ever we deny God and moral law and since most of us accept secular humanism as the religion of the public schools.

I don't know if such "brute facts" make any of you feel any more optimistic about the future or any more happy about the present. Neither was my goal. My goal was to show that the civil war we call a revolution exists because of popular beliefs. The civil war we call a revolution will be over as soon as, but not before, taxpayers and lawmakers really face the facts about the consequences of their own fundamental beliefs and convictions.

We know that many very fine young people, and equally fine older citizens, are involved in no more than an honest quest for change. But, although change is essential, sympathizing with rioters, demonstrators, pornographers, dope users, murderers and traitors, in order to get much needed changes is much like asking the surgeon to cut off your head in order to cure a headache. Sidney Hook makes this point even more clear: ". . . This logic is comparable to justifying arson because it has led to more efficient methods of putting fires out."

Doesn't it seem ridiculous that anyone would tolerate those who are trying to destroy capitalism, our educational system, our constitutional republic, etc.? With one-sixteenth of the world population, we have created more new wealth than all the other millions of people in the entire world combined? We have also more blacks in college in the United States than in all other countries of the world combined. As a recent editorial in the Arizona Republic said: "*What is the matter with us in America?* Here we stand, on the threshold of the '70s—the strongest, freest, most compassionate and humane nation on earth; yet from all sides we daily hear intemperate assaults on our way of life, our cherished values, our inspired traditions and our national character . . . the so-called 'American Establishment' is accused of permitting poverty to continue in this country. Don't the accusers know that even an American living on welfare or unemployment insurance in the United States has a higher income than almost any Chinese, almost any Italian, almost any citizen of Africa or Latin America? We are told by the downgraders of America that our system is oppressive of freedom. Can they name a country that permits more personal freedom, willingly extends more private charity (over $6 billion per year), guarantees more civil rights, has more democratic institutions, more free speech, more freedom to travel, more of every quality that makes the good, rewarding and promising?"

And, we could go on and on listing the achievements of the free enterprise system or "one nation under God." But, this makes absolutely no impression whatever upon the secular humanist . . . he honestly believes in the social gospel as the way toward the fulfillment of mankind's age old dream of Utopia. And most of the secular humanists I know actually believe the age-old Christian heresy that man is perfectible and utopia is possible.

Secular humanism has been with us for three hundred years or more. Its acceptance seems to be almost universal. It seems to have conquered the world. But, truth will out. God is still in His heaven. All is not right with the world, by any means, but people seem to be beginning to realize that their dreams are empty and that the god of secular humanism has feet of clay. If history is our guide we know that in death there is, first destruction then rebirth.

In a time of destruction, such as ours, growth is not too conspicuous. In a forest being cut down or newly burnt over the little sprouts of fresh growth do not loom too large but they are there.

Secular humanism is dying and when any religion begins to die, the people turn

against it. Mobs ransack and burn the temples, mock, defy and express contempt for its priests, and hurl stones and abuse at its defenders. Once the faithful believers suspect that the God is dead and that the priests are hypocrites, their bitterness is intense. They may be better off materially, as we are, but because man does not live by bread alone, the death of man's God is always a painful thing for those who have lost faith. I saw this in Nazi Germany after World War II.

We are losing our faith in secular humanism because it has not solved our basic problems but rather aggravated them. For example, malaria and small pox have been largely eliminated, but ulcers and heart attacks have replaced them. Like the angry disillusioned believers of old, we turn on our priests, the educators; and on our temples, the schools; and cry "Burn, baby burn!"

Secular humanism has deeply infected and captured even the Roman Catholic Church, the Protestants, including even the "Evangelical" Churches. Faith in man is the essence of humanism, and it is the foundation of modern politics and economics. Paper money is a fitting symbol for our dying world; and like other symbols of humanism, paper money too is being burned, today, in this case by inflation. As I have heard about riding a motorcycle in heavy traffic, one can say about those who embrace secular humanism: "You don't have to be crazy but it helps."

In conclusion, may I summarize: Men are now searching for salvation primarily because secular humanism has failed. May God give us the wisdom to learn from the costly mistakes of others rather than undergo the agony of repeating the tragic history of the Germans, the Iron Curtain countries, the Chinese, the Cubans, and civilizations before which have tried to live by bread alone and without belief in a Supreme Being. We still have a choice. And, as Edmund Burke said: "The only thing necessary for the triumph of evil is for good men to do nothing."

Mr. FANNIN. Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Ohio (Mr. YOUNG) is recognized for not to exceed 20 minutes.

SENATOR BAYH TALKS SENSE ABOUT THE ECONOMY

Mr. YOUNG of Ohio. Mr. President, on June 4, 1970, our distinguished colleague, the Senator from Indiana (Mr. BAYH) addressed the constitutional convention of the AFL–CIO in Cleveland, Ohio. In his outstanding speech, Senator BAYH described the deplorable state of the economy and made sound and sensible suggestions for dealing with it.

Senator BAYH observed:

During the 1968 election campaign, candidate Nixon promised a program to solve our economic problems. Since the election his misguided economic policies have achieved a remarkable economic paradox—unprecedented inflation coupled with an economic downturn on a scale that can only be termed a recession.

Mr. President, the distinguished Senator from Indiana has been a leader in the fight to reduce inflation by opposing extravagant military boondoggles. He has long been aware that the tens of billions of dollars spent for war and military hardware contribute far more to inflation than a few million dollars for education and housing.

Senator BAYH's remarks to the AFL–CIO in Cleveland deserve the attention of all Senators. I ask unanimous consent that his speech be printed at this point in the RECORD.

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

SPEECH BY SENATOR BIRCH BAYH

The state of the union is uncertain, the state of the economy is deplorable and the administration's state of mind about how to deal with both is confused.

Higher prices, higher interest rates, growing unemployment—these are painfully evident to any housewife on her trips to the supermarket, to any young couple attempting to buy their first home, to any factory worker who has lost his job.

Early last year the President's economic advisers were confidently predicting that their "balanced budgets" and "tight money" would bring inflation down to three percent by the end of the year. But 1969 ended with a cost of living increase of 6.1 percent and the rate of increase rose even higher in the first three months of this year.

But what does all this mean for you? It means you now pay 12 cents a dozen more for eggs than you did in December of 1968. It means you pay 7 cents more for a pound of hamburger, 5 cents more for a pound of chicken and 14 cents more for a pound of porkchops.

Medical costs are up more than 6 percent in the past year. Medical insurance rates are rising even faster. In some areas the cost of a hospital room has soared as much as 25 percent since President Nixon took office. Construction costs rose an average of 7½ percent in the year ended March 31 and this means housing is more costly for you and for me.

The national consumer price index continues to climb at an annual rate of better than 6 percent, the highest rate in 20 years. This means your paycheck has to stretch farther every week.

Democrats invariably get credit from many people for any and all inflation. And we must acknowledge that the Nixon Administration inherited an inflationary situation caused by escalating war costs in 1967–68 that were not covered by compensating increases in federal revenues. But the reins of government and of economic policy have been in the hands of Richard Nixon for more than 16 months now. During the 1968 election campaign, candidate Nixon promised a program to solve our economic problems. Since the election his misguided economic policies have achieved a remarkable economic paradox—unprecedented inflation coupled with an economic downturn on a scale that can only be termed a recession. We have experienced nothing comparable since the dark days of the Eisenhower-Nixon recession of 1957–58.

The economy today has a familiar pattern—a pattern outlined by Richard Nixon in October of 1968 when he said, "The way to stop inflation is to reverse the irresponsible fiscal policies which produce it." In attempting to halt inflation this administration has reversed the economy. The administration continues to pursue its disastrous economic policy despite clear evidence that it is not working.

Eight months ago, in October of last year, the AFL–CIO recognized the folly of the administration's economic policy and warned that what has now happened would happen.

In a report last October the AFL–CIO Executive Council said:

"The blunderbuss, general form of restrictive economic policies, tight money and sky-high interest rates can finally affect the big corporations by pulling down the whole house—by so depressing the incomes and demands of workers, farmers and smaller businesses that the sales and profits of the big blue chip corporations are finally affected.

"These policies of general restraint are dangerously wrong in the setting of 1969. They are ineffective in combatting profit inflation and the capital investment boom of the larger companies. But they hit home building, consumers, smaller businesses and workers' jobs. And they can become effective in curbing the activities of the big corporations only by depressing the entire national economy."

The administration refused to heed the warning, however, and indeed the entire economy is being depressed.

Personal income from the private sector was down one billion dollars in the first quarter of this year.

The Gross National Product declined 3 percent in terms of real dollars in the first quarter of the year.

Corporate profits before taxes were down 7 percent, representing a loss of more than 10 billion dollars from a year earlier.

Unemployment has soared from 3.3 percent when Nixon took office to 4.8 percent and is still rising. For black workers the rate is 8.7 percent.

New U.S. home sales dipped 8 percent in March and were down 24 percent from March of 1969. The home building industry has sagged alarmingly and construction jobs have declined accordingly. Unemployment among construction workers now stands at 8.1 percent.

The words "credit crunch" and "tight money" have acquired a special meaning and significance for anyone trying to buy a home. The Nixon policy says, in effect, raise interest rates high enough and you will drive demand down. In our first year of Nixonomics federally financed mortgage rates increased 26 percent and effectively priced most families out of the housing market. The need for housing still exists, but those families who need it most cannot afford it. Today, a $20,000 house with a 30-year mortgage will cost the buyer more than twice that amount—$55,000—$35,000 of which is interest.

Last December a Democratic Congress passed legislation specifically designed to give relief to this crucial sector of our economy, one which affects the living conditions of so many American families. It gave the President discretionary power to use selected controls to regulate credit and interest rates when he deemed such action necessary. It also allowed the Secretary of the Treasury to divert funds into the home loan market. Even though his own advisers have admitted the housing industry is well into a recession, the President has yet to use this authority. With homes in Washington, San Clemente and Key Biscayne it may be that it is difficult for the President to appreciate the plight of the average home buyer.

Not only has the President failed to use the credit and interest controls Congress gave him, he has failed to use the power of his office to speak out against exhorbitant price increases in concentrated industries. Just one week after taking office, Mr. Nixon announced that he would in no way interfere with pricing and wage decisions. Today he continues to maintain that wage-price guidelines and "jawboning" used by his Democratic predecessors were not effective. But a close examination of the facts prove him wrong.

Let me give you just a few examples for industries which felt pressure from Democratic Presidents to hold their price increases within reasonable bounds.

Crude industrial materials increased prices by 11 percent in 1969, compared with less than 2 percent in 1968. Copper prices increased five times in 1969 for a 24 percent rise compared with 5.3 percent between 1966 and 1968. In the eight years of the Kennedy-Johnson Administration, metals and metal products increased in price at a rate of less than 3 percent a year. But between December 1968 and November 1969 the price of non-

ferrous metals alone increased by 18 percent. Selected steel products rose in price more than 6 percent in 1969, compared with 1.5 percent between 1966 and 1968.

It is this area of concentrated industries where wage-price guidelines and "jawboning" could be most effective. But Mr. Nixon announced only a week after taking office that he would in no way interfere with the pricing and wage decision of business and labor. And he refuses to utilize these valuable tools of persuasion.

The wage-earning American, the small businessman and the retired person on fixed income are the ones who have been forced to foot the bill for inflation. And to make the problem doubly difficult the average American family, already suffering from increasing inflation and high interest rates, also faces the growing threat of unemployment.

Since President Nixon took office unemployment has risen to a four-year high. More than four million Americans are now unemployed. More than a million have lost their jobs in the first 16 months. In the first five months of this year unemployment has increased at the fastest quarterly rate since the last quarter of 1960 during the Eisenhower-Nixon Administration. The average work week is below 40 hours for the first time since 1962 and this is reflected in the fact that the amount of the average weekly pay check actually dropped between January and February of this year.

The chairman of President Nixon's Council of Economic Advisers has said, "We are going to have to learn to live with a very uneasy compromise between unemployment and the price problem."

Compromise is fine. I believe in compromise. I am a member of a body famous for compromise—the U.S. Senate. But I fail to see the value of a compromise that results in rising prices and rising unemployment. Certainly we had to do something about increasing inflation. But it has been apparent for months that our economy was slowing down. Our GNP actually dropped slightly in the last quarter of 1969. And it dropped again in the first quarter of 1970 and it is still dropping. I am afraid we are once again heading for a Republican recession similar to the Eisenhower-Nixon recession of the late 1950's that left America with a 7 percent unemployment rate when John F. Kennedy became President. As all too many Americans vividly remember, jobs once lost are not always quickly regained.

For the workers whose over-stretched salary shrinks with a shorter work week to the man who wants and desperately needs work but cannot find a job, it is not enough to be told that "prices have priority," that the economy will have to go through a period of "painful readjustment."

The administration has projected an unemployment rate of 4.3 percent for 1970. But with the unemployment rate now standing at 4.8 percent even some Republican economists are predicting an unemployment rate up to 6 percent. Such an increase in unemployment would mean at least one million more Americans will pay with their jobs for Nixon price priorities and readjustments.

An unemployment rate of 6 percent coupled with an inflation rate of more than 6 percent will spell disaster for all too many Americans. It is unacceptable and unconscionable.

A Democratic Congress has attempted to avoid such a disaster. We cut the President's budget for 1970 by more than $6 billion, asking only that he use a small part of our overall savings for vital education and health programs. As you know the President vetoed the funds for schools, calling them inflationary. He did not, however, veto funds for the ABM. Indeed he is asking for more billions for ABM deployment this session.

We in Congress gave the President credit and interest control, which he refused to use. We have shown concern. We acted. But we do not control the reins of economic policy.

The real weakness of this administration's blind reliance on a tight budget and tight money designed to create a below potential economic growth pattern is that we are in serious danger of slipping into another era of economic stagnation. Fortunately, we managed to weather such a period of unnecessarily high unemployment in the 1950's without irreparable damage to our social fabric. But this is not the 1950's.

I believe a legitimate question is: Can the tense and divided America of 1970 risk running below par for several years? On January 3, 1969, Presidential advisor Daniel Moynihan wrote a memo to President Nixon in which he discussed how the president might go about bringing this divided country together.

"The single most important task," Moynihan said, "is to maintain the rate of economic expansion. If a serious economic recession were to come along to compound the controversies of race, Vietnam, and cultural alienation, the nation could indeed approach instability.

"It would be my judgment that the great prosperity of the 1960's is the primary reason we have been able to weather this much internal dissension."

The President rejected Moynihan's advice and opted for a policy which relies on significant unemployment to inflation. More than a year has passed, prices and unemployment have continued to rise, and the country remains tense and divided. Unemployment in the ghettoes of our major cities is creeping up while the southern strategy makes it increasingly clear that equal opportunity for our minority citizens has low priority on the administration's scale of values. Such circumstances are unlikely to promote social tranquility in the hearts of our major cities or meet the rising expectations of American's minorities.

It is time, past time for the President to take appropriate steps to put the nation's economic house in order, to prevent a needless recession, to decrease the likelihood of a further division in our social fabric.

NIXON WAGING WAR BY PRESIDENTIAL DECREE

Mr. Young of Ohio. Mr. President, shortly following the time President Nixon, on his own, without consulting Congress or asking Congress to take action, and without consulting or informing his Secretary of State and Secretary of Defense, undertook the invasion of Cambodia, a sovereign nation whose neutrality the United States had guaranteed, a very fine and convincing article was published and this comment I believe is unanswerable.

Our President undertook to make war by Presidential decree. It is shameful that this President who seems to have regarded himself as a strict constructionist of our Constitution is himself guilty of violating the clear provisions in the Constitution of our country in ordering the invasion of Cambodia by our ground troops and air power.

Our soldiers are despoiling a faraway nation whose people are friendly and peace loving. Many of them have been killed and their hamlets and homes destroyed due to the President's act of war. This despite the wishes of Congress and a majority of the American people.

Mr. President, I ask unanimous consent that the first part of this rather long article in the New Yorker be printed in the RECORD.

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

THE TALK OF THE TOWN

As the defeated British regiments marched past the files of French and American troops at Yorktown, the British bands, in detached resignation, played "The World Turned Upside Down." The same tune would have been an appropriate accompaniment to the events of last week. For the two-hundred-year-old American system came under its most serious attack in modern times, not from the poor, the blacks, or the students but from the White House—the fount, the pinnacle, the keystone of the established order. President Nixon became the first President in the history of the United States deliberately to order American forces to invade another nation on his own, without seeking congressional approval or support. This order was in disregard of the Constitution, the tempering strictures of our history, and the principles of the American democracy. It was, therefore, an act of usurpation.

Few prohibitions are more clearly set forth in the Constitution. That document makes the President Commander-in-Chief, and explicitly states that only Congress shall have the power to declare war or raise armies. The Federalist Papers reaffirm what the law makes clear: the term "Commander-in-Chief" meant only that the President could direct to make war. Hamilton wrote that the President's power would be much less than the power of the British King, for "it would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and Admiral of the Confederacy; while that of the British King extends to the declaring of war and to the raising and regulating of fleets and armies—all which, by the Constitution under consideration, would appertain to the legislature." This was no casual division. The fear of military power under the control of a central government was one of the most serious popular objections to the establishment of the new nation. The only way this could happen, the founders responded, was by a "continued conspiracy" between the executive and the legislature. In this case, Hamilton advised, "the people should resolve to recall all the powers they have heretofore parted without of their own hands . . . in order that they may be able to manage their own concerns in person." As sophisticated men, the Founding Fathers foresaw some of the dangers that lay ahead. They recognized explicitly that formal declarations of war were going out of style, but they still required our legislature to declare war. They saw "how easy would it be to fabricate pretences of approaching danger," but they said that this would demand "a combination between the executive and the legislative, in some scheme of usurpation." In other words, the Constitution would protect the American people against the misuse of military power by prohibiting the executive from going to war without congressional approval and prohibiting Congress from directing the war it had started. Even this was dangerous, they acknowledged, but it was the best that could be done.

For over a hundred and sixty years, the Constitution was followed. Congress declared the War of 1812, the Mexican War (even though there had been a somewhat provoked attack on our troops), the Spanish-American War, and both World Wars. In the period after the Second World War, things began to change. The development of Soviet atomic power, the military impotence of Western Europe, and the shock of Korea impelled us toward the creation of a large peacetime

standing Army—the first in our history. It was seen that a sudden emergency might require instant action, with no time to go to Congress. This implied exception to Constitutional principle was based on the technological realities of atomic war, and it has been invoked only once—when we intervened in the Dominican Republic. That intervention, however, was based on the claim that action within hours was necessary to protect the lives of Americans trapped between the contending forces—simply a traditional rescue operation. This claim may well have masked other motives, but American forces were not committed to combat, and support of the congressional leadership was sought and received within hours of the order to intervene and before the Marines had actually landed.

In Korea in 1950, President Truman acted pursuant to a resolution of the Security Council, whose powers had been confirmed by the Senate when it consented to ratification of the United Nations Charter. In addition, Truman met with the congressional leadership of both parties before ordering combat forces into action, and he received their unanimous support, along with that of the defeated Republican nominee, Thomas Dewey. Nor was there any doubt of the overwhelming public and congressional approval of his action—at least in the beginning. (The same week, the draft was extended with only four dissenting votes.) President Eisenhower sought, and received, congressional resolutions authorizing him to act in the Middle East and in the Formosa Strait. President Johnson himself asked for a resolution at the time of the Gulf of Tonkin incident, and it was the literal verbal scope of this resolution that was construed as authorizing all subsequent action in Vietnam. Yet such a construction was clearly an evasion, and it was at this point that the great Constitutional principle began to decay.

Now President Nixon has taken a giant step. Not only has he evaded the spirit of the Constitutional division of powers but he has deliberately ignored its plain meaning and intent. He has decided that he will go to war in Cambodia because he feels it necessary, no matter what Congress wants or what the people think. He has even implied that such willful disregard of the people and their elected representatives is an act of noble self-sacrifice, and has hinted that we should admire his courage in exceeding the limits of his Constitutional powers. The war in Cambodia was not an emergency. There was time enough to present the matter to Congress for a swift decision. Indeed, unconcealed debate within the executive branch went on long enough to permit the Vietcong to evacuate the threatened area. But the President did not follow the precedent of all his postwar predecessors by seeking assurance of congressional support, either formally or though meetings with the leadership. Rather, he made war by fiat. He has thus united in himself the powers that the Constitution divides and that have remained divided through our history. And this comes from an Administration that proclaims its devotion to "strict construction."

This is not a technical, legal question. In import, it transcends a challenge to the wisdom of the war itself. The President, in effect, has said, "I, and I alone, have decided to go to war in Cambodia." Where does he get that power? The Constitution denies it to him. He is not acting under the necessity of instant reaction. He has the power only because he asserts it, and because the armies follow. In a world in which conflicts are interrelated, there is no limit to the possibilities unfolded by this reasoning. He can invade Laos and Thailand, where Communists are active. He can enter North Vietnam itself. He can attack China, which is both a sanctuary and a source of supply for the North Vietnamese. Nor is the Soviet Union exempt, since it, too, helps our adversaries in Vietnam. Such an assertion of authority is not among the prerogatives of a democratic leader in a republic of divided powers. Our democracy is not an elective dictatorship. It is a government in which all elected officials have carefully limited powers.

PREVENTIVE DETENTION WOULD PREVENT JUSTICE

Mr. YOUNG of Ohio. Mr. President, the District of Columbia omnibus crime bill now being considered in conference contains repressive provisions which could drastically curtail individual liberties guaranteed all Americans in the Bill of Rights. One of the most dangerous and offensive of these is the so-called preventive detention provision in the House version of the bill.

This blatantly unconstitutional proposal authorizes the imprisonment and punishment of persons for crimes which they have not yet committed and may never commit. It is totally repugnant to American tradition. It is a clear violation of the fifth, sixth, and eighth amendments to the U.S. Constitution. If the conference committee reports the District of Columbia crime bill with the abominable preventive detention provision included, I shall vote against that bill.

The fifth amendment clearly states that no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." Preventive detention is a flagrant violation of that guarantee of due process. The most fundamental principle of due process is the presumption that a man is innocent until proven guilty beyond a reasonable doubt. Under our system of justice, the Government cannot deprive a man of his liberty, and should not deprive a man of his liberty, on the basis of a mere accusation or assumption that he has committed a crime or is likely to do so.

However, the proposed preventive detention law will permit the imprisonment of individuals on the claim of "probable" guilt and "dangerousness"—I am quoting from the bill as passed by the House of Representatives—and the jailing of those individuals for 60 days without trial. Suspects, regardless of the court's ultimate verdict, will have been jailed not for actual crimes but for crimes a judge thought they might commit if permitted to remain free.

Mr. President, these are the tactics of a police state. They are totally foreign to our concept of justice.

The preventive detention measure under consideration by the conferees attempts to avoid the due process of law argument by providing for a predetention hearing, which proponents claim would protect an accused. However, the customary rules of evidence would not apply in a preventive detention hearing. Hearsay and other legally inadmissible evidence would be admissible and considered by a magistrate. In reality, such a hearing would provide the accused no protection whatever. In fact, it would in many cases do him an irreparable injustice and jeopardize his rights in an eventual trial to determine his guilt or innocence of the crime which he has been accused of committing.

The hearing procedure for preventive detention also does violence to the fifth amendment guarantee against double jeopardy. If the judge in a pretrial detention hearing finds no "substantial probability" that a suspect committed the crime with which he has been accused of committing, any attempt to prove guilt at a subsequent trial would very likely constitute double jeopardy.

The right of an accused person to have the effective assistance of counsel for his defense, clearly provided in the sixth amendment, would be virtually destroyed by preventive detention. Access to counsel and the opportunity to participate in preparing a defense would be severely restricted. The measure being debated in conference provides for a suspect's temporary release "for good cause." This provision is meaningless, however, because release is only at the pleasure of the custodial official while the accused is in the custody of a U.S. marshal—a condition hardly conducive to contacting a lawyer or prospective defense witnesses.

Perhaps the most direct affront to the Constitution of the United States inherent in preventive detention is its disregard of the eighth amendment, which guarantees that "excessive bail shall not be required."

Mr. President, those 10 amendments to the Constitution of the United States, which we Americans affectionately term the "Bill of Rights," were adopted on the demand of those patriots who won the war for independence. The Constitutional Convention at that time consisted of 54 members, many of them businessmen from Massachusetts and Pennsylvania, or wealthy planters from Virginia and Georgia. Those men were conservatives at that time. There was an uproar from the homes of every liberty-loving man in this country, especially from the homes of the patriots who had won the war for independence, when the gazettes of that time first published the Constitution of the United States as drafted. It was on the demand of those patriots who had worked for victory that the first ten amendments, which we affectionately term the "Bill of Rights," were written into the Constitution and it was because of them that the Constitution was ratified by a sufficient number of the original States. We must never weaken any part of the Bill of Rights by repealing it or softening any of its provisions.

Bail has traditionally been used to assure the appearance of a criminal suspect at trial. If bail is set at a level higher than necessary to insure appearance of a criminal suspect at trial. If bail is set at a level higher than necessary to insure appearance, it is obviously excessive. Yet, that is what is happening in the court of general sessions here in the District. Judges fix bail at $50,000 or $100,000 and often, when a serious offense has been committed, the accused is held without any bail at all.

With the preventive detention rule, a suspect would not have the opportunity for any bail whatever—whether excessive or not. Excessive bail and preventive de-

tention are therefore identical in effect. They constitute an equally unjust and unconstitutional assault on the eighth amendment.

Preventive detention is manifestly unconstitutional. Furthermore, assuming for the sake of argument that it would be sustained by the courts, it is an impractical procedure and contrary to sound law enforcement procedures.

The most crying need in the fight against crime is reform of our court systems. Speedy trials, firm determination of guilt or innocence, and swift sentencing for the guilty would do more than anything to cut into the growing crime problem. As a former chief criminal prosecuting attorney of Cuyahoga County, Ohio, I believed then as I do now that certain punishment like a shadow should follow the commission of a crime. Yet, the preventive detention procedure would add special hearings onto already clogged court calendars. The practical effect would be devastating. The overwhelming majority of criminals not being detained would roam the streets longer as court backlogs increased. Justice would be delayed even further. Justice delayed is justice denied.

Courts in the District of Columbia presently face an almost insurmountable criminal case backlog of 10 to 12 months. It takes that length of time, on the average, from arrest of an accused to the time he is brought before a court for trial.

I suspect one reason is that the judges here do not work as hard, as long, or as industriously as they should. What is needed in the District of Columbia are speedier trials of criminal cases, not more burdensome pretrial hearings. Also, there is need for more judges of integrity and backbone, judges who apply themselves with industry instead of delaying the administration of justice and manifesting the backbone of a jellyfish. On many occasions, when a criminal or a culprit pleads guilty and is brought before the judge, he may be sentenced publicly to some days or months in the workhouse and then, later on, that same day, or the following day, when the defendant's lawyer comes around, he changes the sentence and places the culprit on probation. That is what I mean when I say there are too many judges, particularly in the District of Columbia, with the backbone of a jellyfish.

Mr. President, officials of the Law Enforcement Assistance Administration of the Department of Justice have released an enlightening and informative study on bail reform. This study was initiated by officials of the Justice Department many months ago after they had proposed its preventive detention legislation. Usually, officials in any administration search out the facts, assess the problems, and then develop a legislative solution to meet them. In this case, the Justice Department and the Attorney General, a Wall Street lawyer, and senior partner of the President of the United States, an expert on municipal bonds, who as a lawyer never appeared in court to try a criminal case or to prosecute a criminal case—did just the reverse.

Attorney General Mitchell and his underlings, in effect, shot an arrow into the air, and then worked feverishly to paint a target around the spot where the arrow landed.

Interestingly enough, the Justice Department study proves just the opposite of what Department officials had claimed. The study shows that of all persons charged with felonies, only 7 percent are rearrested for a second felony. Only 5 percent of those originally charged with a violent crime are rearrested for another violent crime.

The figures apply, of course, to arrest only. The rates for actual guilt and conviction of the crimes charged would be even lower, because frequently juries, in their wisdom, bring in verdicts of not guilty.

If preventive detention is enacted into law, judges will be placed in the position of determining the one person out of every 20 or 25 accused who they believe may commit a second felony or violent crime. No mere mortal can be expected to perform such an act of prophecy. It is an immense power which our judges have never had and should not now be given.

Mistakes would certainly be made. Those who would be jailed under false pretenses would suffer irreparable harm. Sixty days of detention prior to trial would in most cases cost the individual his livelihood. Absence from home would severely cripple family relations. Worst of all subjection to the physical and psychological degradation of jail life would create criminal tendencies, or aggravate any such tendencies which exist.

Mr. President, last Sunday the Criminal Law Council of the American Bar Association voted disapproval of the preventive detention sections of the District of Columbia crime bill. The criminal law section, whose members include prominent defense attorneys, prosecutors, and judges, is one of the most widely respected groups in the legal profession.

The council's deliberations were considered so important that key Justice Department and congressional committee staff members made special appearances before the council to defend the District of Columbia crime bill. It is most significant when such a prestigious body opposes a piece of crime legislation. The views of the criminal law council deserve our careful consideration.

Crime in the District of Columbia is a most serious problem requiring strong, effective legislation. No Senator or no Representative feels more strongly than I that such legislation should be enacted into law as soon as possible. However, the crime problem will not be solved by unconstitutional laws designed to fulfill election promises which should never have been made. It will not be solved by abandoning the Bill of Rights.

As I have stated, the Bill of Rights is precious to all Americans. And it must be preserved. It must not be weakened. Certainly we cannot control crime in this country by doing violence to the guarantees afforded in our Bill of Rights, because if we abandon those, we would then be adopting the tactics of fascist and Communist dictatorships.

If preventive detention and other repressive measures remain a part of the District of Columbia crime bill, it should be allowed to die unwept, unhonored and unsung.

Mr. President, preventive detention would not prevent crime; it would only prevent justice.

[Applause in the gallery.]

The PRESIDING OFFICER (Mr. LONG). Under the rules of the Senate, demonstrations are not permitted in the Senate. Any demonstration of that sort is prohibited.

The Chair requests that the persons demonstrating in the galleries leave immediately.

The Chair instructs the Sergeant at Arms to see that the persons who applauded in that gallery depart.

FREE SPEECH

Mr. YOUNG of Ohio. Mr. President, the right to dissent is often mentioned by speakers today who cite the Boston Tea Party and our Revolutionary War as examples justifying defiance of law and order. What commentators overlook is the fact that violent dissent was necessary in Revolutionary days just before the commencement of the War for Independence, because there was then no other way to enforce the wishes of the people, but when our Government was established the Founding Fathers made sure that the people could express their opinions through orderly and constitutional processes. In addition "the right of the people peaceably to assemble and petition the Government for a redress of grievances" was guaranteed by the Constitution. There is absolutely no need for, nor right to violent revolutionary dissent in our United States.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. LONG). Under the previous order, the Senate will proceed to the consideration of routine morning business with a 3-minute limitation.

SHIPMENTS OF POISON GAS FROM OKINAWA

Mr. MAGNUSON. Mr. President, I have recently received a communication from the YMCA Youth Legislature of the State of Washington indicating the grave concerns not only of our young people but of the population in general over announced plans by the Pentagon to make shipments of poison gas from Okinawa.

The YMCA Youth Legislature of the State of Washington is an example of how responsible and patient young men and women would rather deal with the issues.

I ask unanimous consent that the letter from Washington State's youth governor, Morris Johnson, and the attached memorial to the President of the United States and to the Congress passed by the 1970 Youth Legislature of Washington be made a part of the RECORD.

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

STATE OF WASHINGTON,
OFFICE OF THE YOUTH GOVERNOR,
Seattle, April 25, 1970.

DEAR SENATOR MAGNUSON: On April 25, the YMCA Youth Legislature of the State of Washington passed a memorial relating to the banning of transportation or storage of nerve gas and/or any products of biological warfare through the State of Washington. Enclosed is a copy of this memorial and we hope you will give it your deepest consideration. The citizens of Washington are highly concerned about this matter and we hope you will use the power invested in you to prevent this shipment, and similar future shipments, from passing through any area in our United States.

Duly concerned,

MORRIS JOHNSON,
Youth Governor.
BARRY RAU,
Youth Attorney General.
SUE DEJARNETT,
Youth Secretary of State.

1970 YOUTH LEGISLATURE OF WASHINGTON: A MEMORIAL

A memorial, to the Congress of the United States, relating to the banning of transportation or storage of nerve gas and/or any products of biological warfare through the State of Washington.

Section 1. To the Honorable Richard M. Nixon, President of the United States and to the Senate and the House of Representatives of the United States in Congress assembled:

Whereas the people of the State of Washington have petitioned their state legislature to make this request, we your memorialists resolve that nerve gas and/or products of biological warfare shall not be transported in, across, through, or stored within the State of Washington.

Be it resolved that copies of this Memorial be immediately transmitted to the Honorable Richard M. Nixon, President of the United States, the Secretary of the United States Senate, the Clerk of the United States House of Representatives and to the members of the United States Senate and the United States House of Representatives from this state and to the Honorable Melvin Laird, Secretary of Defense, and the Honorable Robert Finch, Secretary of Health, Education and Welfare.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of 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.

THE SUPERSONIC TRANSPORT AIRCRAFT

Mr. BYRD of Virginia. Mr. President, the administration has proposed the expenditure of $290 million during the next fiscal year for the supersonic transport aircraft, commonly called the SST.

This is only one installment toward payment of the Government's share of the costs of this airplane. The total is estimated to be about $1.3 billion of taxpayers' funds.

The supersonic transport would be a remarkable plane.

It would fly at speeds up to 1,800 miles an hour, would carry 300 passengers and would have a range of up to 5,000 miles. It is easy to see why the President and the aviation industry are enthusiastic about development of this aircraft.

I do not believe, however, that this is the proper time for the use of tax funds for the development of the SST.

We are in a highly inflationary period. The economy has not yet recovered from the $25 billion deficit in Government finances in fiscal 1968. Consumer prices continue to soar.

This is not the time to authorize $290 million for a program that is not essential to our security or to our welfare.

I am struck, too, by the fact that under the present plan, 85 percent of the funds required for development of the SST will come from the Government. I do not believe this can be justified.

Never before in our history has the Government paid the cost of the development of a commercial airplane. The 85 to 15 ratio to me is clearly unreasonable.

Both aviation manufacturers and the airline industry stand to profit from the SST. It seems to me that they should be asked to bear considerably more than 15 percent of the financial burden of developing this airplane.

Furthermore, we have no assurance, if this project is carried out, that $1.3 billion will be the ceiling for Government costs. An official of the Department of Transportation has said that it might become necessary for the Government to help finance actual production of the plane.

In the past, officials have indicated that the Government's share of the costs would be confined to the development stage. If Government financing is also used for production, Government costs could soar an additional billion dollars, or more.

Advocates of immediate development of an SST by the United States often argue that it is important for us to lead the world in aviation. But it is not possible for the United States to be first with the SST—it will be at least 5 years behind the version being produced jointly by France and England, and another being developed by the Soviet Union.

The aviation industry of the United States does not need the prestige of the SST. Its technological achievements are universally recognized.

In addition to these arguments, there is the question of the environmental effects of SST. Experts have testified that this aircraft would cause widespread sonic booms, which could be both annoying and dangerous if the plane were permitted to fly over land areas.

Until the problem of the sonic boom is licked, the plane can be used only for overseas flights.

Economic studies indicate the SST will lose money if it is confined to flights over water. This is bound to create economic pressure to permit overland flights, with the resultant danger of widespread sonic booms.

The SST does not seem to me to rank high in any system of national priorities. There are many other programs which seem to me more vital to the security and welfare of the United States.

All of these factors enter into my own decision to oppose funds for the SST for fiscal 1971.

But I think the most important single factor is that of inflation. Congress would be setting a poor example for the Nation if it were to approve huge expenditures for the SST at a time when it is vital that the inflationary cycle be halted by getting Federal spending under control.

UNUSUAL ACTION BY SENIOR CLASS AT VIRGINIA POLYTECHNIC INSTITUTE

Mr. BYRD of Virginia. Mr. President, I want to tell my colleagues in the Senate today about something strange and unusual which happened in Virginia.

Last Saturday morning, the senior class at the Virginia Polytechnic Institute bought a quarter-page advertisement in the State's largest newspaper. In this advertisement, the students addressed an open letter to the Governor, to the State Legislature, to parents, alumni, and taxpayers—thanking them for their support of the school.

The letter, signed by class president Lester F. Langhans III, of Corning, N.Y., and class treasurer Harris B. Turner of Richmond, Va., expressed appreciation for the privilege of attending college. They attributed campus disruptions to a minority that has "managed to present a very unrealistic picture of the American college student."

The Virginia Polytechnic Institute is a State-supported college of 10,000 students. It is situated at Blacksburg in Montgomery County in the southwest part of our State.

Virginia Tech was the site last month of disturbances in which two campus buildings were seized. President T. Marshall Hahn, Jr., reacted swiftly and firmly against the disruptions and suspended more than 100 students who participated in the actions.

The class president said the advertisement, authorized by the senior class officers and purchased by class treasury funds, resulted from a realization that "nobody ever thanks the taxpayers for making it possible for students to attend college."

Expressing appreciation for all types of support shown for their school, the students said to both parents and State:

Thank you for your financial backing and for preserving the principles of our country that makes it possible to obtain an education. Thank you for giving us an opportunity.

As a Senator from the State of Virginia, I am proud of this action taken by the officials of the senior class of the Virginia Polytechnic Institute.

How refreshing it is.

I commend, too, Dr. Hahn for the swiftness and firmness with which he handled those students who sought to disrupt the education of their fellow-students.

It seems to me that it is very important that college administrators show not only understanding and fairness in dealing with their students, but also firmness.

Dr. Hahn did all of this—and perhaps this firmness helped inspire the very unusual action taken by the class of 1970 at the Virginia Polytechnic Institute.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of the open letter.

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

An open letter: Governor Linwood Holton; Members of the General Assembly; Parents of Members of the Class of 1970; Alumni of Virginia Polytechnic Institute; Taxpayers of the Commonwealth of Virginia.

Thank you. During this period of national turmoil, much public attention has been focused on this nation's institutions of higher learning. A small minority of students have managed to present a very unrealistic picture of the American college student. The majority of the academic community has continued within the framework of society to attain a goal of higher education.

It is at this time that we the members of the Graduating Class of 1970 of the Virginia Polytechnic Institute do wish to thank you for the support that has been given to us and to our university. Thank you for your financial backing and for preserving the principles of a country that makes it possible to obtain an education. Thank you for giving us an opportunity.

Graduating Class of 1970, Virginia Polytechnic Institute.

LESTER F. LANGHANS III,
Class President.
HARRIS B. TURNER, JR.,
Treasurer.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of Virginia. Mr. President, I ask unanimous consent that the order for the quorum call the rescinded.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed a bill—H.R. 15712—to amend the Public Works and Economic Development Act of 1965 to extend the authorizations for titles I through IV through fiscal year 1971, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill—H.R. 15712—to amend the Public Works and Economic Development Act of 1965 to extend the authorizations for title I through IV through fiscal year 1971, was read twice by its title and referred to the Committee on Public Works.

ENROLLED BILLS SIGNED

The ACTING PRESIDENT pro tempore (Mr. EAGLETON), announced that on today, June 9, 1970, he signed the following enrolled bills, which had previously been signed by the Speaker of the House of Representatives:

H.R. 10184. An act to provide for the disposition of judgment funds of the Sioux Tribe of the Fort Peck Indian Reservation, Montana; and

H.R. 15166. An act authorizing additional appropriations for prosecution of projects in certain comprehensive river basin plans for flood control, navigation, and for other purposes.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. EAGLETON) laid before the Senate the following communication and letters, which were referred as indicated:

PROPOSED SUPPLEMENTAL APPROPRIATION (S. Doc. 91–98)

A communication from the President of the United States transmitting a proposed supplemental appropriation for the fiscal year 1970 in the amount of $50,000,000 for the Department of Labor, with an accompanying paper was referred to the Committee on Appropriations, and ordered to be printed.

REPORT OF COMMUNICATIONS SATELLITE CORP.

A letter from the President, Communications Satellite Corp., transmitting, pursuant to law, a report of the corporation, dated April 20, 1970 (with an accompanying report); to the Committee on Commerce.

REPORT ON LOAN TO THE CENTRAL IOWA POWER CORPORTATION, MARION, IOWA

A letter from the Acting Administrator, Rural Electrification Administration, Department of Commerce, transmitting, pursuant to law, a report relating to a $5,000,000 loan of a planned $20,415,000 loan program for the Central Iowa Power Cooperative, Marion, Iowa (with an accompanying report); to the Committee on Appropriations.

REPORT ON LOAN TO THE CORN BELT POWER COOPERATIVE OF HUMBOLDT, IOWA

A letter from the Acting Administrator, Rural Electrification Administration, transmitting, pursuant to law, a report relating to a $5,000,000 loan of a planned $20,125,000 loan program for the Corn Belt Power Cooperative, Humboldt, Iowa (with an accompanying report); to the Committee on Appropriations.

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

A letter from the Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report on Department of Defense procurement from small and other business firms for July 1969–March 1970 (with an accompanying report); to the Committee on Banking and Currency.

PROPOSED CONCESSION CONTRACT, CROW INDIAN TRIBE OF MONTANA

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed concession contract under which the Crow Indian Tribe of Montana will be authorized to provide facilities and services for the public, within the portion of Bighorn Canyon National Recreation Area lying within the State of Montana (with an accompanying paper); to the Committee on Interior and Insular Affairs.

REPORT ON MINOT EXTENSION, GARRISON DIVERSION UNIT, MISSOURI RIVER BASIN PROJECT, NORTH DAKOTA

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, a report on the Minot Extension, Garrison Diversion Unit, Missouri River Basin Project, North Dakota, dated July 1969 (with an accompanying report); to the Committee on Interior and Insular Affairs.

ADMISSION INTO THE UNITED STATES OF CERTAIN DEFECTOR ALIENS

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

AUDIT REPORT FOR THE AMERICAN SYMPHONY ORCHESTRA LEAGUE, INC.

A letter from a certified public accountant, transmitting, pursuant to law, the audit report for the American Symphony Orchestra League, Inc., dated March 31, 1970 (with an accompanying report); to the Committee on the Judiciary.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. EAGLETON):

A joint resolution of the Legislature of the State of California; to the Committee on Appropriations:

"ASSEMBLY JOINT RESOLUTION NO. 6

"Relative to flood control projects

"Whereas, In March 1938, December 1955–January 1956, and January–February 1969, the Mill Ditch, Fancher Creek, Dog Creek, Pub Creek, Dry Creek, Redbank Creek, Mud Creek, Holland Creek, more particularly known collectively as the San Joaquin-Kings River Interstream Group, have caused severe flood damage in the Fresno-Clovis metropolitan area as well as other urban and farming areas of the County of Fresno and urban and agricultural areas in adjacent counties; and

"Whereas, Such streams are largely uncontrolled and do not have the capacities to hold back the surface runoff generated from a heavy rainfall, as was recently demonstrated by the 1969 floods, when such streams caused millions of dollars of damage to both public and private property in the Fresno metropolitan area, and many farming and urban communities of Fresno County and adjacent counties; and

"Whereas, Existing projects constructed by the Corps of Engineers in 1928 and the Fresno Metropolitan Flood Control District in 1962 have reduced, but not eliminated, flood damages from that group of streams; and

"Whereas, The nature of this flooding from the foothill surface runoff cannot be handled by planned local drainage facilities of the Fresno Metropolitan Flood Control District encompassing the Fresno-Clovis metropolitan area for the reason that such facilities are designed strictly for local surface runoff generated solely by urban development; and

"Whereas, In 1969, the President of the United States declared Fresno County a disaster area by reason of the severity of the flooding and the resulting damage; and

"Whereas, It is necessary that dams and other facilities be constructed upon the various foothill streams and tributaries running into the San Joaquin Valley in order to control such floodwaters during periods of extreme rainfall and to prevent floodwaters from damaging the rural, urban and metropolitan areas through which these streams and tributaries run; and

"Whereas, A study of the San Joaquin-Kings River Interstream Group by the U.S. Army Corps of Engineers was authorized by Congress in 1956; and

"Whereas, Due to the critical need for flood protection from runoff from the stream group, the U.S. Army Corps of Engineers, which is highly qualified to make studies of flood prevention, plans to initiate a study of that group as part of its San Joaquin River Basin study this fiscal year, or under the Redbank and Fancher Creek study, if that authorized investigation is funded this year; and

"Whereas, It is necessary that an immediate study of this problem and of the facilities which will be required in order to prevent further disastrous floods in the future be undertaken; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to make an appropriation for the purpose of allowing the U.S. Army Corps of Engineers to make an immediate study on the need for flood control projects on the San Joaquin-Kings River Interstream Group, together with the dams and flood control facilities required, the design criteria therefor, and the cost of such facilities; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

A joint resolution of the Legislature of the State of California; to the Committee on Interior and Insular Affairs:

"ASSEMBLY JOINT RESOLUTION No. 13

"Relative to oil drilling sanctuaries

"Whereas, The California Legislature has created certain sanctuaries in which leasing of state owned tide and submerged lands for oil and gas development is prohibited or controlled; and

"Whereas, These sanctuaries and the coastal lands adjacent to them will be in serious jeopardy of pollution of disastrous proportions if leases are granted for oil, gas, or other minerals exploration and exploitation in federal submerged lands oceanward of the existing state sanctuaries; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to prohibit oil and gas development operations on such submerged federal lands off the California coast as would represent an extension to the outer continental shelf of the boundaries of the oil drilling sanctuary areas which have been created with respect to certain tide and submerged lands of the state; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Interior, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

A joint resolution of the Legislature of the State of Alaska; to the Committee on Interior and Insular Affairs:

"JOINT RESOLUTION 101

"Supporting a fair and equitable settlement of the Alaska Native land claims

"Be it resolved by the Legislature of the State of Alaska:

"Whereas the Alaska Native remains as he has for more than a century, without title or the security it affords on lands that he and his ancestors have occupied and used for generations; and

"Whereas the Alaska Native neither deserves nor wishes to continue as a "ward" of the government, in a self-perpetuating "second class citizenship"; and

"Whereas until the Native land claims issue is settled, the social and economic progress of the Alaska Native—indeed of all Alaska—will continue to be seriously impeded and diverted from its rightful place; and

"Whereas the United States Senate Interior and Insular Affairs Committee has recently approved and reported to the Senate a bill which would authorize a combination of cash payments, mineral royalties and land selections in settlement of the Native land claims;

"Be it resolved that the Sixth Alaska State Legislature, in recognition of the importance of this issue to every Alaskan citizen, strongly urges and supports a fair and equitable, early settlement of the Alaska Native land claims; and be it

"Further resolved that the Sixth Alaska State Legislature commends Senator Henry M. Jackson, Chairman, and the members of the Senate Interior and Insular Affairs Committee for their diligence in researching the Native lands question and their efforts in bringing the matter before the Senate.

"Copies of this Resolution shall be sent to the Honorable Richard M. Nixon, President of the United States; the Honorable Spiro T. Agnew, Vice President of the United States; the Honorable Walter J. Hickel, Secretary, Department of the Interior; the Honorable John W. McCormack, Speaker, U.S. House of Representatives; the Honorable Richard B. Russell, President Pro Tempore, U.S. Senate; the Honorable Henry M. Jackson, U.S. Senator and Chairman, Senate Committee on Interior and Insular Affairs; the Honorable Wayne N. Aspinall, U.S. Representative and Chairman, House Committee on Interior and Insular Affairs; and to the Honorable Ted Stevens and the Honorable Mike Gravel, U.S. Senators, and the Honorable Howard W. Pollock, U.S. Representative, members of the Alaska delegation in Congress.

"The following officers of the Legislature certify that the attached enrolled resolution, Senate Joint Resolution No. 101, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

"Passed by the Senate May 20, 1970.

"BRAD PHILLIPS,
"President of the Senate.

"Attest:

"BETTY HANIFAN,
"Secretary of the Senate.

"Passed by the House May 28, 1970.

"JALMAR, M. KERTTULA,
"Speaker of the House.

"Attest:

"CONSTANCE H. PADDOCK,
"Chief Clerk of the House.

"Attest:

"KEITH H. MILLER,
"Governor of Alaska."

A petition signed by sundry citizens, praying for the enactment of the bill (H.R. 15959) relating to the disposal of bottles and cans; to the Commitee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPARKMAN, from the Committee on Banking and Currency, without amendment:

S. 3889. A bill to amend section 14(b) of the Federal Reserve Act, as amended, to extend for 2 years the authority of Federal Reserve banks to purchase U.S. obligations directly from the Treasury (Rept. No. 91–918).

By Mr. CHURCH, from the Committee on Interior and Insular Affairs, without amendment:

H.R. 2012. An act to amend the act of October 25, 1949 (63 Stat. 1205), authorizing the Secretary of the Interior to convey a tract of land to Lillian I. Anderson (Rept. No. 91–919); and

H.R. 9854. An act to authorize the Secretary of the Interior to construct, operate, and maintain the East Greenacres unit, Rathdrum Prairie project, Idaho, and for other purposes (Rept. No. 91–920).

BILLS AND A JOINT RESOLUTION INTRODUCED

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

By Mr. SAXBE:

S. 3935. A bill to amend the Federal Water Pollution Control Act, as amended, to provide financial assistance for river basin programs; to the Commitee on Public Works.

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

By Mr. ERVIN (for himself, Mr. HART, Mr. BAYH, Mr. HUGHES and Mr. YOUNG of Ohio):

S. 3936. A bill to give effect to the sixth amendment right to a speedy trial for persons charged with offenses against the United States, and to reduce the danger of recidivism by strengthening the supervision over persons released on bail, probation, or parole, and for other purposes; to the Committee on the Judiciary.

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

By Mr. RANDOLPH:

S. 3937. A bill to designate as wilderness the Cranberry, Otter Creek, and Dolly Sods areas in the Monongahela National Forest in West Virginia, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. SPARKMAN:

S. 3938. A bill to amend title VII of the Housing and Urban Development Act of 1965; to the Committee on Banking and Currency.

By Mr. SMITH of Illinois:

S. 3939. A bill to amend the Federal Aviation Act of 1958 in order to provide for an Air Travel Protection Agency; to the Committee on Commerce.

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

By Mr. MATHIAS (for himself and Mr. PERCY):

S. 3940. A bill for the relief of certain employees of the Department of Defense; to the Committee on the Judiciary.

By Mr. SCHWEIKER (for himself, Mr. SCOTT, Mr. BENNETT, Mr. BROOKE, Mr. CRANSTON, Mr. GOODELL, Mr. HART, Mr. HUGHES, Mr. KENNEDY, Mr. MCGEE, Mr. MONTOYA, Mr. PACKWOOD, Mr. PERCY, Mr. WILLIAMS of New Jersey, and Mr. YOUNG of Ohio):

S. 3941. A bill to provide civil penalities for the use of lead-based paint in certain dwellings; to the Committee on Banking and Currency, by unanimous consent.

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

By Mr. HRUSKA:

Senate Joint Resolution 208. Joint resolution to authorize and request the President to proclaim the period January 10, 1971, through January 16, 1971, as "National Retailing Week"; to the Committee on the Judiciary.

S. 3935—INTRODUCTION OF A BILL TO PROVIDE FINANCIAL ASSISTANCE FOR RIVER BASIN PROGRAMS

Mr. SAXBE. Mr. President, in 1914 the Ohio Legislature, in special session, created the Ohio Conservancy District Act dedicated to the single purpose of flood control. Subsequently, several regional conservancy districts were established in my State.

The basic Ohio Conservancy Act has been amended on numerous occasions since 1914 in order to broaden the scope of responsibilities which Ohio conservancy districts might accept, with the ap-

proval of property owners and public agencies in the regional watershed. For example, the Miami Conservancy District serving the Great Miami River watershed has planned and intends to implement the following programs: a regional waste water treatment facility, installation of floating aerators, a stream appearance program, low-flow augmentation, a water quality data network, and an incinerator for the disposal of nonaqueous liquid residuals—gas, oil, and paints.

To date the Federal funds channeled to this particular district have amounted to about one-third of the funds for management and planning purposes. This Federal involvement, initiated in January 1969, will end December 1971, as the grants through section 3(c) of the Federal Water Pollution Control Act are not considered continuing nor may they be extended.

For this reason, I introduce today a bill amending section 7 of the Federal Water Pollution Control Act to enable these intrastate agencies, with jurisdiction over interstate streams—such as the Miami Conservancy District—throughout the Nation, to continue planning, while implementation is underway under a regional plan of a State or States. This proposed amendment provides support for the implementation of a basin water quality management plan, which would include the planning, construction, operation, and maintenance of waste treatment facilities and other basin water quality management activities. If a basin water quality management plan has been approved by the Governor or Governors of States concerned and is determined by the Secretary of the Interior to meet criteria in the Federal act, the administrative costs of implementing such plan for a river basin or portion thereof for a period of 3 years would be supported. Conservancy districts need extended Federal funding for detailed planning to continue their awesome task of cleaning up our rivers and streams on a regional basis.

Mr. President, I introduce for proper reference a bill to provide financial assistance for river basin programs.

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

The bill (S. 3935) to amend the Federal Water Pollution Control Act, as amended, to provide financial assistance for river basin programs, introduced by Mr. SAXBE, was received, read twice by its title, and referred to the Committee on Public Works.

S. 3936—INTRODUCTION OF A BILL TO ENFORCE THE SIXTH AMENDMENT RIGHT TO SPEEDY TRIAL

Mr. ERVIN. Mr. President, on behalf of the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. BAYH), the Senator from Iowa (Mr. HUGHES), the Senator from Ohio (Mr. YOUNG), and myself, I introduce for appropriate reference a bill to give effect to the sixth amendment right to a speedy trial for persons charged with offenses against the United States, and to reduce the danger of recidivism by strengthening the supervision over persons released on bail, probation, or parole, and for other purposes.

There is one aspect to the current controversy over preventive detention which has received perhaps less attention than it deserves. Preventive detention is a reaction to the steadily worsening ability of our criminal justice system to cope with the demands placed upon it in the modern era. Greater numbers of defendants, greater rates of crime, longer delays in trial and appeal, assembly line justice, inadequate staffing of courts and supporting personnel, and a tragic and disgraceful corrections system—these are among the serious difficulties which beset our criminal justice system. Preventive detention is one answer that has been offered in response to the ills besetting our judicial system. But preventive detention will not cure. What it will do is paper over the decay of the courts, and hide ills which must be remedied. It will enable us to operate much as we have in the past, because the fruits of this crisis will be hidden from our eyes. Defendants will languish unseen in jails awaiting trials that will be ever longer in coming if we continue our failure to face the true problems and to propose serious means to solve them. If we adopt preventive detention as the panacea, I fear that we will have yet another excuse to ignore the hard work that must be done to reform our courts. All the manifestations of our failures—delayed trials, the pretrial crime those delays foster, injustice to citizens, and disrespect of the law—will be hidden from view.

We must face the fact that our criminal justice system is breaking down. We must not react to this breakdown, however, by the institution of new repressive devices which do violence to constitutional principles and which threaten to burden the system even more. Instead, we should finally do what is constitutionally required. We must take steps to make the sixth amendment right to a speedy trial—a right so far denied both society as well as the defendant—a reality after all these years.

In this spirit I introduce in the Senate today a proposed "Speedy Trial Act of 1970." This bill attacks the problem of delayed trials and pretrial recidivism from three directions. First, it requires each Federal district court to set trials within 60 days of the date of an indictment or information. It establishes a limited opportunity for delays in trial—only those required by other proceedings involving the defendant, or those absolutely necessary for the holding of a fair trial. It bars delays caused by inadequate judicial resources, and seeks strongly to discourage procrastination by counsel.

The speedy trial provisions of this part of the bill apply in four stages: first, to those persons accused of serious felonies and not released prior to trial; second, to those accused of serious felonies and released prior to trial; third, to those accused of other felonies and not released; and finally, to all other persons accused of nonpetty offenses.

The bill requires each district court to establish plans for the implementation of the speedy trial requirements of the legislation and the sixth amendment. It also provides for the report to Congress of the funds and personnel needed to implement the speedy trial requirements.

This is possibly the most important part of the bill. It will for the first time require the executive and judicial branches to make a comprehensive assessment of their resources and their requirements for an efficiently functioning criminal justice system. They will then present to Congress their evaluation of the resources which they find lacking. Congress then will make its own comprehensive assessment of the resources necessary to assure speedy and fair administration of the criminal law. The choice then will be clear. If we desire a modern, efficient, and well-run judicial system—one which will truly and effectively perform its function of punishing and rehabilitating law breakers and deterring crime—we will know what it will cost and how much of an effort is required. If the Nation truly wants law and order, and not merely a panacea, it will pay that cost.

The second approach to insuring speedy trial and reducing pretrial recidivism is the authorization for additional penalties for crimes committed while on release. This section fills gaps in the Bail Reform Act, but it avoids the easy temptations of near-sighted or repressive measures to deal with pretrial crime.

Third, the bill authorizes the creation of demonstration "Pretrial Services Agencies" in five Federal districts, including the District of Columbia. The agencies will be responsible for making bail recommendations, for supervising and controlling persons released on bail, for assisting in the providing of medical, employment, and other services to these persons, and for performing other functions designed to insure the reduction of pretrial crime, nonappearance for trial, and unnecessary pretrial detention. These agencies are designed to put into operation the recommendations of the many committees which have surveyed the operation of the Bail Reform Act and pointed out our persistent failure to make that act work as it was intended and as it should.

When we truly reform our bail machinery and make the Bail Reform Act work as it was intended and as it should, I am confident that we will then be in a position to take a step that has long been needed—the complete prohibition of money bail in amounts beyond the ability of a defendant to pay. We can then eliminate what has been properly called the "hypocrisy" of extralegal preventive detention through the use of high money bail.

I believe there is no disagreement that unreasonably high money bail set for the purpose of preventive detention violates the eighth amendment stricture against unreasonable bail. There is no disagreement on the desirability of eradicating the injustice of having pretrial freedom turn on an individual's wealth or poverty. There is, of course, a fundamental dispute of principle of whether to increase the preventive detention which now exists, or to eliminate it entirely. I believe that if the courts can be made to

operate efficiently, quickly, and justly and if we devote enough attention to the legal and proper methods for reducing pretrial crime, we can reach the point where excessive money bail, and perhaps all money bail, can be eliminated.

The passage of a law insuring the sixth amendment right to a speedy trial would be a revolutionary step in our criminal law. It would be revolutionary despite the fact that for 180 years the Constitution has required speedy trial. I do not underestimate the difficulty of making speedy trial a reality after all these years. There are problems involving the time-honored "right" of defendants to delay trial as long as they can; there are problems of insuring adequate resources to make the courts work as they should; and there are problems in seeing that all parties, judges, defense counsel, and prosecutors—not to mention the Congress—devote the energy and attention that will be required to make the sixth amendment right a reality and not a platitude.

I commend this proposal to the scrutiny of the Justice Department and the other witnesses who will appear to testify on this proposal. I hope that they will analyze and criticize this bill carefully; not in a spirit, however, of proving that speedy trial is impossible, but in the spirit of improving this proposal so that it can be a realistic and effective means of implementing the constitutional right to speedy trial. I caution that I propose this bill in the spirit of stimulating debate and placing before the Congress a concrete proposal in place of vague proposals for speedy trial. Whether this bill or something entirely different is the proper device for making the sixth amendment right a reality, I hope will be clarified in future hearings. I am convinced, however, that the time has come to put aside fear-sponsored proposals like preventive detention, and begin to deal with the difficult problems which face us today in the area of criminal justice.

I ask unanimous consent that the text of the bill and a sectional analysis of it be printed in full in the RECORD at this point.

The PRESIDING OFFICER (Mr. BYRD of Virginia). The bill will be received and appropriately referred; and, without objection, the bill and analysis will be printed in the RECORD.

The bill (S. 3936) to give effect to the sixth amendment right to a speedy trial for persons charged with offenses against the United States, and to reduce the danger of recidivism by strengthening the supervision over persons released on bail, probation, or parole, and for other purposes, introduced by Mr. ERVIN (for himself and other Senators), was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S. 3936

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Speedy Trial Act of 1970".

TITLE I—SPEEDY TRIALS

SEC. 101. Title 18, United States Code, is amended by adding immediately after chapter 207 a new chapter 208, as follows:

"CHAPTER 208—SPEEDY TRIALS

"Sec.
"3161. Time limits and exclusions.
"3162. Sanctions.
"3163. Effective dates.
"3164. District plans.

"§ 3161. Time limits and exclusions.

"(a) When a defendant charged with an offense against the United States first appears before the court for the setting of release conditions under section 3146 the judge shall, after consultation with the counsel for the defendant and the United States Attorney, set a day certain for the trial.

"(b) The trial of a defendant charged with an offense against the United States shall be commenced as follows:

"(1) Within sixty days from the date the defendant is arrested or a summons is issued, except that if an information or indictment is filed, then within sixty days from the date of such filing;

"(2) If the indictment or information is dismissed upon motion of the defendant and thereafter the defendant is charged with the same crime or a crime based on the same conduct or arising from the same criminal espisode, within sixty days from the date the defendant is so charged; or

"(3) If the defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, within sixty days from the date of the mistrial, order granting a new trial, or remand.

"(c) The following periods of delay shall be excluded in computing the time within which the trial of any such offense must commence: "(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to, an examination and hearing on competency, any period of delay resulting from the fact that he is incompetent to stand trial, or resulting from an examination and treatment pursuant to section 2902 of title 28, United States Code, and any period of delay resulting from hearings on pretrial motions, interlocutory appeals, or trials with respect to other charges.

"(2) Any period of delay during which prosecution is deferred by the United States Attorney pursuant to written agreement with the defendant for the purpose of allowing the defendant to demonstrate his good conduct.

"(3) Any period of delay resulting from the absence or unavailability of the defendant.

"(4) If the information or indictment is dismissed upon motion of the United States Attorney and thereafter a charge is filed against the defendant for the same offense or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

"(5) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant shall be granted a severance so that he may be tried within the time limit applicable to him.

"(6) Any period of delay resulting from a continuance granted at the request of the defendant or his counsel upon a showing of good cause, if such request is made more than fifteen days prior to the date set for trial, but in no event shall any such period of delay be excludable for any period in excess of seven days.

"(7) Any period of delay resulting from a continuance granted at the request of the United States Attorney upon a showing of good cause, if such request is made more than fifteen days prior to the date set for trial, but in no event shall any such period of delay be excludable for any period in excess of seven days.

"(8) Any other period of delay resulting from a continuance granted at the request of the defendant or his counsel or the United States Attorney upon a finding by the judge that, unless such a continuance is granted, the ends of justice cannot be met. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court, after first having considered the right of the defendant to a speedy trial and the public interest in a prompt disposition of the case, sets forth in writing in the record of the case its reason for granting such continuance.

"§ 3162. Sanctions.

If a defendant, through no fault of his own or his counsel, is not brought to trial as required by section 3161, the information or indictment shall be dismissed on motion of the defendant. Such dismissal shall forever bar prosecution for the offense charged and for any other offense required to be joined with the offense. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty shall constitute a waiver of the right to dismissal.

"§ 3163. Effective dates.

"(a) The time limitations in section 3161 (a) shall apply—

"(1) to defendants charged with any of the following offenses in informations or indictments filed more than 90 days after the effective date of this Chapter, and continuously held in custody on such charge:

"(A) murder;
"(B) voluntary manslaughter;
"(C) rape;
"(D) carnal knowledge of a female under the age of sixteen, or taking immoral, improper, or indecent liberties with a child under the age of sixteen years;
"(E) robbery;
"(F) burglary;
"(G) kidnaping;
"(H) arson;
"(I) assault with a dangerous weapon;
"(J) assault with intent to commit any offense;
"(K) mayhem;
"(L) unlawful sale or distribution of a narcotic, depressant, or stimulant drug (as defined by any Act of Congress), if the offense is punishable by imprisonment for more than one year;
"(M) threatening, injuring, or intimidating any prospective witness or juror for the purpose of obstructing or attempting to obstruct justice;
"(N) extortion or blackmail accompanied by threats of violence; or
"(O) an attempt or conspiracy to commit any of the foregoing offenses, as defined by any Act of Congress, if the offense is punishable by imprisonment for more than one year; and

"(2) to defendants charged with any offense referred to in paragraph (1) of this subsection, in informations or indictments filed more than 120 days after the effective date of this Chapter, and not continously held in custody on such charge.

"(3) to defendants charged with any offense, other than an offense referred to in paragraph (1) of this subsection, in informations or indictments filed more than 180 days after the effective date of this Chapter, and continously held in custody in such charge.

"(b) Except as extended under section 3164, the time limitation in section 3161 (a) shall apply to all other offenses (other than

offenses within the purview of paragraph (1) or (2) or (3) of subsection (a)) charged in informations or indictments filed more than eighteen months after the effective date of this Chapter; except that section 3161 (a) shall not apply to the trial of offenses filed under the antitrust, securities, or tax laws of the United States.

§ 3164. District Plans.

"(a) Each United States district court, with the approval of the judicial council of the circuit, shall, within 90 days of the effective date of this Chapter, prepare a plan for the trial or other disposition of offenses under section 3163. Each such plan shall be formulated after considering the recommendations of the Federal Judicial Center, the United States Attorney and attorneys experienced in the defense of criminal cases in the district, and shall be filed with the Administrative Office of the United States Courts. Each such plan shall include a description of the procedural techniques, innovations, systems and other methods by which the district court has expedited or intends to expedite the trial or other disposition of criminal cases. The plan shall make special provision for the speedy trial of cases at places of holding court where there is no judge continuously resident.

"(b) In the event a district court is unable because of limitations of manpower or resources to implement its plan for the trial or other disposition of criminal cases as provided in section 3163(b), its plan shall, with the approval of the judicial council of the circuit, be submitted to the Judicial Conference of the United States, with a copy to the Attorney General, and shall request an extension of the effective date specified in section 3163(b). In addition to the information required under subsection (a) of this section, each such plan in which an extension is requested shall specify the necessary authorizations and appropriations for additional judges, prosecutors, probation officers, full-time defense counsel, supporting personnel and other resources without which full compliance with section 3163(b) cannot be achieved.

"(c) On or before fifteen months from the effective date of this Chapter, the Judicial Conference shall determine whether and to what extent section 3163(b) is to be extended as to each district.

"(d) Within eighteen months after such effective date, the Judicial Conference shall submit a report to Congress detailing the district plans submitted to it under subsections (a) and (b) of this section, the action taken by the Judicial Conference under subsection (c) of this section, and the legislative proposals and appropriations necessary to achieve compliance with the time limitations provided in section 3161.

"(e) In the event that a district court with respect to which section 3163(b) has become effective is subsequently unable to meet the time limitations prescribed by section 3161 (a), the Chief Judge of such district may seek and the Judicial Conference may grant suspension of such limitations as provided in subsection (b) of this section.".

TITLE II—BAIL REFORM ACT COMMUNITY PROTECTION AMENDMENTS

SEC. 201. Chapter 207 of title 18, United States Code, is amended by inserting after section 3150, the following new section:

"PENALTY FOR CRIME COMMITTED WHILE ON RELEASE

"SEC. 3150A. When a person is convicted in a district court of any offense (other than a petty offense as defined in section 1 of this title) and the court finds that such offense was committed while such person was released under this Chapter pending trial, awaiting sentence, pending appeal or pending the disposition of a petition for a writ of certiorari, or during a period of release prior to surrender to commence service of sentence, the court may impose a sentence of imprisonment of not more than three years which shall be consecutive to the sentence imposed for the offense committed while on release pursuant to this Chapter, and to any other sentences."

SEC. 202. Section 3150 of title 18, United States Code, is amended by striking the word "certiorari" and inserting in lieu thereof the following: "or pending the disposition of a petition for writ of certiorari or during a period of release prior to surrender to commence service of sentence".

TITLE III—PRETRIAL SERVICES AGENCIES

SEC. 301. Chapter 207 of title 18, United States Code, is amended by striking section 3152 and adding the following new sections:

ESTABLISHMENT OF PRETRIAL SERVICES AGENCIES

"SEC. 3152. There shall be established, on a demonstration basis, in each of five judicial districts, one of which shall be the District of Columbia, a pretrial services agency authorized to maintain effective supervision and control over, and to provide supportive services to, defendants released under this Chapter. The districts, other than the District of Columbia, in which such agencies are to be established shall be designated by the Chief Justice of the United States after consultation with the Attorney General, on the basis of such considerations as the number of criminal cases prosecuted annually in the district, the percentage of defendants in the district presently detained prior to trial, the incidence of crime charged against persons released pending trial under this Chapter, and the availability of community resources to implement the conditions of release which may be imposed under this Chapter.

"ORGANIZATION OF PRETRIAL SERVICES AGENCIES

"SEC. 3153. The Director of the Administrative Office of the United States Courts shall establish a pretrial services agency in each of the designated districts. After reviewing recommendations of the judges of the District Court to be served by the agency, the Chief Judge of the Court shall appoint, subject to the provisions of Part III of title 5, United States Code, a Chief Pretrial Services Officer who shall receive compensation at a rate to be established by the Chief Judge of the Court but not in excess of the rate prescribed for GS–16 by section 5332 of title 5, United States Code. The Chief Pretrial Services Officer shall be responsible for the direction and supervision of the agency and may appoint and fix the compensation, subject to the provisions of Part III of title 5, United States Code, of such other personnel as may be necessary to staff each agency and may appoint such experts and consultants as may be necessary, pursuant to section 3109 of title 5, United States Code.

"FUNCTIONS AND POWERS OF PRETRIAL SERVICES AGENCIES

"SEC. 3154. Each pretrial services agency shall perform such of the following functions as the District Court to be served may specify:

"(1) collect, verify and report promptly to the judicial officer information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions for each such person;

"(2) review and modify the reports and recommendations specified in paragraph (1) for persons seeking release pursuant to section 3146(e) or section 3147;

"(3) supervise persons released into its custody under this Chapter;

"(4) with the approval of the Administrative Office of the United States Courts, operate or contract for the operation of appropriate facilities for the custody or care of persons released under this Chapter including, but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services;

"(5) inform the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions;

"(6) serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this Chapter and advise the court as to the eligibility, availability and capacity of such agencies;

"(7) assist persons released under this Chapter in securing any necessary employment, medical or social services;

"(8) prepare, in cooperation with the United States marshal and the United States Attorney such pretrial detention reports as are required by Rule 46(h) of the Federal Rules of Criminal Procedure; and

"(9) performs such other functions as the court may, from time to time, assign.

"REPORT TO CONGRESS

"SEC. 3155. The Director of the Administrative Office of the United States Courts shall annually report to Congress on the accomplishments of the pretrial services agencies, with particular attention to (1) their effectiveness in reducing crime committed by persons released under this chapter; (2) their effectiveness in reducing the volume and cost of unnecessary pretrial detention; and (3) their effectiveness in improving the operation of this chapter. The Director shall include in his fourth annual report recommendations for any necessary modification of this chapter or expansion to other districts.

"DEFINITIONS

"SEC. 3156. As used in sections 3146 through 3155 of this chapter—

"(1) The term 'judicial officer' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the District of Columbia Court of General Sessions or Superior Court, and

"(2) The term 'offense' means any criminal offense, other than an offense triable by court martial, military commission, provost court, or other military tribunal, which is in violation of any Act of Congress and is triable by any court established by Act of Congress."

SEC. 302. The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last two items and inserting in lieu thereof the following:

"3150A. Penalty for Crime Committed While on Release.
"3151. Contempt.
"3152. Establishment of Pretrial Services Agencies.
"3153. Organization of Pretrial Services Agencies.
"3154. Functions and Powers of Pretrial Services Agencies.
"3155. Report to Congress.
"3156. Definitions."

SEC. 303. For the purpose of carrying out the provisions of this title, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each fiscal year thereafter, the sum of $1,500,000.

SEC. 304. Section 604 of title 28, United States Code, is amended by striking paragraphs (9) through (12) of subsection (a) and substituting in lieu thereof:

"(9) Establish pretrial services agencies pursuant to section 3153 of title 18, United States Code;

"(10) Purchase, exchange, transfer, distribute, and assign the custody of law books, equipment, and supplies needed for the maintenance and operation of the courts, the Federal Judicial Center, the Administrative Office of the United States Courts, the

offices of the United States magistrates and commissioners and the offices of pretrial services agencies;

"(11) Audit vouchers and accounts of the courts, the Federal Judicial Center, the pretrial services agencies, and their clerical and administrative personnel;

"(12) Provide accommodations for the courts, the Federal Judicial Center, the pretrial services agencies and their clerical and administrative personnel;

"(13) Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States."

The analysis, presented by Mr. ERVIN, is as follows:

ANALYSIS OF S. 3936, PROPOSED "SPEEDY TRIAL ACT OF 1970"

TITLE I: SPEEDY TRIAL

SECTION 101. Adds a new chapter 208, to title 18, USC, as follows:

Section 3161 time limits and exclusions

Subsection (*a*) requires the judge to set a date certain for trial when the defendant first appears before him for the purpose of setting bail. The date is set upon consultation with the prosecutor and defense counsel.

Subsection (*b*) requires that the date set for trial be within 60 days of arrest or issuance of summons, unless an information or indictment is filed, in which case trial must be within 60 days of that date. If charges are dropped, or a mistrial is declared, the 60 days runs from the date of new charges, or the date of mistrial.

Subsection (*c*) excepts from the 60 day period the following periods of delay:

(1) Proceedings relating to the defendant such as examination and hearing on competency, the period of incompetency, hearings on pretrial motions, trials on other charges, and interlocutory appeals;

(2) Delays caused by deferred prosecution upon agreement of defense counsel and prosecutor for the purpose of demonstrating the defendant's good conduct;

(3) Delays caused by absence of defendant;

(4) Delays between the dropping of a charge and the filing of a new charge for the same or related offense;

(5) Reasonable periods of delay when the defendant is joined for trial with a co-defendant, and good cause exists not to grant severance.

(6) Any delay up to 7 days resulting from a continuance granted at the request of the defense counsel or the prosecutor upon good cause shown, if made more than 15 days before the date set for trial.

(7) Any other delay resulting from a continuance granted at the request of defense or prosecution, upon a finding of the judge that the ends of justice cannot be met unless the continuance is granted. The Judge must consider the right of the defendant and the interest of the public in speedy trial, and set forth in the record his reasons for granting the continuance.

Section 3162 sanctions

This section declares that if the case is not brought to trial with the prescribed period through no fault of defendant or his counsel, the charges shall be dropped with jeopardy.

Section 3163 effective dates

Subsection (*a*) makes the time limits of Section 3161 effective—

(1) 90 days after the effective date of the title for persons held in custody on certain defined charges. The charges include capital offenses, robbery, burglary, arson, crimes involving bodily harm, felony drug offenses, intimidation of witnesses, extortion or blackmail accompanied by threats of violence, and attempts and conspiracies to commit these offenses.

(2) 120 days after the effective date of the title for persons charged with above offenses and released on bail.

(3) 180 days after the effective date of the title for persons charged with other felonies and not released on bail.

Subsection (*b*) makes the time limits of Section 3161 apply to all other felony cases not covered by subsection (a) 18 months after the effective date of the title. Section 3161 does not apply, however, to offenses under the antitrust, tax, or securities laws.

Section 3164 district plans

Subsection (*a*) requires each district court, upon approval of the judicial counsel of the circuit, to submit a plan for the trial of cases under section 3164 within 90 days of the effective date of the title. The plan is to be formulated after consultations with the Federal Judicial Center, the U.S. Attorney, and the local bar. It is to be filed with the Administrative Office of the U.S. Courts.

Subsection (*b*) permits the district court to request an extension of the time required for implementing its plan if unable to do so because of limitations in manpower or resources. The request, if approved by the judicial council of the circuit, shall be submitted to the Judicial Conference, with a copy to the Attorney General. The request shall contain a list of the appropriations and personnel required to implement the plan.

Subsection (*c*) requires the Judicial Conference to determine whether and to what extent the extensions requested shall be granted.

Subsection (*d*) requires a report by the Judicial Conference to the Congress 18 months after the effective date of this title detailing the action taken to comply with this title, the extensions granted, and the legislation and appropriations necessary to comply fully with the time limitations of Section 3161.

Subsection (*e*) provides that if a district is subsequently unable to meet the time limitations of this title, the Chief Judge of the district court may request a temporary suspension as provided in subsection (b).

TITLE II: BAIL REFORM ACT COMMUNITY PROTECTION AMENDMENTS

Section 201 amends chapter 207, title 18, U.S. Code (The Bail Reform Act of 1966) by inserting a new Section 3150A following Section 3150. The new section authorizes the imposition of an additional sentence of up to three years, to run consecutively for the conviction of any nonpetty offense committed while on release pending trial, sentence, or appeal.

Section 202 amends Section 3150, chapter 207, title 18, U.S. Code, providing added penalties for a willful failure to appear, to apply if released pending disposition of a writ of certiorari, or pending surrender to commence service of sentence.

TITLE III: PRETRIAL SERVICES AGENCIES

Section 301 amends chapter 207, title 18, U.S. Code by striking Section 3152 and adding the following:

Section 3152 establishment of pretrial services agencies

This section creates on a demonstration basis in the District of Columbia and four other judicial districts, pretrial services agencies to supervise and control defendants released on bail. The other four districts are to be selected by the Chief Justice, upon consultation with the Attorney General, on the basis of the number of criminal cases in the district, the percentage of defendants detained before trial, the incidence of crime charged to persons released prior to trial, and the resources available.

Section 3153 organization of pretrial services agencies

This section authorizes the Director of the Administrative Office of the U.S. Courts to create a pretrial services agency in the designated districts. The chief judge of the district court appoints a chief Pretrial Services Officer who is responsible for the operation of the agency, and may appoint other personnel to staff the agency.

Section 3154 functions and powers of pretrial services agencies

Each agency is to perform various functions, as the court shall direct, including: collection and verification of information pertaining to eligibility of defendants for release, and recommendations for conditions of release; supervision and control of released persons; operation or contraction for operating of facilities for custody or care of released persons, such as halfway houses, narcotics and alcohol treatment centers, and counseling centers; coordination of other agencies to serve as custodians of released persons; and affording medical, social, and employment assistance to released persons.

Section 3155 report to Congress

The Director of the Administrative Office of the U.S. Courts shall make an annual report on the operation of the Pretrial Services Agencies, including their effectiveness in reducing pretrial crime and the volume and cost of pretrial detention. In his fourth annual report, the Director shall recommend any modifications of this chapter, or its expansion to other districts.

Section 3156 definitions

This section contains the definitions of former Section 3152.

Section 302 amends the analysis of chapter 207 to reflect the amendments made by this title.

Section 303 authorizes the appropriation of $1,500,000 for each fiscal year to carry out the provisions of this title.

Section 304 amends Section 604, title 28, U.S. Code, relating to the functions of the Director of the Administrative Office of the U.S. Courts, to reflect the new duties imposed by the creation of pretrial services agencies under this title.

S. 3939—INTRODUCTION OF A BILL RELATING TO PROTECTION FOR AIR TRAVELERS

Mr. SMITH of Illinois. Mr. President, I am today introducing a bill I hope will get the Congress thinking—and moving—on the problem of protecting air passengers from the skyjackers, air pirates, and deranged persons who have been terrorizing the flying public with impunity up to now. My bill would create an enforcement agency within the Federal Aviation Administration whose sole purpose would be the protection of persons and property aboard aircraft. I ask unanimous consent that the text of the bill be included at this point in the RECORD.

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

The bill (S. 3939) to amend the Federal Aviation Act of 1958 in order to provide for an Air Travel Protection Agency, introduced by Mr. SMITH of Illinois, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 3939

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title XI of the Federal Aviation Act of 1958 is

amended by inserting at the end thereof the following:

"AIR TRAVEL PROTECTION AGENCY

"SEC. 1112. The Secretary shall establish within the Federal Aviation Agency an agency to be known as the Air Travel Protection Agency, whose purpose shall be the protection of persons and property aboard aircraft operated by air carriers in air transportation from threats or acts of violence or willful disruption of such transportation.

"(b) The primary function of the Agency shall be prevention of violations of subsections (c), (h), (i), (j), (k), (l), and (m) of section 902 of this Act and other laws of the United States relating to threats or acts of violence upon persons or property aboard aircraft operated by air carriers in air transportation, or to the willful disruption of such transportation.

"(c) The Secretary shall also, through such Agency—

"(1) conduct of contract for the conduct of research and development to create devices, methods, or procedures necessary to accomplish such Agency's primary function;

"(2) promulgate such regulations as may be necessary to accomplish such Agency's primary function, including, but not limited to, regulations under which an air carrier may be required to install certain devices or adopt certain methods or procedures or to deny air transportation to certain persons or property;

"(3) enforce such regulations by regular surveillance of air carrier facilities, devices, methods, and procedures installed or adopted pursuant to such regulations;

"(4) cooperate with the Federal Bureau of Investigation and other Federal agencies in investigations of violations of such subsections of section 902; and

"(5) undertake such other activities as may be appropriate to carry out the purpose of this section.

"(d) Such Agency shall be headed by a Director appointed by the Secretary and shall be staffed by such employees as the Secretary may deem necessary to accomplish the functions of the Agency. The Director shall serve at the pleasure of the Secretary and be compensated at the rate prescribed for level IV of the Executive Schedule in section 5315 of title 5 of the United States Code.

"(e) No air carrier shall be held liable for money damages in any State or Federal court solely for its denial to furnish air transportation to a person or property pursuant to regulations issued under authority of this Act."

SEC. 2. Subsection (1), (j), and (k) of section 902 of the Federal Aviation Act of 1958 are each amended by striking out "in flight" wherever appearing therein.

SEC. 3. Section 6 (c) (1) of the Department of Transportation Act is amended by striking out "and 1111" and inserting in lieu thereof "1111, and 1112".

Mr. SMITH of Illinois. Mr. President, the Air Travel Protection Agency would have broad regulatory and enforcement authority to provide preflight and in-flight protection against seizure of an aircraft or the commission of violent and disruptive acts on board. Our laws already ban the air transportation of explosives and other dangerous articles, forbid the carrying of concealed weapons aboard aircraft, ban interference with flight crew members or attendants, and prescribe the death penalty or 20 years imprisonment upon conviction for air piracy. All of criminal activities that must be prevented are already on the books, but there is no specific statutory mandate to any Government agency to prevent them. The FBI is given the authority to "investigate" these violations, but no one is given the duty to prevent them.

This is not a job we can leave to voluntary action by the airlines. Their desire to move passengers quickly and in an aura of glamour and luxury is in basic conflict with effective security measures that may mean inconvenience to travelers, inspection of suspicious baggage, and the like.

Frankly, the apparent helplessness of various agencies to cope with the problem of violence on board aircraft stymies me. We have created a farflung bureaucracy to keep plants and vegetables with fruit flies and plant diseases from moving by air, but we have done absolutely nothing to prevent criminals or deranged persons from boarding aircraft with weapons or susbtances whose very presence on an aircraft mean immediate and mortal danger to its passengers and crew.

This is not a job we can permit to become "a sideline" of any agency or subagency. I was shocked to learn this morning, that, at present, FAA's "chief expert" on air piracy is a member of that agency's flight surgeon's staff. I have no knowledge of this gentleman's expertise. I presume he is highly qualified. But why should police functions, regulatory functions, be housed in the flight surgeon's office? Is not the protection of air passengers against terrorism and death important enough to warrant full staffing, full funding, full authority of an office of its own at FAA? I think it is. My bill will do just that.

Finally, this is not a job we can leave until some other time. Surely our present technology and creativity ought to enable us to keep a pirate from boarding an aircraft with a knife, a gun, and a gallon of gasoline right now. But the catalyst for applying that technology and creativity must not be allowed to be the deaths of scores of innocent passengers. It must be legislation that gives one agency, one staff, the duty to research and develop protective systems to do the job. My bill will create that agency, that staff—and give it the broad mandate it will need to work quickly and efficiently.

It is about time regulation of air passenger service shifted from concern about the number of square inches of seat space per coach passenger to the protection of travelers who have no way to protect themselves except by refusing to fly. I invite my colleagues to join me in sponsorship of this bill, and I urge the Senate to move promptly to preclude the kind of tragedy that was narrowly averted last Thursday.

Mr. President, newspapers across the Nation have told the near-tragic story of air piracy committed aboard TWA's flight 487 on that day. I ask unanimous consent that a number of Chicago Tribune and Chicago Sun-Times articles relating to this latest—and perhaps most shocking—example of airborne violence be reprinted in the RECORD at the close of my remarks. I also ask unanimous consent that an exchange of correspondence between myself and Robert L. Tully of the Airline Pilots Association be printed at this point in the RECORD.

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

[From the Chicago Sun-Times, June 7, 1970]

EXPERT SEES MORE BIZARRE HIJACKINGS

(By William Hines)

WASHINGTON.—An authority on what makes hijackers tick predicts more bizarre air piracy attempts such as the one involving a TWA jet at Dulles International Airport Thursday.

At the same time, the expert, Dr. David G. Hubbard of Dallas, said in a telephone interview that the government was blocking any chance of a solution to the problem by refusing to allow a scientific study of offenders who have been brought to justice.

Citing a policy by the Justice Department's Federal Bureau of Prisons against allowing contact with prisoners even by representatives of other government agencies, Hubbard said:

"How the hell are you going to protect yourself against something you won't even look at?"

FAA TURNED DOWN

The Federal Aviation Administration acknowledged that it had requested access to persons convicted of hijacking and had been turned down by the Prison Bureau. An FAA spokesman said, "We just don't know what to do."

A check with the American Psychiatric Assn. here revealed that despite wide interest in hijacking as a mental health phenomenon, scientific literature on the subject is virtually nonexistent.

Most scientists and government officials asked about information on hijacking referred the questioner to Hubbard. He has managed to study the case histories of several hijackers and has devoted years to consideration of this form of antisocial behavior.

PREDICTED MANY CRIMES AFTER APRIL HIJACKING

Last April 19, after a DC-9 New York-to-Boston shuttle was hijacked by a man who wanted the plane flown until it ran out of fuel over the Atlantic, Hubbard predicted many crimes by "impressionable foreigners" within the next couple of weeks.

Between April 24 and 30, an Argentine plane was hijacked to Cuba, a light plane was taken over in British Honduras and flown to Mexico, and nine students in Japan diverted a jetliner to Korea.

Asked what he foresees after Thursday's hijacking by Arizonan Arthur G. Barkley, Hubbard said:

"We are in the declining phase of a fad—have been since Apollo II (last July)—and any declining fad tends to mutate. Some of the recent hijackings have been very aberrant, and some incidents not listed as hijackings fall into the same pattern."

He cited the apparently suicidal motivation of the Boston shuttle hijacker, the kidnaping of a Chicago-Miami plane last month by a woman accompanied by her son, the suicide of a passenger who also shot and wounded a seatmate in April, and the attempted self-destruction earlier this year by a passenger who slit his throat and then wanted the stewardess to open the cabin door so he could leap out.

FLEEING TO CUBA NOT CHIEF REASON

In Hubbard's view, Barkley's action was another incident motivated by something other than a simple desire to flee to Cuba, the chief stimulus when the "fad" was at its height about a year ago.

"Look at this guy," Hubbard said. "He didn't fly to Cuba. He flew right to the heart of government, right at the FAA, right at the FBI right at the Supreme Court, and he said 'Give me some money.'"

Hubbard was critical of Trans World Airlines and the government authorities who permitted the airline to pay the man $100,-

000, one-tenth of 1 per cent of his ransom demand. He referred to the payment as "uninformed, irresponsible idiocy" and that "handling of the problem requires something more"

"PARTICULARLY DISTURBING" INNOVATION

Barkley's "invasion" of Washington is a particularly disturbing and potentially dangerous innovation, he said.

"The chief danger in hijacking is that other political points may be made—to show up the government on its tax policies, to shame it in the Vietnam War, or to advance the cause of black nationalism," he said. "This sort of thing tends to dramatize the little man vs. the powers that be."

Many persons, especially in the FAA, believe hijackers are born losers in whom a suicidal undercurrent runs strong.

Aside from resisting Hubbard's (and the FAA's) efforts to understand hijackers better, the government this weekend seemed stumped on what to do about hijackers.

Trans World Airlines is one of three carriers (Eastern and Pan American are the others) using an FAA-developed "antihijacking" system. The system electronically frisks passengers, who are also visually screened during boarding by gate agents trained according to a secret "psychiatric profile," which supposedly can detect hipack-prone personalities.

A spokesman for TWA said the electronic surveillance was not in use at the gate through which Barkley boarded the plane at Phoenix, Ariz., on Thursday. The psyching of passengers was in effect, the spokesman said—"we apply that everyplace."

NO DATA TO SHOW EFFECTIVENESS

The FAA is alternately bullish and defensive about the system devised by a group under the deputy air surgeon, Dr. H. L. Reighard. But spokesmen acknowledge that they cannot produce any data to show that the system is effective.

Asked what the agency is doing to stem hijacking, a spokesman said, "We are trying to accelerate what we have been doing for the past year." This boils down to using the antihijacking system at some gates and displaying signs in terminals in English and Spanish warning that hijacking is a federal crime.

The airlines with the most hijackings are Eastern, with 16 successful and 4 unsuccessful attempts, and National, with 13 and 3. Both lines fly from the crowded northeastern United States to Florida.

Since Eastern started using the system experimentally last year it has experienced seven hijacking attempts. TWA, which began using the system in Decemebr, has had three. National, which has never used the system, had three in August, September and October, and was grounded by labor disputes beginning in November. Pan Am had one attempt since instituting the system.

This week, the FAA was in the defensive phase of its replies to questions about the system. "We've never said it was anything but a deterrent," a spokesman said. He added that he had no way of measuring how effective a deterrent it has been.

HIJACKING DECREASE

Hubbard's contention that hijacking is in a decline seems borne out by the figures. The decline is across the board, and there seems to be no correlation with use or nonuse of the FAA system. The number of hijacking attempts worldwide is running about one-half the total at this time last year.

The FAA keeps a log of hijacking attempts. An incident in Peru in 1930 was designated No. 001. The TWA hijacking Thursday is No. 218. There were no hijackings between 1930 and 1947, when people started escaping from Communist countries in stolen airplanes. The hijackings to Havana started in 1961. There have been 110 successful hijackings since then.

Several of the hijackers have returned to the United States to face criminal penalties. They have been questioned by law enforcement officers and prosecutors, but apparently not by professional psychologists and psychiatrists.

[From the Chicago Sun-Times, June 5, 1970]

HIJACKER OUT TO "GET EVEN WITH SOCIETY"

WASHINGTON.—The aim of hijacker Arthur G. Barkley "was to destroy the money he was given as ransom, destroy the aircraft and destroy all the people aboard," said the TWA executive who volunteered to take charge of the commandeered plane Thursday.

"This is the price, this is the hang-up—he had to get even with society," said Billy Williams, 46, TWA's manager for international flights.

It was the veteran pilot's second such experience with hijackers. But the last time around he did not have to worry about a plane load of passengers.

Williams, who was brought in from New York to take charge, described the sequence this way:

UPSET AT AMOUNT OF MONEY

As instructed by the hijacker, Williams carried the bags of the first $100,750 ransom with him when he boarded the aircraft.

"I was greeted by the hijacker," Williams said, recalling his entry into the cockpit.

Williams said the hijacker, who always used the word "sir," told Williams to sit down in a jump seat behind Capt. Dale C. Hupe and buckle his seatbelt.

Williams said the hijacker stood with his back to the cockpit door "with a razor in one hand and a pistol in the other."' A can of gasoline was near his feet.

Williams said the hijacker was "very, very upset when he opened the money bag and sensed there was not the $100 million that he asked for.

"He cut the bag open. Unfortunately the first bag was $1 bills. He quickly grabbed more out and in a few seconds he advised Hupe to put the aircraft back in the air," Williams said.

Williams said that he and the flight engineer, Jim Hankins, "engaged in considerable conversation. Sometime during the climb-on I don't know when exactly, he indicated to us he wanted to go back for some more money."

When the plane rolled to a stop at Dulles for the second time, Williams recalled hearing some gunfire and feeling the tires of the airplane going flat.

FBI MEN IN COCKPIT

In the meantime, Williams said the firing started in the cockpit as the FBI men had come into the open door "apparently without the hijacker's knowledge." He couldn't say how the shooting began in which Capt. Hupe was wounded.

Williams said he then started back for cockpit with a gun that one of the agents on the ground had tossed to him through one of the open doors, but by then the hijacker had been subdued.

It was last Nov. 1 that Williams played a similar role in an aviation hijacking drama.

On that occasion also, he volunteered to take command of a TWA Boeing 707 which landed at Kennedy Airport in New York after being hijacked over California. It had been commandeered by 20-year-old AWOL Marine Lance Cpl. Raphael Minichiello, who had let the 39 passengers off during a prior refueling stop at Denver.

Then with refueling stops at Bangor, Me., and Shannon, Ireland, Williams flew the big plane, its crew and its hijacker to Rome—the first trans-Atlantic hijacking in aviation history.

Minichiello was captured in Italy, where a variety of charges were lodged against him.

[From the Chicago Sun-Times, June 5, 1970]

NAB HIJACKER, $100,750

WASHINGTON.—A hijacker demanding $100 million cash from the U.S. Treasury held 51 airline passengers hostage Thursday in an eight-hour sky-high drama that ended when he was lured back to the ground and seized in a scuffle that left the pilot and hijacker wounded.

The passengers scrambled to safety after the TWA 727 jet landed for a second time at Dulles International Airport, where earlier the gun-wielding man had collected $100,750 from the airline—the first ransom ever paid a hijacker.

The plane's pilot, Capt. Dale C. Hupe, was shot in the abdomen by a small-caliber weapon. The hijacker, who identified himself as Arthur G. Barkley of Phoenix, Ariz., was wounded in the thumb when he was overpowered.

The hijacker had forced the TWA jetliner to make a second landing at Dulles after officials told him 100 sacks of $100 bills were waiting on the runway. Actually, airline officials said, the money bags were stuffed with paper.

More than three hours earlier, the hijacker had forced the plane to bypass St. Louis and to make its initial landing at Dulles. There he received the $100,750 carried onto the plane in a brown canvas bag by another pilot.

SHORTCHANGED, HE CLAIMS

But, claiming he was shortchanged, the hijacker refused to release the passengers or crew of six. Instead, he forced the plane to take off on a circuitous route south, then north over New York state, then south back to the Washington area.

As the red-and-white jet circled in the evening skies above the capital, government officials radioed that the demanded money was waiting for him on the Dulles runway.

The plane landed again shortly after 7 p.m. As it rolled to a stop on the runway, FBI agents shot out its tires and blocked its path with a large fire truck.

Then ensued a half-hour of cryptic radio exchanges, climaxed with the co-pilot saying, "The captain has been shot—get an ambulance."

WOUNDED PILOT UNDERGOES SURGERY

TWA spokesman John Corris said four shots were heard from inside the plane as FBI agents and Federal Aviation Administration policemen scurried through the craft's open doors to seize the hijacker.

Later, Capt. Hupe said he did not know what prompted the hijacker to shoot him.

"He just turned around and started firing in the cabin," Hupe said as he lay on a hospital operating table in nearby Fairfax, Va.

The small-caliber bullet entered his left abdomen and emerged from his back.

Doctors at Fairfax County Hospital performed exploratory surgery lasting two hours and said Hupe was in satisfactory condition. They said the surgery was conducted to make certain there had been no damage to vital organs.

From the hospital emergency room, Hupe telephoned his wife Doris in Perry, Kan., to assure her he was all right.

The manager of Dulles Airport, Dan Mahaney, said the hijacker had a .38-caliber pistol in one hand, a straight razor in the other and also carried a can of gasoline.

The shooting started, Mahaney said, after the first FBI agent entered the plane. He said the hijacker stood in the cockpit and kept peeking round the bulkhead to fire.

JAILED WITHOUT BOND

"He was like a rabbit with his head in and out of his hole," he said. The distraction gave the crew a chance to jump the man who was subdued during "a horrible melee," Mahaney said.

The FAA said the hijacker was wounded in the thumb.

Barkley was arraigned in Alexandria, Va., before U.S. Magistrate Stanley King, who ordered him jailed without bond in the city jail on a charge of air piracy.

After King heard a rambling but polite argument in which he was unable to get Barkley to say whether he wanted his own lawyer, the magistrate said he would appoint one, at least temporarily, on Friday. Barkley appeared in court with a bandaged right thumb and spots of blood on his yellow shirt, which was open to the waist, and on his checkered sport coat.

"It's all pending in the Supreme Court of the United States Tax Court," Barkley told reporters as they entered the courtroom. He then repeatedly tried to explain his grievances in court until King told him they were irrelevant to the air-piracy charge.

When told of the air-piracy charge, a capital offense, Barkley said, "Not guilty, your honor."

"You do not have to plead at this time," King told him.

King said a hearing in Barkley's case will be set within 10 days.

SPECIAL FLIGHT RETURNS PASSENGERS

A special flight taking the hijacked passengers back to St. Louis left late in the evening.

A few of the women passengers wept as they reached the Dulles terminal. But another passenger, Richard Hill of Zanesville, Ohio, said passengers were calm during the hijacking. In fact, he said, he wasn't aware of what was going on until the plane landed for the first time at Dulles.

After the second landing, three men threw open doors so their fellow passengers could flee. Other passengers scrambled down a safety chute.

During the hijacking, Barkley broadcast repeated radio messages to the President, the Supreme Court and other government officials.

CALLS HIMSELF A SLAVE OF THE UNITED STATES

He had been turned down by the Supreme Court last March in an appeal of a $471.78 tax case. In his court petition, Barkley had claimed he was "being held a slave by the United States."

After he collected $100,750 ransom, the hijacker radioed:

"Is the President ready to fulfill my request? That request was for $100 million."

At another point, he radioed: "I have a message for the President and the State Department. You don't know the rules of war, you don't even know how to count money."

At its first Dulles stop the plane was refueled to capacity for a potential range of 1,900 miles. Also put aboard were international maps and Capt. Billy Williams, a foreign-rated pilot who flew a young Marine hijacker to Rome last year.

For most of the agonizing flight, Barkley pre-empted the aircraft radio from the pilots to broadcast messages directed to President Nixon, FBI Director J. Edgar Hoover, the attorney's general's office, the secretary of labor, the Treasury Department and Supreme Court justices "unfit to rule."

[From the Chicago Sun-Times, June 5, 1970]

DRAMA ON JET: "I WANT $100 MILLION . . ."

WASHINGTON.—Here is what happened in Thursday's hijacking of a TWA 727 jet airliner, all times Eastern Daylight Saving:

11:00 a.m.—TWA Flight 487 leaves Phoenix with 51 passengers.

11:43 a.m.—Flying at 29,000 feet over New Mexico, pilot Dale C. Hupe reports by radio that a man has taken over the plane, demands it fly directly to Washington. Hijacker quoted as saying: "I want $100 million in small bills delivered to the plane."

3:37 p.m.—Plane lands at Dulles International Airport northwest of Washington.

4:20 p.m.—Capt. Billy Williams licensed to fly internationally, arrives at Dulles, enters the airliner a few minutes later carrying $100,750 TWA had drawn from two banks.

4:35 p.m.—Plane takes off from Dulles for unknown destination, flies south, then heads north.

4:45 p.m.—Hijacker radios: "Is the President ready to fulfill my request? That request was for $100 million."

5:25 p.m.—Radar shows plane making turn northwest of Elmira, N.Y., and heading back south toward Washington.

7:10 p.m.—Lands at Dulles again, where officers are waiting to shoot out tires.

7:20 p.m.—Emergency doors of plane open and passengers scramble out.

7:32 p.m.—Capt. Hupe wounded after several shots are fired aboard the plane.

7:34 p.m.—FBI agents capture hijacker who is wounded in thumb during the scuffle.

[From the Chicago Sun-Times, June 5, 1970]

HIJACKER'S MESSAGE SPURRED DECISION TO HALT PLANE AT DULLES

(By Carl Bernstein)

WASHINGTON.—While TWA Flight No. 487 was 25,000 feet above Washington, a group of men on the ground decided at 5:10 Chicago time, that if the hijacked plane made a second landing at Dulles International Airport, it would not be permitted to take off again.

Minutes earlier, Arthur G. Barkley had radioed from the jetliner's cockpit that unless accorded the usual response to hijackings.

"Barkley's messages were so rambling and incoherent $100 million was waiting for him at Dulles, "it is just going to be too bad for the people on this plane."

That message, according to participants in Thursday's hijacking drama, ensured that the plane would not be permitted to take off again, even though it meant endangering the lives of the 58 hostages.

In the past, the demands of hijackers have usually been met to ensure the safety of passengers and crew. It was feared that the behavior of Barkley was too erratic to be sane, it was apparent he had no rational plan," R. Daniel Mahaney, the manager of Dulles said after the hijacking was finally aborted. "His demands for $100 million simply could not, under any circumstances, be met . . . therefore, it was felt we had to go in and get him."

JOINT DECISION

That decision apparently was made by Mahaney and TWA officials, including the company president, F. C. Wiser Jr., in consultation with the FBI; Arvan H. Saunders, director of National Capital Airports; and John H. Shaffer, the Federal Aviation administrator.

According to Mahaney, he was told by TWA's president:

"Don't let that plane get off the ground again. You stop them."

"How?" Mahaney said he asked Wiser.

"That's up to you," the executive reportedly replied.

Under the plan that was decided upon after a series of telephone calls and conferences, 100 decoy money bags would be put on the runway, then the plane's tires would be shot out when it landed.

At 6:05 p.m., the Boeing 727 jetliner touched down. After spotting the money bags on the ground, the pilot made a 180-degree turn and taxied toward the parcels, stuffed with newspapers. Three fire trucks were on the north, middle and south side of the runway, a standard procedure at Dulles.

TIRES FLATTENED

"Get the vehicles off the runway," the hijacker radioed when he saw the trucks. "Turn around immediately." As planned, the trucks moved away.

However, a fourth fire truck, smaller than the others and therefore out of sight from the cockpit, trailed the jetliner.

Inside the fire truck, two members of the FAA police force at Dulles, each of them armed, aimed their weapons at the plane's tires. Their first shots failed to take effect. Finally the two tires under the aircraft's nosewheel were flattened.

As the passengers were escaping through an open door, FBI agents climbed aboard and overcame the hijacker.

[From the Chicago Tribune, June 5, 1970]

SEIZED TWA JET LEAVES WASHINGTON—51 PASSENGERS STILL ABOARD

BULLETIN

WASHINGTON, June 4.—A hijacked TWA jet with 51 passengers aboard took off from Dulles International airport this afternoon with a new pilot, full load of fuel, and $100,000 ransom. The destination was unknown. It had landed here on orders from the hijacker.

WASHINGTON, June 4.—A Trans World Airlines jet liner with 51 passengers aboard, hijacked by a man demanding 100 million dollars in cash from the United States Treasury, headed for Washington's Dulles International airport today where officials said $100,000 would be waiting.

James T. Murphy, deputy director of the bureau of national airports, said the $100,000 was furnished by T.W.A.

"We plan to do what the man hijacking the plane wants us to do," Murphy said.

HIJACKED IN FLIGHT

The jet liner, hijacked on a flight from Phoenix to Washington, was due to land at 2:40 p.m. [Chicago time]. It bypassed a scheduled stop at St. Louis.

Airport officials said the jet liner would be kept at the end of the runway about a mile from the terminal and out of view.

Murphy said that in view of the hijacker's request for more fuel, the plane might take off again for another destination still unknown.

TWA officials said they learned of the hijacking about an hour after take-off when the hijacker took over the radio and announced that he was taking the plane to Washington because his rights had been violated.

"I'm addressing the Supreme Court," TWA quoted the hijacker's saying, "I want 100 million dollars in small bills delivered to the plane."

LEARN OF HIJACKING

He requested that a fuel truck and two TWA officials meet the plane when it arrived at Washington National airport.

Officials learned of the hijacking when the plane was over Las Vegas, N.M.

The 727 jet was piloted by Capt. Dale C. Hupe, a veteran of 23 years flying, TWA said.

"The money is to be put in a tow sack and tied at the top," a transcript of the hijacker's message read. "The runway should be clear. No one on the runway."

He then addressed himself "To J. Edgar Hoover, FBI director, the attorney's general's office, the secretary of labor, the United States treasury department and justices of the court unfit to rule."

COMMENTS SEEM CONFUSED

The hijacker's comments seemed confused. He said he demanded the 100 million dollars "for the relief of injuries that he has suffered from unfair practices." He referred to a federal court case he described as "Docket No. 1558," and number "3601–66."

Again referring to an apparent court case, he said "in authority of the United States Code, title 28, section 1252, 12 and 3 of this, to be brought to the head of the federal government, a copy of this motion has been mailed to each of the respondents. "This respectively submitted, Arthur G. Barkley, 4145 N. Mitchell st., Phoenix."

The Federal Aviation administration said the pilot of the big jet had reduced the

plane's speed as he flew eastward to reduce its fuel consumption.

However, the FAA spokesman said the plane apparently had enough fuel to reach Washington.

[From the Chicago Tribune, June 6, 1970]

JETS TRAILED HIJACK PLANE

(By Fred Farrar)

WASHINGTON, June 5.—Trans World Airlines officials were concerned today over the ease with which Arthur Barkley, the captured plane hijacker, carried aboard a can of inflammable liquid.

The liquid was believed to be gasoline. Tests on it were begun at Federal Bureau of Investigation laboratories here.

John Corris, a T.W.A. spokesman, said Barkley apparently carried the gallon paint can filled with liquid aboard the jet liner yesterday in a duffle bag which he could fit in under his seat.

The defense department disclosed that the T.W.A. 727 that was hijacked by Barkley between Phoenix and Washington was shadowed for almost three hours by 2 armed air force interceptors before it landed here for the second and final time.

The Pentagon disclosed for the first time that such shadowing is a routine practice when air lines are hijacked.

Capt. Dale C. Hupe, the pilot, was recovering from a gunshot wound to his abdomen. Hupe, 50, underwent a three and one-half hour operation late last night after he was wounded by a bullet apparently fired from Barkley's gun. Barkley also was wounded on the thumb.

Federal Magistrate Stanley King set Wednesday for a preliminary hearing on aircraft piracy charges against Barkley, 49, of Phoenix, Ariz., arrested when the hijacked plane landed here a second time. Aircraft piracy is a federal offense carrying penalties ranging from 20 years in prison to death.

EVER PRESENT PROBLEM

Corris said that cabin luggage is an ever present problem. He said the rule presently is that passengers can carry anything aboard that will fit under their seats.

The question has been raised, Corris said, on whether to inspect hand luggage. He said he did not know if a decision would be that far-reaching.

Six bullet holes were found in the airplane today. They were in the instrument panel, the door of the front lavatory, and in the bulkhead walls between the cockpit and the cabin.

The $100,000 that T.W.A. withdrew from two banks near Dulles airport yesterday has been put back in the airline's account.

HITS BRAKE ASSEMBLY

One bullet that was fired to shoot out a tire went on into the brake assembly. The assembly was repaired here before the plane was ferried to New York City for further inspection.

The Pentagon said that four other interceptor planes were sent aloft to continue surveillance of the airliner. They were sent back to their bases when the big plane turned south again and returned to Dulles, International airport after circling above upstate New York.

In this and in other hijacking cases, "the intercepts were performed for purely humanitarian reasons and to serve as focal points for any rescue efforts, should any such efforts be necessary," the Pentagon said.

The defense department said that while all the intercepters involved—F–106 Delta Dart jets—were armed with Falcon air-to-air missiles, this was * * * alert status in their air defense role, and there was no time to remove missiles.

Sources here said the shadowing of hijacked airliners is performed to give authorities better information than can be provided by radar should disaster result from a hijacking.

Hupe's home is in Perry, Kans. His wife, Doris, and their son, Denis, 19, visited him today in a hospital in Fairfax, Va. The surgeon who performed the operation on Hupe said the pilot was "perfectly fine," but would be in the hospital recuperating for another 10 days.

WIFE QUOTES PILOT

Hupe's wife quoted him as saying he considered Barkley "a highly-disturbed individual" and believed the bullet which wounded him came from the hijacker's gun.

Barkley was taken before the federal magistrate last night and ordered held without bail. He was jailed in Alexandria, Va., across the Potomac river from Washington.

Brought before King today, Barkley was told he was accused of air piracy and asked if he understood the charge.

"Not guilty, your honor," Barkley responded.

RIGHTS ARE EXPLAINED

The magistrate sought to explain to Barkley his right to legal counsel and the nature of the charge against him. King told Barkley he was not to enter a plea at this time and had the right to remain silent.

"The United States charged me—right, your honor?" Barkley said, interrupting the magistrate. "I have the right to charge the United States out of the spirit of the Constitution. I have the right as a citizen to request representation for taxation."

King attempted to silence Barkley two or three times. He explained that "grievances over taxes" had nothing to do with the air piracy charge and today's proceeding.

King finally said sharply, "Mr. Barkley, I am not going to argue with you about your grievances with the United States government. Do you want a lawyer?"

Barkley did not reply. United States Atty. Brian P. Gettings recommended to the magistrate that he appoint a lawyer to represent Barkley.

[From the Chicago Sun-Times, June 6, 1970]

HOW DEER GAVE IDEA FOR CAPTURE OF BARKLEY

(By Bernard D. Nossiter)

WASHINGTON.—The gentle deer that ramble across Dulles International Airport's 10,000 acres in Virginia indirectly had a role in the capture of Arthur G. Barkley, the barechested gunman who hijacked a TWA airliner on Thursday.

Because the animals stray onto runways, they are a hazard to planes. So Dulles is one of the nation's few airports where policemen are armed with hunting rifles, and each year they bag several score deer.

Thursday night, two of the marksmen, P. J. Farnham and George A. Armitage Jr., had a different target. Riding on a fog-foam fire truck, their mission was to knock out the six 12-ply tires on the 727 jetairliner. Their bullets immobilized the plane, providing the key to Barkley's capture.

Barkley was in the cockpit, holding a .22-caliber pistol in one hand and a razor in the other over the flight captain, Dale C. Hupe, and his first officer, Donald Salmonson.

FAILS TO SEE FIRE TRUCK

The hijacker did not see the fire truck creeping up behind the plane and did not hear the shots from the hunting rifles because the plane engines had been revved up on his orders for another takeoff.

That was how it had been planned by James T. Murphy, a former FBI agent who is deputy director of the Washington airports, and R. Daniel Mahaney, manager of Dulles. They and TWA executives had concluded Barkley was so irrational that there was no possibility of meeting his demands. They decided that the plane had to be immobilized without Barkley's knowledge and assigned the marksmen to do the job.

When the plane came to a halt, Barkley sent Capt. Billy Williams and flight engineer James Hankins to the rear door to pick up the 40 "money" bags used as lure to bring the plane back. Williams had come aboard with $100,750, when the craft first landed at Dulles in midafternoon because Barkley had demanded a pilot qualified to fly over international routes.

SIGNALS WITH HANDS FOR GUN

Williams, now in the rear, spotted Mahaney on the ground and signaled with his hands for a gun. Mahaney tossed up a revolver. Williams didn't get a chance to use it. A dozen FBI men under John McDermott, the agent in charge of the Alexandria (Va.) office, had appeared on the scene.

The FBI men, wearing bulletproof vests, hoisted the smallest of their number up on their shoulders to the sill of the door, 8 feet 9 inches above the ground.

The agent came up firing, then slipped back. Barkley, using the cockpit bulkhead as a shield, began shooting at the FBI man from a distance of four feet.

The agent came back up to the door sill, firing again, and a shot nicked Barkley's right thumb.

The gun battle gave the two crew members their chance. Salmonson grabbed Barkley around the neck; Hupe lunged for his waist. Barkley, a 200-pounder, wrestled Hupe into a seat and then, apparently, fired the shot that put the captain in the hospital.

Salmonson tore the gun from Barkley's grasp as three or four FBI agents clambered through the narrow door and piled into the jacker.

Barkley struggled furiously, his nose was bloodied, and finally he was subdued and handcuffed.

HIJACKED AIRLINER HAD JET FIGHTERS TAILING: PENTAGON

WASHINGTON.—The Defense Department disclosed Friday that four Air Force jet fighters, armed with heat-seeking air-to-air Falcon missiles, trailed the hijacked TWA airliner Thursday through the crowded Northeastern air lines.

The Pentagon said the F–106 interceptors were "scrambled" from Dover (Del.) Air Force Base immediately after the jetliner took off from Dulles International Airport near Washington.

The airliner had landed at Dulles, where hijacker Arthur G. Barkley picked up $100,750 of the $100 million he had demanded in ransom. He then ordered the plane into the air again.

Later, the jet returned to Dulles for the rest of the ransom and Barkley was arrested after a gun battle with FBI agents in which both the hijacker and the captain of the jetliner were wounded.

Barkley, 49, a former bakery truck driver from Phoenix, Ariz., was in jail Friday, charged with air piracy, a capital offense.

In an official statement, the Pentagon said it is "normal procedure" for military planes to shadow hijacked airliners.

The fighters, part of the North American Defense Command, were sent aloft "for purely humanitarian reasons and to serve as focal points for any rescue efforts," the Pentagon statement said.

Missile-carrying planes were used, the Pentagon added, because they were the first and fastest craft available.

Barkley, who faces a federal court hearing Wednesday, was said to have passed part of a government-devised test to keep potential hijackers off planes.

The airport test devised by the Federal Aviation Administration has two parts: a face-to-face sizeup by airline counter agents to spot behavioral giveaways and a boarding gate detector for ferrous metals to find con-

cealed weapons. The latter device was not in use at Phoenix, where Barkley boarded the TWA jet Thursday morning, Trans World Airlines spokesman John Corris said, but the visual sizeup was.

General FAA figures show that 24 persons have been turned away out of a quarter-million passengers carried by three airlines using the FAA system since last October.

The ferrous detector is not enough, the FAA said, since it picks up everything metallic and roughly half of all passengers have on them some metal objects. The two tests in combination drastically eliminate potential suspects and are an extremely effective barrier, the FAA declared.

[From the Chicago Sun-Times, June 5, 1970]

PRAISE FOR CREW FROM TWA PRESIDENT

NEW YORK (UPI).—The chairman of Trans World Airlines congratulated the crew of TWA's hijacked 727 jetliner Thursday night and said TWA was "very grateful that the consequences . . . were no worse than they turned out to be."

Charles C. Tillinghast Jr., chairman of the board and chief executive officer for TWA, said, "The entire crew is to be congratulated on the skill and fortitude with which they handled the entire affair."

He said the bizarre hijacking "will serve to remind us that we need to continue with vigor and vigilance to find means more effective to combat hijacking and other violence against aircraft."

AIR LINES PILOTS ASSOCIATION,
April 6, 1970.

Hon. JOHN A. VOLPE,
Secretary, Department of Transportation, Washington, D.C.
Mr. JOHN A. SHAFFER,
Administrator, Federal Aviation Administration, Department of Transportation, Washington, D.C.

GENTLEMEN: Your promptness and courtesy in meeting with representatives of the Air Line Pilots Association relative to aircraft security is appreciated.

The recent incident that resulted in the death of one of our pilots is a tragic example of a situation that, in my opinion, has been perpetuated by a permissive society. This type of incident is neither peculiar or restricted to airborne vehicles. The operators of buses and taxi-cabs in this and other cities will attest to this. Individuals who engage in this type of activity are, to a great degree, a by-product of liberalism. We as air line pilots, will continue to direct our efforts towards safety; however, in areas such as this, our effectiveness is limited by factors beyond our control.

Predictions indicate a tremendous growth in air commerce. Commercial aircraft with a seating capacity in excess of four hundred are a reality. A commercial aircraft capable of exceeding the speed of sound will be placed in service in the near future. The traveling public who utilize the air carriers are entitled to every consideration as related to safety; not to mention the individuals and property over which these aircraft are operated.

The Boston incident should cause an awareness of the potential hazard existing today. While this incident was tragic, little imagination is needed to visualize the holocaust that would result should a large aircraft such as the Boeing 747 slam into a densely populated area. Every precaution must be taken in our effort to preclude such a tragedy. We dare not do less.

While many of the suggestions to solve this problem have merit, supportive action by Congress and affected Federal Agencies is necessary to achieve any lasting success. Individuals who engage in air piracy are criminals and should be handled in a swift, firm and severe manner. The desire and what sometimes appears to be a obsession, to guarantee and protect the constitutional rights of the criminal have resulted in acquittals, light penalties and/or no prosecution at all. This liberalized and overly protective attitude results in abrogating the rights of the law-abiding citizens.

Recognizing the limitations as to the scope of your office, by copy of this letter to the office of President Nixon, Members of Congress, the State Department, the Justice Department and the Federal Bureau of Investigation, we implore this administration to act with all urgency.

The Air Line Pilots Association will be pleased to participate in any effective program designed to deal with this problem.

Sincerely,

ROBERT L. TULLY,
First Vice President.

MAY 4, 1970.

Mr. ROBERT L. TULLY,
First Vice President,
Airline Pilots Association,
Washington, D.C.

DEAR MR. TULLY: Thank you very much for providing me with a copy of your memorandum to Transportation Secretary Volpe and FAA Administrator John Shaffer. I share your concern and the concern of your membership for the safety of airline personnel and air travelers completely.

Please do not hesitate to send me any suggestions you may have for how we can deal with this grave situation. I will do whatever I can to cooperate with all efforts to insure the safety of air travel.

Sincerely,

RALPH TYLER SMITH.

AIR LINE PILOTS ASSOCIATION,
May 8, 1970.

Hon. RALPH TYLER SMITH,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR SMITH: Thank you for your letter of May 4, 1970. The expressed interest indicated by you and other members of Congress is deserving of more detailed correspondence dealing with this subject matter.

The problem of aircraft hijacking is only one facet of the total problem of providing aircraft security. There is an urgent need *now* to provide security against unlawful seizure of air carrier aircraft by an armed passenger and/or sabotage of the aircraft. It is imperative that security measures, procedures, and devices be developed and improved to prevent unauthorized weapons or explosive devices being carried or placed on aircraft, and to enable flight crew members to deal effectively with the armed passenger or saboteur in the cabin or in the cockpit of the aircraft. We strongly advocate the immediate establishment and funding of a realistic and effective program to accomplish these objectives. This program should have the support of the air carriers as well as the appropriate government agencies.

The main thrust of efforts to provide aircraft security should be directed to examination of passengers, baggage, cargo and the aircraft prior to loading. Screening devices more effective than the metal detectors which are now in use must be developed and installed at all air carrier airports. Also, air carrier personnel who handle passengers, baggage, cargo and aircraft crews should receive training to enable them to handle security problems they may encounter and to make them constantly aware of the need for aircraft security. Until such devices have been developed and installed the pre-boarding surveillance of passengers and baggage techniques that have been initiated by Eastern Airlines *should be required of all air carriers.*

In addition, we recommend that a program of searching passengers and baggage, including carry-on baggage where detection systems indicate a need, be instituted by the carriers of such proportions that an air line passenger would accept such searches in the future as a routine operating procedure to insure his safety in flight. We believe such a program would have a strong deterrent effect to prevent the unauthorized carriage of weapons and dangerous devices aboard aircraft.

With respect to cabin security in flight or the problem of dealing with the armed passenger in the cabin, the Captain must be given the *opportunity* to decide whether or not to comply with the request of the hijacker to divert the aircraft and whether or not to admit him to the cockpit. If the bulkhead separating the flight deck and the passenger compartment were bulletproof, but permitted a face-to-face confrontation between the Captain and the hijacker, perhaps the crews would be able to deter the hijack attempt. Compliance with the hijacker's request, consistent with safety and sound judgment, may be indicated even though they would not admit him to the cockpit. In these cases the safety of the flight would not be jeopardized by a crew fatality. However, in order for the flight crews to make the proper decisions, it would be necessary for them to be fully cognizant of the actual situation in the cabin. Flight crew members must be able to view the hijacker, his weapon, and his accomplices in the cabin by means of television cameras or similar devices. Therefore, we recommend that the FAA consider in conjunction with the requirement for a bulletproof cockpit, an additional requirement that a device or means be provided in the aircraft which would enable the flight crew to view the cabin from the cockpit.

Once the hijacker or saboteur has entered the cockpit, we are all agreed that the flight crew must be equipped to deal with the irrational person who makes an *unreasonable* request. Unquestionably, one or more devices can be developed to be used by the flight crews which would render the hijacker immediately ineffective. Also, in this situation, training films could serve a very useful purpose by familiarizing the flight crews with fire arms, explosive devices, chemical devices, molotov cocktails, magnesium, phosphorus, etc., and with regard to each of these, the best way of dealing with such weapons and destructive devices. We must plan *now* to equip flight crews with one or more such devices which can be used by them on an optional basis to effect incapacitation of a hijacker in the cockpit should the opportunity present itself or should the hijacker make a request that, *consistent with safety, cannot be complied with.*

On the problem of aircraft sabotage, the present lack of airport security at nearly every airport in the world makes it possible for a saboteur to gain access to parked aircraft and place aboard bombs or fire devices with triggering mechanisms of numerous designs that can activate explosives or generate fires in flight. Security must be promptly improved not only for parked aircraft, but for freight, mail, parcel post, and checked baggages as well, prior to being loaded aboard aircraft.

Finally, the FAA Task Force on Deterrence of Air Piracy should concern itself not only with hijacking of aircraft, but also with sabotage of aircraft and all matters of aircraft security. We strongly recommend that the jurisdiction and responsibilities of the FAA's Task Force be enlarged to deal with the overall problems of security of air carrier aircraft and that the necessary resources be made available to accomplish this purpose.

Little has been done to achieve total aircraft security of air carrier aircraft in the United States and the air line pilots are not satisfied that *present plans* will result in any appreciable improvements of this situation.

The Association has written to the FAA and requested on behalf of the air line pilots

in the United States that the agency initiate the actions listed above. We should appreciate any assistance you can give us to cause the FAA and other government agencies to accept their responsibility for aircraft security and to act effectively in this matter.

Sincerely,

ROBERT L. TULLY,
First Vice President.

Mr. SMITH of Illinois. Mr. President, Mr. Tully's letter of May 8 reflects the sound thinking of many airline pilots on the question of security aboard aircraft. These are the men who presently bear the awesome responsibility for passenger safety in air piracy or air violence situations, alone, without the aid of up-to-date technology, sound regulations, or even personal protection onboard. They and their crews have been nothing less than heroic, and all of us are grateful for their calm, their coolness under incredible pressures, and their constructive suggestions for improving the situation. I believe that all or most of their proposals could easily be accommodated within the framework of my bill. I welcome the further suggestions of my colleagues, airline crews, and most of all, airline passengers. I urge the Senate to act on air travel protection before delay takes another life.

S. 3941—INTRODUCTION OF THE LEAD PAINT POISONING PENALTIES ACT OF 1970

Mr. SCHWEIKER. Mr. President, I rise today to introduce, for myself, my principal cosponsor, the Senator from Pennsylvania (Mr. SCOTT), and 13 other Senators from both parties, the Lead Paint Poisoning Penalties Act of 1970.

I send the bill to the desk and ask unanimous consent that it be referred to the Committee on Banking and Currency.

The PRESIDING OFFICER (Mr. LONG). The bill will be received and appropriately referred.

The bill (S. 3941) to provide civil penalties for the use of lead-based paint in certain dwellings, introduced by Mr. SCHWEIKER (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Banking and Currency.

Mr. SCHWEIKER. Mr. President, in recent months, the attention of a concerned public and many of us in the Senate has been focused upon the multiple environmental problems and constraints which constitute serious health threats to substantial segments of our population.

As these belated discussions and published articles on the environmental problem have been magnified, we have found that in many instances immediate solutions are not readily available. Indeed, we have discovered that it may take years of research before we know the answer to some of our worst environmental problems. One of the best examples of these research needs is our need to devise solutions for the pollution problems created by the internal combustion engine.

Although I wholeheartedly support efforts to make environment one of our national priorities, we should not overlook the fact that the lower income segment of our population does not consider these priorities as meaningful as we might assume. The environmental problems of the poor certainly cannot be classified as priorities of combustion engines or pollution of our streams. These are not the primary environmental concerns of the poor. The environmental problems of the poor relate to survival. More specifically, they relate to survival of children suffering from diseases related to poor housing, rats, inadequate food, and a tragic disease resulting from lead paint poisoning.

Lead paint poisoning, a preventable disease, has remained until recent years a low priority in most of our urban health departments. The result has meant that countless numbers of children residing in "lead-belts" primarily in Puerto Rican and black communities have been afflicted with a disease which should never have occurred.

The disease, according to Jane S. Lin-Fu, in a recent article entitled "Childhood Lead Poisoning" published in Children and reprinted by the Department of Health, Education, and Welfare, occurs most frequently among children residing in housing units constructed prior to World War II, although it can occur in any dwellings where lead-based paint has been used. Children will commonly put items such as paper, pieces of plaster, woodwork, and other similar items in their mouths, and swallow them. This is particularly true in dilapidated housing where these substances are common and children suffer from a disease called pica, in which a child has a perverted appetite for nonfood items.

Mr. MAGNUSON. Mr. President, the Commerce Committee has jurisdiction of all these matters. We have several bills before the committee at this time. The Senator's bill is a good one.

Mr. SCHWEIKER. Mr. President, I withdraw my unanimous-consent request.

Mr. MAGNUSON. We will talk about the matter later.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be referred to the appropriate committee under the rules.

Mr. SCHWEIKER. Mr. President, repeated ingestion of these lead-painted substances can lead to mental retardation, cerebral palsy, optic atrophy, and impairment of intellectual ability. Tragically, it can, and does result in death for many children. The most common victims of this disease are children between the ages of 1 and 6. The article by Jane Lin-Fu indicates that within this age range, children between the ages of 1 and 3 comprise 80 to 90 percent of the cases. Additionally, and perhaps most tragically, over 50 percent of all deaths from lead poisoning occur in 2-year-olds.

These are horrible observations of what happens to a large segment of our deprived population. The confirmed cases of this disease in four of our major cities in 1969 gives us an indication of the dimensions of the problem. In that year, Philadelphia had 122 confirmed cases, New York, 727 cases, Chicago treated 467 potential victims, and 60 cases have been reported in the District of Columbia since April 1969. Yet, these figures indicate only part of the problem. There are thousands of children throughout this Nation who have elevated levels of lead circulating in their blood who have not been detected or treated.

These problems have been called to our attention previously by Senator KENNEDY, the distinguished Senator from Massachusetts. The bill which he introduced, S. 3216, established grants for local governments and States to seek out victims of this disease and establish mechanisms for detection, treatment, and elimination of lead-based paints on interior surfaces.

My bill complements S. 3216. It prohibits the use of paint containing lead pigments or additives on interior surfaces of any dwelling falling within the jurisdiction of title VIII of the act of April 11, 1968, relating to fair housing, Public Law 90–284. As of December 31, 1968, more than 80 percent of all housing units in the United States were subject to the Fair Housing Act, so that most housing units where leaded paint exists are reached by my bill.

In addition, this bill requires owners or landlords to remove any existing lead-based paint from interior surfaces or to cover these surfaces up, within 1 year from the effective date of this act.

Civil penalties of a maximum of $1,000 per dwelling unit for each violation of this act are included in the bill. The reporting procedures for lead-paint violations to the Secretary of Housing and Urban Development are the responsibility of persons in the local community. The tremendous growth of interest by medical personnel, community groups, local governmental officials, and tenants gives me every reason to believe that this procedure will work. I feel deeply as my principal cosponsor, Senator SCOTT, does, that the "silent deaths" of black and brown children should be ended now.

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

Mr. SCHWEIKER. I yield.

Mr. MAGNUSON. Mr. President, I did not hear the Senator ask unanimous consent to refer the bill. But I hope that the Senator will reconsider that or I would move to reconsider the unanimous-consent request.

The PRESIDING OFFICER (Mr. LONG). Did the Senator ask unanimous consent? It is my impression that he asked that the bill be appropriately referred.

Mr. GRIFFIN subsequently said: Mr. President, earlier today the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) introduced a bill entitled "To provide civil penalties for the use of lead-based paint in certain dwellings."

He asked unanimous consent that the bill be referred to the Committee on Banking and Currency. At that time, the Senator from Washington (Mr. MAGNUSON) interposed an objection. It is my understanding that now Senator MAGNUSON has withdrawn that objection, and, on behalf of the Senator from Pennsylvania, I renew his request that the bill be so referred.

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

ADDITIONAL COSPONSOR OF AN AMENDMENT

NO. 667

Mr. GRIFFIN. Mr. President, on behalf of the Senator from West Virginia (Mr. BYRD), I ask unanimous consent that, at the next printing, the name of the Senator from South Carolina (Mr. THURMOND) be added as a cosponsor of amendment No. 667 to H.R. 15628, to amend the Foreign Military Sales Act.

The PRESIDING OFFICER (Mr. BELLMON). Without objection it is so ordered.

NOTICE OF HEARINGS BEFORE THE SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

Mr. McCLELLAN. Mr. President, I would like to announce that the Special Subcommittee on Criminal Laws and Procedures has scheduled hearings on the general question of Federal aid to law enforcement for June 24 and 25. Included in these hearings will be the following bills:

S. 3, to authorize the Attorney General to provide a group life insurance program for State and local government law enforcement officers—Senator KENNEDY;

S. 964, to expand and improve Federal law enforcement facilities and programs—the "Crime Control and Prevention Act of 1969"—Senator TYDINGS;

S. 965, to establish regional divisions in the National Institute of Law Enforcement and Criminal Justice—Senator TYDINGS;

S. 966, to provide travel grants to State and local law enforcement personnel for study and observation of foreign law enforcement agencies—Senator TYDINGS;

S. 968, to provide travel grants to State and local law enforcement personnel for study and observation of domestic law enforcement agencies—Senator TYDINGS;

S. 969, to provide for programs to bring together various State and local law enforcement officials for meetings, seminars, and so forth—Senator TYDINGS;

S. 970, to provide supplements to salaries of State and local law enforcement personnel—Senator TYDINGS;

S. 971, to increase salaries of certain State and local law enforcement officers—Senator TYDINGS;

S. 972, to provide retirement, injury, and death benefits for personnel of State and local law enforcement agencies—Senator TYDINGS;

S. 1229, to make assistance available to Indian tribes on the same basis as to other local governments under the Omnibus Crime Control and Safe Street Act of 1968—Senators McGOVERN, MANSFIELD, and METCALF;

S. 2465, to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a more equitable allocation of grants among the States—Senators METCALF and MANSFIELD;

S. 2875, to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide financial assistance to States for the construction of correctional facilities—Senators HRUSKA, ERVIN, and MANSFIELD;

S. 3045, to amend the Omnibus Crime Control and Safe Streets Act of 1968 to modify or limit certain provisions relating to grants and to provide authorization of appropriations—Senator HRUSKA;

S. 3171, to amend the Omnibus Crime Control and Safe Streets Act of 1968 to authorize grants for the purpose of crime prevention, to provide 50, rather than the present 85 percent block grant allocation, sets a 3-year authorization of funds, and for other purposes—Senators HARTKE, BAYH, BIBLE, CANNON, EAGLETON, HARRIS, KENNEDY, McCARTHY, METCALF, TYDINGS, WILLIAMS of New Jersey, and YARBOROUGH;

S. 3541, to amend the Omnibus Crime Control and Safe Streets Act of 1968 with respect to planning grant percentages, salaries of personnel, changes and additions to provisions relating to training, education, and research grants, establishes program for grants for construction, acquisition, renovation, and so forth, of correctional institutions, and for other purposes—Senators HRUSKA, ALLOTT, BIBLE, BOGGS, COOK, COTTON, CURTIS, DOLE, DOMINICK, EASTLAND, ERVIN, FANNIN, FONG, GOLDWATER, GRIFFIN, GURNEY, HANSEN, HOLLINGS, McCLELLAN, MILLER, PACKWOOD, PASTORE, PELL, SCOTT, SMITH of Illinois, STEVENS, THURMOND, TOWER, YARBOROUGH, and YOUNG of North Dakota; and

S. 3616, to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide direct financial assistance to units of local government upon which the presence of the Federal Government has produced additional law enforcement burdens—Senators TYDINGS, BIBLE, COOK, and HOLLINGS.

In addition, I am hopeful that the House of Representatives by that time will have acted favorably on H.R. 17825, the omnibus law enforcement assistance measure ordered unanimously reported by the House Judiciary Committee on May 27, 1970, and its provisions will be formally before the subcommittee. In any event, I would hope that those who appear before the subcommittee or submit statements will direct their comments not only to the bills listed above but also to H.R. 17825.

The hearings will begin each day at 10 a.m. in room 2228, New Senate Office Building. Any person who wishes to testify or submit a statement for inclusion in the record should communicate as soon as possible with the Subcommittee on Criminal Laws and Procedures, room 2204, New Senate Office Building.

ADDITIONAL STATEMENTS OF SENATORS

VETERANS' ADMINISTRATION HOSPITALS IN MAINE

Mrs. SMITH of Maine. Mr. President, the hospitals of the Veterans' Administration have come under heavy attack in recent weeks. I cannot speak with respect to facilities throughout the Nation, but I have made personal inquiry about conditions at the Veterans' Administration center in my own home State of Maine—the center at Togus, Maine.

On May 5, 1970, I issued a press release on this matter. On June 1, 1970, Mrs. Corinne L. Clark, the Maine department president of the American Legion Auxiliary, wrote a letter to the editors of Maine's daily newspapers reporting on the excellent conditions she had personally observed for the past 10 years at the Veterans' Administration center in Togus, Maine.

I ask unanimous consent that her letter and my press release be printed in the RECORD.

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

AMERICAN LEGION AUXILIARY,
DEPARTMENT OF MAINE,
South Portland, Maine, June 1, 1970.

DEAR EDITOR: Although I am not a native born Mainer, I have a great love for, and pride in our state. The great history and traditions of the Pine Tree State have been marked by our pride in the veterans of Maine. Each passing day brings more returning servicemen from Viet Nam Conflict action to add to the growing veteran population of our state.

It was with some concern that I read in a recent issue of Life magazine and viewed on some television news programs, details and pictures of deplorable conditions which exist in some Veterans Administration hospitals in several states. Knowing human nature as I do, I realized that there would be many who would immediately decide that all VA hospitals were alike. Therefore, I felt that I should speak out for our own VA facility, better known to our Maine people as "Togus".

For the past ten years, I have served as a volunteer, on a fairly regular basis, at our VA Center. During that time, I have spent periods in both hospitals—the General and Neuro-Psychiatric. I know that the conditions outlined by Look magazine and the TV news stories, do not exist at the Togus VA Center. I have constantly marvelled at the personal concern of the doctors and staff personnel, the patience and efficiency of the nurses and aides and the excellent care extended to all. Long term patients, of which there are many, are not always the most agreeable and cooperative, but I have yet to witness a single case of neglect, an unclean bed or undue waiting periods for service. To be sure there are unmet needs, shortage of beds and help, but we have a VA facility in Maine that we can be proud of, and I am glad of the opportunity to speak out for it. I think that the people of Maine deserved to be reassured of the excellent service being rendered at Togus. We have had many favorable comments in the past, the most recent visitor being Mrs. Marcelle Davidson, National President of the American Legion Auxiliary. She was impressed by the cleanliness and pleasant atmosphere and general well-being of the patients at Togus.

I was greatly concerned, as I read and witnessed on TV, of the poor treatment our veterans are receiving, but I feel that this is an exception rather than the rule.

I have a son who is serving in the Air Force, who may need treatment at a VA Hospital at some future time. I, like every other mother, want the best for her son. If the federal budget is the cause of the cutbacks, and the poor treatment in some VA hospitals, then we should work to restore the cuts. We must offer the best for those who gave their best for us. The Maine American

Legion Auxiliary serving with the American Legion pledges to continue the fight for the well being of our sick and hospitalized veterans.

Yours truly,

Mrs. CORINNE L. CLARK,
Department President.

PRESS RELEASE OF SENATOR MARGARET CHASE SMITH, MAY 5, 1970

Senator Margaret Chase Smith said today that she has been assured by Administrator of Veterans Affairs Donald E. Johnson that the Togus Veterans Administration hospital will continue to give Maine veterans quality medical care.

Charges that the Togus hospital and other VA hospitals are underfunded and understaffed caused Senator Smith to ask for details on the hospital's operation from Center Director Harry V. Flussi and from Administrator Johnson.

Since 1965, the Senator said, costs at Togus have risen from $20.92 per day for each patient to $26.70 and from $1,570 per patient treated to $2,089. Funds available to Togus have increased proportionately, she said. The ratio of staff to patients has risen from .98 to 1.02 during the same period.

Togus and other VA hospitals do have the same problems as private hospitals, a shortage of trained medical personnel. This shortage was aggravated in VA by a 1968 law that required the agency to reduce its staff to the mid-1966 level. This deprived the VA's medical care program of several thousand workers in all categories of the health services professions at a time when the VA requirements for such personnel were growing steadily.

"Last September, to meet this problem," she said, "President Nixon raised VA's personnel ceiling by 1,500 even though employment authorizations for other Federal agencies were then being reduced by 51,000. He also approved the VA's fiscal 1971 appropriations request for an additional 2,100 medical care employees."

With relation to funding for VA hospitals, Senator Smith explained that on November 26, 1969, the then record sum of $1,541,701,000 for medical care was included in the FY 1970 VA appropriation measure approved by President Nixon. Since that time, the President has approved $106.5 million additional for VA medical program needs, including pay raises.

"Then, on February 2 of this year," Mrs. Smith continued, "the FY 1971 budget submitted to Congress by the President included $1,702,200,000, the highest appropriation request in history for VA medical care. On April 2, the President proposed an amendment to this FY 1971 budget to provide an additional $50 million for VA medical care programs.

The FY 1971 request will increase the VA medical care staff by another 5,723 employees, bringing the full time employment up to 137,854—the biggest work force in the department's history."

Administrator Johnson has advised the Senator that VA is conducting a full-scale review of the medical program needs, station-by-station as well as on a regional planning basis, and projecting the related construction needs well into the future years.

This includes requirements for new facilities as well as modernization and replacement facilities, to work out with all parties concerned a new long-range plan which structures a relationship between medical needs and the construction necessary to meet those needs.

"No veterans with service-connected disabilities or nonservice connected veterans in need of emergency care are denied admission at Togus," the Administrator advised Senator Smith. "The current needs of the Vietnam veterans for hospitalization are being met. Their future needs are being included as part of our on-going review."

POLISH LEGION OF AMERICAN VETERANS 50TH ANNIVERSARY

Mr. HART. Mr. President, 50 years ago the Polish Legion of American Veterans was founded in Hamtramck, Mich.

This past Saturday, Hamtramck Post I, the original PLAV post, celebrated its golden anniversary. On August 28, the national organization will hold its 50th anniversary convention in Detroit.

Mr. President, this organization has good reason to be proud of the contributions persons of Polish descent have made to America, both as members of the armed services and of PLAV.

Of the 100,000 men who volunteered for military service shortly after this Nation entered World War I, 30 percent were of Polish descent.

More than 10 percent of those serving during World War II were of Polish descent.

Both of these figures take on added significance when measured against the fact that Poles make up only 4 percent of the Nation's population.

PLAV's record of public service is equally impressive.

Here is just a partial list of the public service projects supported by the Hamtramck post alone:

Essay contests on patriotism in high schools;

Financial and volunteer support and extensive blood donations for the American Red Cross;

Purchase of more than $300,000 of U.S. bonds during World War II;

Some $40,000 spent on charitable and welfare projects during the depression;

Thousands of hours of volunteer service in Veterans' Administration hospitals at Allen Park, Battle Creek, Saginaw, and Iron Mountain;

Funds donated to furnish day rooms at the Battle Creek and Allen Park VA hospitals;

Annual Christmas parties at the Allen Park hospital;

More than $100,000 donated for charitable works for member and nonmember veterans, and widows and orphans of veterans.

Mr. President, in reviewing the history of service of PLAV posts, I was reminded of a statement I made in 1964 on the 173d anniversary of the Polish Constitution.

I would like to repeat just a few sentences from that speech, for I think they explain, at least in part, why people of Polish descent have responded in such numbers to crises in America. I said, in part:

Today, the 173rd anniversary of the Polish Constitution, we think again of the importance to human freedom of that great document.

In America we commemorate these landmarks in the struggle for human dignity because our roots as a people spring from those days men cried out against tyranny.

"Seventeen decades ago, the people of Poland proclaimed that: "All power in civil society should be derived from the will of the people . . ."

This idea, this faith, was shared by the American colonies.

That faith is still part of the spirit of America. That idea is still central to our way of life.

So in working to improve the quality of life in America, Poles are following in the great tradition of the land from where their descendants came.

All Americans have profited from the commitment of Americans of Polish descent to that tradition.

Once again we are reminded that the roots of America reach back to each of the many countries from which our descendants have come.

Once again we are reminded that America is the sum of all the parts of which she consists, the vast majority of which came to these shores from abroad.

So with those thoughts in mind, I take this opportunity to honor the Polish Legion of American Veterans, which now has posts in 10 States, and to say "thank you" for the many contributions its members have made to America in the 50 years of its existence.

ACCEPTANCE OF HANDICAPPED IN LABOR FORCE

Mr. DOLE. Mr. President, on June 1, 1970, the Post-Standard of Syracuse N.Y., published an article entitled "Crippled Wheel 100 Miles." The article reports on a 100-mile trek in wheelchairs by 10 crippled students from Southern Illinois University. The purpose of this "jaunt for jobs" was to arouse a climate of opinion leading to the acceptance of the handicapped in the labor force of our country, and to promote the understanding that disabled persons are capable of significant contributions in the working world.

Prejudice toward hiring the handicapped is often perpetuated by the connotation of the word "handicapped" which brings to mind a dependent or incompetent person. It is important for us all to recognize the potential and ability of the handicapped to compete successfully with employees who are without physical disabilities.

I ask unanimous consent that the article, which so well depicts the enthusiasm of these young people to become contributing, self-sufficient members of our society, be printed in the RECORD.

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

CRIPPLED WHEEL 100 MILES

ST. LOUIS.—Ten crippled students from Southern Illinois University at Carbondale completed Sunday a 100-mile "jaunt for jobs"—a wheelchair endurance run to promote employment for the handicapped.

"We were going to sell pencils, you know, the old stereotype," said John Taschler, 24, of Madison, Wis. He is president of the Winged Wheels Club at the university.

The club had 5,000 pencils but the university was shut down because of recent student anti-war protests. So the students decided on the "jaunt for jobs," to "create public awareness that handicapped persons can perform many tasks."

Trip leader was Michael Kaminski, 22, of Middleton, Wis. He is an infantry veteran paralyzed from the waist down by a mortar explosion in Vietnam.

As soon as the group left Carbondale last Tuesday, state police stopped them. A misunderstanding was cleared up when the govnor's office confirmed that the club had been given permission to use the highways. The students had a police escort the rest of the way.

"Some people thought we were protest marchers," said Taschler.

At one point, said Taschler, a car pulled up and a crippled man tried to say something. But he couldn't. His wife, who was driving, said "He wants to tell you that he thinks what you are doing is good. He says thanks."

At the halfway mark, Coulterville, Ill., "the whole town of about 800 turned out," said Taschler. The fire house was emptied of trucks and cots were set up for the students to stay overnight.

At Marissa, Ill., the students learned that a 10-year-old crippled boy named Johnny wanted to meet them. "They told him he would die before he was six," Taschler said. The students found Johnny and gave him a club T-shirt. His father let him follow alone on the sidewalk for a while.

"We got a bigger thrill than he did," said Taschler.

At least six other handicapped persons turned out to meet the students, who kept at least two wheelchairs on the road at a time. They had a van to carry those who took breaks.

The other students were: Bill Chadwick, 21, McHenry, Ill.; Alex Wilton, 26, Chesterfield, Mo.; Alfred Riecken, 20, Evansville, Ill.; Pat Gibson, 22, St. Louis; Mike Winters, 19, Ken Barbee, 20, and Herb Hoffman, 23 all of Chicago; and Christine Curtis, 20, of Miami, Fla.

"Getting tougher every day," said Taschler when the students increased their pace from three to four miles an hour. Some were doing 15-mile stretches at a time. "We decided we had to slow this thing down or we would get there too soon," Taschler said.

The destination Sunday afternoon was home plate at Busch Stadium. The baseball game between St. Louis and Los Angeles started after the baseball that the students had carried with them was thrown into play by Kaminski.

Taschler said he tried to get a job after earning his bachelor's degree in speech but "it was damned difficult." He is now a graduate student.

"The world is moving too fast," he said. "We were averaging four miles an hour and meeting a lot of fine people. And they learned a lot about handicapped people.

"We are just as human as anyone else. We just have a different mode of transportation. But we showed we have the stamina to do a job."

DAVID LAWRENCE ON GALLUP

Mr. HANSEN. Mr. President, with further reference to the Gallup poll which I placed in the RECORD yesterday, an article by David Lawrence, published in the Washington Star of June 8, has just come to my attention. Mr. Lawrence makes some perceptive and clear-headed comments on the significance of the Gallup findings.

Primarily, he says, it is because the people have recognized that in the President they have a leader who has not feared to take the initiative away from the enemy. He points out that the Vietnamization program has been popular and has generally been accepted as one of growing success.

A majority recognizes the attack on Cambodia for what it was: An attack on an illegal sanctuary used by North Vietnam as a base for operations against our troops.

Mr. Lawrence concludes that the meaning of the Cambodia operation was not an easy one to get across, but that the obvious results and their relation to the President's concern for the safety of our troops has finally sunk in.

He says the main point in which the American people are interested is "that the United States has found a way to bolster the strength of a Southeast Asian country to defend itself against aggression and to encourage other small nations to help each other maintain their security and independence."

Even though they do not like war, the American people, according to Mr. Lawrence, will support the President until the war has "reached an honorable conclusion."

That is President Nixon's underlying purpose, and Mr. Lawrence believes the President's TV reports to the American people have convinced them of this fact.

Mr. President, I ask unanimous consent that Mr. Lawrence's column be printed in the RECORD.

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

NIXON CONVINCES HIS CONSTITUENTS

(By David Lawrence)

Much to the surprise of many who thought President Nixon's popularity was slipping because of all the noise and shouting from the anti-war group, the latest Gallup Poll, just released, shows he has actually "registered steady gains in popularity over the last two months." In this survey, taken before the President's speech last Wednesday, 59 percent of the adults expressed approval of the way he is handling his job.

The news release by George Gallup of the American Institute of Public Opinion concedes that "this finding will come as a surprise to interpreters of the national mood who expected the President's popularity to drop sharply" after widespread student protests over the decision to send troops into Cambodia. But the previous survey, conducted soon after Mr. Nixon's decision to send troops into Cambodia, gave an approval rating of 57 percent, which was a one-point rise over the previous ratings in April. It now has climbed to 59 percent.

One of the factors which is cited as explaining what is called a "surprising survey result" is the opposition of the adult population to recent student strikes in protest to the Cambodian action. Another is the approval which has been given to the "Vietnamization" program of withdrawal of American troops while the South Vietnamese forces are trained to take over the fighting. Various Gallup Poll surveys have shown this particular plan to have been approved over the past four years.

Public opinion is not always readily measured by the amount of headlines one side or the other gets in controversial matters. It has been suspected lately that the student riots and campus disturbances against the war have stirred up more sympathy than opposition for the President, in his difficult position as commander in chief of the armed services.

The meaning of the Cambodian operation itself was not an easy one to get across when it was first announced. Subsequent news reports and television broadcasts, however, have shown the vast amount of munitions and supplies which have been captured in enemy "sanctuaries," thus diminishing the capability of the North Vietnamese to conduct attacks on American troops now in Vietnam. The President's argument that it was his duty to take every measure possible to insure the safety of the troops remaining in Vietnam after he had withdrawn 150,000 apparently has sunk in. Protection for the American soldiers was deemed far more important than arguments about "widening the war."

Mr. Nixon has made it clear that by a certain date—namely, June 30—all American soldiers will be removed from Cambodia, though South Vietnamese will be left there. This doesn't mean, however, that air strikes will be ended, because the American military commanders feel they must have the right to use air power at any time to attack the lines of communication leading to enemy bases or encampments.

American planes have been hammering away at enemy targets outside of South Vietnam ever since the war began, and probably will continue to do so until the South Vietnamese have sufficient air strength to do the job themselves.

One thing is clear—and the Gallup Poll now has confirmed this—the American people do not disapprove of measures taken to defend the American troops who remain in Vietnam as the process of withdrawal is carried out. The main point in which they are interested is that the United States has found a way to bolster the strength of Southeast Asian country to defend itself against aggression and to encourage other small nations to help each other maintain their security and independence.

On the whole, a policy which involves war is never popular. But once a war has been begun, the people are likely to support the President of the United States until it has reached an honorable conclusion. And that is President Nixon's underlying purpose. His television reports to the American people have done a convincing job.

AMERICAN PRINCIPLES AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, I firmly believe that the most fundamental of all human rights is the right to live. This is a right which our country has reaffirmed time and time again. Today I would like to look for a minute at just how much a part of the "American philosophy" the right of human life has become.

The Massachusetts Body of Liberties in 1641 affirmed that with our due process "no man's life shall be taken away, no man's honor or good name shall be stained, no man's person shall be arrested, restrained, banished, dismembered, nor any ways punished, no man shall be deprived of his wife or children."

Samuel Adams noted in 1772 that "among the natural rights of the colonists are these: First a right to life, secondly to liberty, thirdly to property; together with the right to defend them in the best manner they can."

The first Continental Congress resolved that all citizens had certain "indubitable rights and liberties; which cannot be legally taken from them, altered or abridged by any power whatever, without their own consent." The first of these was said to be the right to life.

The Virginia Declaration of Rights declared that "all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact, deprive or divest their posterity; namely the enjoyment of life and liberty."

Our Declaration of Independence listed life as the first of the unalienable rights.

More recently the allied nations fought

World War II "to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands."

In 1948 the 21 American Republics declared that "every human being has the right of life, liberty, and the security of his person" in the Declaration of the Essential Rights and Duties of Man.

In the United Nations Charter and the Universal Declaration of Human Rights we upheld the same belief.

This simple principle seems almost innate to those of us fortunate enough to have been born in this great Nation. After all what can be more self-evident than the right of all human beings to life? But there are times, Mr. President, when nations have to remind themselves and others of simple principles. They have been transgressed too often to be allowed to fall unguarded. It is when principles become unguarded that they are prone to collapse.

Mr. President, the United States is called upon today to continue a great tradition by confirming the right of all human beings to life. In an evermore violent world the United States is looked to for example and inspiration.

It is high time that we have the courage of our tradition which is the courage of our convictions by embodying in international law the right of every human being to life. It is high time, Mr. President, that the Senate ratify the Convention on Genocide.

"SEEDS OF CHANGE"—THE STORY OF THE "GREEN REVOLUTION"

Mr. MATHIAS. Mr. President, in these days of trouble and crisis, it is a great pleasure to bring good news of man's successful efforts to overcome an age-old problem.

During the last few years, the development and rapid spread of new strains of high-yield crops, particularly wheat and rice, have enabled the developing countries to postpone the threat of famine for another decade or two. If during this period mankind can also slow and eventually stabilize population growth, the threat of famine could be lifted for all time.

The story of the "green revolution"—the shorthand term used to describe these new crop strains and their impact—is ably told in a new book by Lester R. Brown, of the Overseas Development Council, entitled "Seeds of Change."

Mr. President, I ask unanimous consent to have printed in the RECORD a review of "Seeds of Change" by the distinguished former Secretary of Agriculture, Orville Freeman. I commend the book to Members of Congress and to every American interested in achieving a more tolerable global balance between food and people.

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

"SEEDS OF CHANGE," BY LESTER R. BROWN
(Reviewed by Orville L. Freeman)

Seeds of Change is a timely book about the Green Revolution, a "revolution" which may prove to be one of the most significant international economic phenomena in history. The author, Dr. Lester Brown, still in his mid-thirties, has been in the front ranks in the struggle to focus attention on the importance of agricultural development to the less-developed world for more than a dozen years. He writes boldly and with insight.

Seeds of Change spells out for the reader what the Green Revolution is not, as well as what it is. It makes it clear that the spectacular spread of the miracle seeds fathered by research undertaken by the Rockefeller and Ford Foundations is not guaranteed for the future. What it will take to continue it where the Green Revolution has started and to begin it in the tropical less-developed countries where it has not yet begun (mostly in Africa and Latin America) is carefully examined.

CONSEQUENCES OF REVOLUTION

Perhaps the most valuable and timely part of this book is the review of the economic, social and political consequences of the Green Revolution. In a dramatic section entitled "Solving Urban Problems in the Countryside", attention is focused not only on the promise but also on the threat the Green Revolution holds for the less-developed world if it is poorly managed.

Finally, the author issues a pointed challenge to his countrymen. If the United States can lead the world, he asks, to the elimination of famine (which we have done in the decade of the 60's), why can't we exercise the same leadership to abolish hunger and malnutrition in the decade of the 70's?

Hopefully, *Seeds of Change* will contribute to ending a rather sterile debate on whether there has or hasn't been a Green Revolution. There has been a lot of confusion and wasted energy focused on the descriptive term "Green Revolution", which is shorthand for the rapid spread of the new high-yielding cereal varieties and associated techniques in some of the poor countries. Some over-optimistic souls have concluded that now a Green Revolution is under way, the War on Hunger will be quickly won. Others find the description Green Revolution an easy target on which to exercise their talent for ridicule. In the process of such a dichotomy, important know-how is misdirected and non-experts get confused rather than informed.

Seeds of Change makes it clear that the Green Revolution is no universal phenomenon in the poor countries. There are literally dozens of poor countries which the Green Revolution has not yet reached. In the countries where it has begun, the area which will accommodate the news seeds is a minor share of the total, perhaps one-sixth of the total wheat acreage in West and South Asia and maybe seven percent of the rice land in South and Southeast Asia. Water and the ability to control it is a serious constraint on the extension of the Green Revolution. Nor has the technological breakthrough affected all production. So far, it is confined for the most part to food grains, and within that category largely to wheat and rice.

On the positive side, *Seeds of Change* documents that the Green Revolution is a magnificent achievement, bringing new hope and promise to the developing world.

The spread of the new wheat and rice seeds is phenomenal. Since 1965, some 40 million acres have been planted to the new miracle seeds. They have increased production on the acreage planted by approximately 20 million tons at a value estimated at $3 billion. The net income increase to the producer between the traditional and high-yielding varieties is dramatic. For wheat: Turkey, $32 per acre to $80 per acre; India, $17 to $76. For rice: Philippines, $81 per acre to $140 per acre.

The annual increase per acre yield where Mexican wheat is used in India and Pakistan has more than doubled the rate of advance in the United States following the introduction of hybrid seed corn a generation ago. Total wheat production in Pakistan and India has increased more than 50 percent over the past four years. Ceylon's rice production has increased one-third in three years. In Mexico, wheat production has increased each year during the 1960's, starting at 495 pounds per person in 1960 and reaching 680 pounds per person in 1968.

UNBELIEVABLE BREAKTHROUGHS

To a former Secretary of Agriculture who increased domestic wheat acreage allotments twice in 1966, the second time in the face of vociferous opposition, because world food grain reserves were perilously low and another monsoon failure on the subcontinent of Asia would have triggered world-wide famine, the magnitude of the production breakthrough is almost unbelievable. You can be sure I had no inkling in 1966 that miracle seeds doubling and quadrupling yields for wheat and rice would be planted on close to 40 million acres in a few years. As a matter of fact, if one of my advisers in or out of the U.S. Department of Agriculture had made such a prediction in 1966, we probably would have sent him for psychiatric observation. At no time in history has there been such a massive application of new technology in countries assumed to be dominated by traditionalism.

Seeds of Change describes in fascinating detail technological dimensions of the breakthrough, but the book is not limited to the technological. For this reviewer, Chapter 12—"New Seeds and the Cities"—is especially timely. It sets forth a promise and a threat. The promise is to help check the rural-urban cities human trash heaps, the very opposite of the centers of civilization envisioned by the great philosophers" by expanding rural threat is that should indiscriminate mechanization take place and the special needs of the small subsistence farmer be ignored, more millions will be added to the army of the unemployed, driving them into the already almost ungovernable big cities.

BIG CITY PROBLEMS

Seeds of Change doesn't say so explicitly, but it hints that the displacement of large numbers of rural people by mechanization is more responsible for the big city problems which resulted in the burning of cities in the United States in the 1960's than any other factor. For my part, I have no hesitation in confirming this analysis. I have visited cotton plantations in the American southland where in one year the labor supported by the plantations dropped from 100 families to 5 families. Some describe this phenomenon as efficiency and progress, proudly citing per capita output figures. Such an evaluation fails to consider the human and social cost of 95 black families with nowhere to go. They or their children made up the rioting mobs who cried "Burn baby, burn" in Detroit, Washington, Cincinnati, Cleveland and Los Angeles.

This is not to say that all mechanization is socially counterproductive. Quite the contrary. Dr. Brown points out that some forms of farm mechanization are employment-creating, while others are labor-displacing. He sees the mechanization of irrigation as one which is highly desirable in that it increases both production and employment.

NATIONAL MECHANIZATION POLICIES

The key point implicit throughout *Seeds of Change* is that wise national policies, by maximizing employment and making sure the new technology reaches the little farmers, can help to keep people away from the politically inflammatory urban areas, and at the same time stimulate the entire national economy. In this way, the new technology can build markets for consumer goods like motor bikes, transistor radios and household appliances, creating desperately needed jobs in industry.

Policies governing mechanization may have greater influence on the future eco-

nomic development of the less-developed countries than policies in any other area. The worrisome thing is that not a single poor country where the Green Revolution has made a major impact has a reasoned, effective national policy on mechanization.

Following his discussion of rural employment and the urban crisis, the author then argues, in what may be the principal intellectual contribution of the book, that the time has come to redefine the population problem. He makes his point as follows:

"When Thomas Malthus published his gloomy treatise in 1798, he defined the population problem primarily in terms of food supplies and the threat of famine. Ever since, the threat of overpopulation has been perceived largely in his terms . . . But as we enter the 1970's we are faced with a need to redefine the population problem. After nearly two centuries, it is time to move beyond our legacy from Malthus.

"Two independent phenomena, both bearing directly on the population issue, are forcing us to change our conception of it. The first is the agricultural breakthrough in the poor countries. Although this is by no means a solution to the population problem, it is diminishing the prospects of famine in the near future and buying time—perhaps an additional fifteen years in which to develop the technologies, the will, and the strategies to stabilize global population growth.

"While the threat of famine is diminishing, the number of young people entering labor market is rising rapidly . . . the food problem of the 60's is becoming the employment problem of the 70's. Feeding the increasing numbers of people will not be easy, but is likely to prove much more manageable than providing jobs."

WHO BENEFITS?

The question is frequently and properly raised: Who is benefiting so far from the Green Revolution? Is it reaching the small farmer who makes up the great mass of the population? *Seeds of Change* passes rather lightly over this question by declaring that although it is "conventional wisdom" to assume that big farms benefit most from technology, the real limiting factor is the availability of water, not the size of the farm. The success of small farms in Japan and Taiwan gives some credibility to this conclusion. Nonetheless, it appears to me that such a statement begs the real question, which is "Who gets the water?"

On the Gangetic Plain in India, for example, a farmer with a 15-acre holding can afford to sink his own tube well. A two-acre farmer can't. As a practical matter, eight two-acre farmers seldom, if ever, pool their resources. Nor does the Indian Government sink wells for them. So they can't get water and are observers, not participants, in the Green Revolution. As such, they are potential migrants to the big city and tinder for revolution in the countryside. The ache of discontent and discrimination fueled by the village TV center and their own transistor radios remind them daily that their government, and society in general, doesn't care about them. Strong and determined efforts will have to be made very soon or else the Green Revolution will pass by the small farmers in most of the poor countries.

FROM POTENTIAL TO REALITY

Seeds of Change is essentially a bullish book. It concludes that the Green Revolution is a major breakthrough that holds great promise of becoming a general, not a limited, phenomenon.

The question remains, however, how can the potential become reality. How can poor nations inhibited by centuries of repression, traditionalism, ignorance and poverty apply modern technology quickly and widely?

The principal shortcoming of *Seeds of Change* from where I stand, is that it leaves this question largely unanswered. In the concluding section addressing itself to the basic question "How" should have been a chapter dealing much more fully with what actions both we and the poor countries should be taking.

NATIONAL DEVELOPMENT STRATEGY

What is needed, of course, is a national strategy on a country-by-country basis. Such a national strategy would have several components. It should take advantage of the high-yielding cereals, disseminating them as rapidly and as widely as possible. This, in turn, requires continuous efforts by the plant breeders to develop high-yielding varieties adaptable to an ever widening range of growing conditions.

Governments must walk the thin line of formulating a food price policy which helps to maintain incentive prices to farmers, but at the same time lowers prices to consumers as rapidly as the introduction of new technologies and declining production costs allow. We should bear in mind that for the world's poor, a decline in food prices has the same effect as a rise in income.

Most of the less-developed countries have an agricultural development strategy of sorts. But I know of none that has shaped its plan specifically and in detail to balance and manage all the complexities that make up the Green Revolution. Time is of the essence. It is here that the United States can be of great help.

The problem solving technique "systems analysis" and the skills to apply it should be made available to every less-developed country so the national policies of each can be updated and conformed to the new technology. There is no magic in the systems approach, but it is a powerful analytical tool that could be helpful in meeting the complex problems that interact where the Green Revolution goes forward with its multitudinous social, economic, cultural, political and technological facets.

SYSTEMS ANALYSIS IN DEVELOPMENT

The systems approach makes it possible for a decision-maker to look at a complex problem in its entirety, determining exactly how the various parts interact so they can be brought into the proper relationship for an optimum solution. It is interdisciplinary, using teams of specialists—sometimes called engineers—who know society as well as technology. Such a team, headed by an experienced systems professional, might include several economists, an agronomist, a marketing specialist, a food technician, an ecologist and a rural sociologist. It could, in perhaps six weeks, submit to the decision makers of a less-developed country an updated agricultural development plan. Alternative courses of action to carry out the plan would be identified by the disciplined application of logic and common sense in a sophisticated, professional way.

It will probably be much more difficult to get the political leaders in the less-developed countries to support and make proper use of the recommendations made by a systems team than to find the team. If the key decision-maker isn't personally involved and committed to the systems approach, the recommendation may go on the shelf to gather dust, sharing the fate of countless studies. Reaching and convincing the leadership in the less-developed countries which are on the threshold of or which have a technological breakthrough could be the most important assistance possible. The "selling job", would have to be done at a high level and followed up with tact and good judgment. But out of such an effort could come a Green Revolution implementation plan with the political leadership of the less-developed countries firmly committed to it.

A CALL TO ACTION

Seeds of Change provides an excellent note on which to begin the '70s. It is a current analysis of the Green Revolution, its consequences and its potential for improving human well-being. But more than that, it is a call to action, particularly on the part of governments, our own as well as those in the poor countries. The purpose of its author and of the Overseas Development Council, which sponsored it under the leadership of James Grant, was to identify the potential which the new seeds bring for improving the well-being of that majority of mankind which is hungry and malnourished.

They have succeeded admirably.

FLORIDA NEWSPAPER POLL BACKS UP PRESIDENT NIXON ON CAMBODIA

Mr. GURNEY. Mr. President, a Florida newspaper, the Pompano Beach Sun-Sentinel, has been conducting a poll of its readers on the Cambodian action as well as on other matters surrounding the war in Southeast Asia.

The poll shows overwhelming support of the President in his policy concerning the war in Southeast Asia.

The Sun-Sentinel is widely read in the thickly populated Fort Lauderdale area as well as in Pompano Beach.

I ask unanimous consent that the editor's letter to me and the questions of the poll be printed in the RECORD.

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

JUNE 3, 1970.

Senator EDWARD J. GURNEY,
133 Old Senate Office Building,
Washington, D.C.

DEAR SENATOR GURNEY: At the suggestion of Jack Hord, we conducted a ballot poll of our readership on President Nixon's Cambodian policy; and I am sure as a supporter of Mr. Nixon, you will find much satisfaction in its results.

A copy of the ballot, published daily during the week of May 24–30, is enclosed.

The results were:

Total ballots: 2,200.

Question 1: 2,024 yes; 165 no.

Question 2: 1,908 no; 286 yes.

Question 3: 1,747 no; 463 yes.

Question 4: 1,168 yes; 850 no; 234 undecided.

I have written to the President advising him of overwhelming support accorded him in this area.

With all personal regards,

Sincerely yours,

WILLIAM A. MULLEN,
Editor.

VOICE YOUR VIEW ON INDOCHINA WAR

President Nixon and the Congress appear headed for some form of showdown on the conduct of the war in South Vietnam. The President has his prerogatives as commander in chief and the Senate insists upon its right to advise and consent on foreign affairs. The House of Representatives also wants a voice.

In summary,. there are several positions to considered by Americans within this war context. You can indicate your preference on this ballot, which will be recorded and forwarded to this area's Representatives in Washington:

1. Do you support President Nixon's dispatch of troops into Cambodia to destroy enemy sanctuaries and protect American troops, a mission that is to be completed by June 30? Yes _____. No _____.

2. Do you support the Cooper-Church

Resolution that would cut off federal funds for retaining U.S. troops in Cambodia after June 30? Yes _____. No _____.

3. Do you support a House version of the McGovern-Hatfield Amendment that would require removing all U.S. troops from South Vietnam by June 30, 1971? Yes_____. No _____.

4. Should the U.S. hold out for a military victory in South Vietnam? Yes_____. No _____.

Name _____

Address _____

City _____

Mail or bring your ballot to the nearest Sun-Sentinel office.

COMMENDATION OF MR. J. PHIL CAMPBELL, UNDER SECRETARY OF AGRICULTURE

Mr. DOLE. Mr. President, I wish to commend the Under Secretary of Agriculture, Mr. J. Phil Campbell, for the perceptive address he delivered at the 17th National Watershed Congress in Denver, June 8.

I know the Under Secretary well, and he always speaks out forcefully on national issues. Like all of us, he is deeply concerned about the environmental challenge facing the Nation. Like all of us, he is aware, as the President said, "of the declining quality of the American environment" and of the challenge this poses for the future of our people.

Yet he is optimistic about the future. He believes we can and will make our peace with nature. He points out that much of the technology required to meet our environmental needs is already in being. What is needed is a "reinforced national will to apply this technology to present and future problems.

Mr. Campbell is optimistic that just as the Nation has begun to correct its problems of the natural environment, so also we will survive the current social upheaval.

I believe this stimulating address merits the widest public attention. I ask unanimous consent that it be printed in the RECORD.

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

THE ENVIRONMENTAL CHALLENGE

I deeply appreciate the opportunity to appear at this 17th National Watershed Congress.

Like you, I delight in the beauty of a clean stream or lake, a healthy forest, a green field.

One of my most prized possessions is eight acres of bluegrass pasture in front of my home in the Piedmont Plateau of northern Georgia. This pasture of mine developed on top of a Bermuda grass. And one of life's minor triumphs occurred when a professional agronomist, seeing this beautiful bluegrass pasture—something which was not supposed to exist in that region—said to me, "You certainly have been putting a lot of lime here, haven't you?" I told him that to my knowledge not one pound of lime had been applied to that pasture for the past 45 years. On the other hand, neither had there been a plowpoint applied to it for the past 35 years—which is largely why it became a bluegrass pasture.

I tell you this in part to demonstrate that, like you, I have a deep and long standing interest in the development of a beautiful and useful environment—but also to illustrate a point with which I think you would all agree; namely, that despite the great progress that has been made, the science of soils and water and forests, in fact, environmental science as a whole, is still in its infancy.

There are three main points that I want to touch on today.

First, the environmental crisis.

Second, where we stand in terms of progress and achievement.

Third, what we can do to help develop the kind of an environment we all want for America.

There *is* an environmental crisis. President Nixon in creating the Environmental Council said, "Each day we receive new evidence of the declining quality of the American environment."

Others have said that a majority of Americans today, urban and rural alike, in all sections of the country, live near polluted waters and breathe polluted air.

Still others predict that by the year 2000 the United States will need a trillion gallons of water a day—nearly three times the estimated use in the mid-1960's. And they estimate that there are only about 560 billion gallons a day of available stream flow that eventually can be tapped for water needs.

Big chunks of farmland are being swallowed up for houses, factories, industries, airports, and highways. And the demands upon our forests and woodlands are multiplying.

The population of the United States—now roughly 205 million—may grow by another 100 million persons by or shortly after the end of this century.

All these developments put pressure on our resources.

Consider the fact that the average American in a life span of 70 years uses 26 million tons of water, 21,000 gallons of gasoline, 10,000 pounds of meat, 14 tons of milk and cream, 9,000 pounds of wheat, and great quantities of other products from the earth.

To those who concentrate on these statistics and trends, the future seems mightly grim. Yet, I am not pessimistic about the prospects for this nation. On the contrary, I am optimistic—and in a few moments I will tell you why.

But first let us consider how and why the crisis of our surroundings has occurred.

It developed, as the President point out, "not so much from choices made, as from choices neglected; not from malign intention, but from failure to take into account the full consequences of our actions." It is largely "the result of our inability to keep pace with progress. We have become victims of our own technological genius."

This, indeed, is true. Technological advance has brought the nation immense progress, but it has also created huge problems.

The gasoline engine, for example, which revolutionized transportation and replaced muscle power in agriculture and industry is also a prime polluter of the atmosphere.

Our modern industries and our great urban and suburban development projects which are so important to the American standard of living are also prime polluters of lakes and streams.

Our scientific agriculture, which provides the most abundant and varied food supply in the world—for only 16½ percent of our after taxes income—is under scrutiny for its use of pesticides and weed killers and its great cattle feeding operations which produce difficult problems of waste disposal.

Just as man's economic advances have outraced his social progress, so also technology has outrun, but only temporarily I believe, man's wisdom in its use.

I said I am optimistic about the future. I believe we can, and will, make our peace with nature.

I believe, as the President believes, that "together we have damaged the environment and together we can improve it."

I believe that just as the misuse of technology has caused the present problems, the right use of technology can solve those problems.

I believe, in fact, that much of the technology required to meet prospective environmental needs is already in being. What remains to be developed is a reinforced national will to apply this technology to present and future problems.

I am optimistic about the future because of what has already been accomplished in the past. And this is the second main point I want to touch on.

Somehow our farmers and conservationists with the help of the USDA and other government agencies, despite their ignorance, their fumbling and bungling, their inexpertness and inefficiency, their lack of ecological knowledge and general ineptitude—somehow they have managed to create through the stewardship of soil, water, and forest resources the most abundant food supply the world has ever seen—plus safer drinking water for a higher percentage of our people than ever before—plus facilities for recreation unmatched in history—plus vastly increased opportunities for fishing and hunting.

Most of us here can recall the dust storms of the 1930's We can remember how the sun was virtually eclipsed at mid-day—how clouds of dust enveloped our homes, offices, and other buildings—and how the stuff seeped in through every crack around our doors and windows. This occurred even on the eastern seaboard—1000 miles from the source, the western farm States.

Wind erosion damage in the Great Plains last year was the lowest recorded since reporting began 35 years ago. Less than a million acres were damaged in the 1969 "blow season." In the drought years of the 1950's the acreage damaged by wind in a single season reached almost 16 million acres. In the Dust Bowl years it was far higher than that. The stabilization of the Great Plains is largely due to the increased use of soil and water conservation practices by Great Plains landowners.

As I told you earlier, my environment through much of my life has been the Georgian Piedmont. I can remember when the view from ridge top to ridge top was old cotton stalks and broom sedge fields. Now the view is mostly pine forests and grass.

I can remember days when the entire horizon was hazy from woods' smoke. Today those forests are well protected from wildfire.

I can remember when many of the streams ran red with silt. Today the forests of my State—where there are now nearly 3 million acres of pine plantations—have greatly reduced soil erosion.

I remember when the existence of wildlife there was being seriously threatened. Today the deer herds, wild turkey flocks, and other species of wildlife have been restored.

Back around 1920, according to biologists, the U.S. game supply sank to a low ebb. Today, hunting grounds abound with fish and game. In some sections, certain species such as beaver and deer are reported in "excess supply."

It is reasonable to speculate that the continental United States has more fish and wildlife today than when the Red Men were the sole proprietors of this land. Certainly our abundance of wildlife resources is enjoyed by far more hunters than ever took to the forest before the white man's arrival. There were probably less than a million Indians—men, women, and children—here when Columbus landed. Considerably fewer than half of them hunted; the squaws and young children stayed home. Today, more than 15 million persons own hunting licenses and more than 24 million have fishing licenses.

This is the result of conservation farming,

allocation of acreage to wildlife habitat, stocking of fish and game, coupled with a greatly reduced take by individual hunters.

I can cite many other examples of progress.

Since the Dust Bowl days, more than 2 million individual farmers, ranchers, communities, and other land users have voluntarily signed cooperative agreements to put conservation plans into effect. The land involved totals three-quarters of a billion acres.

Sixty-eight Resource Conservation and Development Projects are now underway. Most of these projects include accelerated soil and water conservation, development of water resources, and social and economic development.

Increased research is being applied to the biological control of pests—offering considerable long-term promise in reducing the need for chemical controls.

Many DDT uses were cancelled last fall, and plans are to phase out other non-essential uses as rapidly as is feasible. We will be taking similar action toward other pesticides that persist in the environment or endanger human health.

It has been said that the story of water and man's quest for it is in large measure the story of civilization. We know from the Bible and from the history of ancient civilizations that water was then thought of largely in terms of watering holes for cattle and sheep. We think of camel caravans crossing the desert. And we think of tremendous floods wiping out whole regions.

Water holes, drought, and floods have played a large role in our own national history, too. That we no longer fear drought and flood as our ancestors did is a remarkable tribute to our conservation progress.

We have learned to treat our forests as water factories. Forest lands which comprise about one-third of the nation's land base, produce over 60 percent of the total water yield, and are vital to maintenance of water quality.

Protection, sound management, and improvement of forest land resources are a vital part of 10 of the 11 flood prevention projects authorized by the Flood Control Act of 1944. Forest land treatment is also an essential part of the small watershed program.

The effectiveness of these measures is illustrated in the Los Angeles River Flood Prevention Project. Some of our ranger stations recorded over 30 inches of rainfall during a nine-day storm period last January.

Despite widespread severe flooding throughout this southern California area, little damage occurred within the Los Angeles River Flood Prevention Project area, where upstream project measures had been installed. Heavy damage occurred in adjacent areas, particularly in the San Gabriel Watershed, where there are no such installations.

In the interest of protecting the quality of the environment and providing unique recreational opportunities, the Wild and Scenic Rivers Act was passed by the Congress in 1968. It implements the policy of the United States that certain rivers which possess outstanding scenic, recreational, fish and wildlife or other values, shall be preserved in free-flowing condition, and be protected for this and future generations.

Water problems in the last analysis are watershed problems. It is estimated that since the beginning of the Water Protection and Flood Prevention Program in upstream rural areas in 1954, projects carried out under the program have prevented $142 million in property damages. Loss prevented in the past fiscal year alone is estimated at approximately $40 million.

Secretary Hardin recently called attention to the fact that siltation kept out of streams by permanent cover in the past 30 years would displace a volume of water equivalent to a 10-year supply for all U.S. households.

This is, I think, a noteworthy record of progress.

I happen to be one person who believes that our farmers and forest and woodland operators and the conservation-minded people in government at all levels deserve to be commended for what they have done to improve the environment during the past few decades. In fact, I have no hesitation in saying that our farmers, ranchers, and foresters as a whole have done more than any other part of our society to improve the natural environment.

They were concerned about conservation and the wise use of natural resources long before the gentlemen of the press and other communications media learned about their importance.

This is not to say that more does not need to be done. More *must* be done—and I believe agriculture and forestry will continue to lead the way. The thing is that we must get more help from other parts of American society than has been the case up to now. Improving the environment is everybody's business.

Secretary Hardin has described the environmental role of the U.S. Department of Agriculture as follows: "To manage the environment for the widest range of beneficial uses, without degrading it, without risk to health or safety, without loss of future productivity, and without being tyrannized by pests."

This, he said, requires an integrated approach to assure:

"1. The necessities of life: Adequate food, fiber, shelter, and raw materials for industry.

2. The safey of man: Safe and adequate water, clean air, productive and safe soil held in place, sanitation, disease and pest control, the perpetuation of basic life processes.

3. A quality of life: Space to live, attractive surroundings, suitable habitat for plants and animals, outdoor recreation, and esthetic satisfaction."

This is the approach employed in evolving and carrying out a watershed project.

The development plan for any given watershed project takes into account the widest possible range of questions, the pros and cons, the goals, and the right and wrong ways of achieving those goals. Not just how water itself will be conserved, utilized and its quality improved, but decisions on the best use of land, establishment of better cover, enhancement of wildlife, recreation potentials, and economic gains in terms of rural nonfarm job opportunities in addition to the improvement of farm income.

In some instances this requires recognition of the fact that a given project may prove harmful to certain forms of wildlife and vegetation—but recognition also that these adverse effects will be mitigated by total improvement of the watershed area.

It may mean facing up squarely, for example, to the necessity of channeling part of a stream to end repeated flooding. Or to clear bottom land and shift crop production to that more level acreage from hillsides where run-off and erosion will be checked by beneficial new cover. It means understanding and accepting the fact that a loss in one place will be offset by improvements in many others, resulting in a total net gain for the watershed area.

This is the integrated approach—and it makes sense.

Now just a few specific observations on my third major point—how we can develop the kind of environment we all seek for America.

First, we must push ahead to complete the land treatment and structural work needed in the watersheds.

We must recognize that in contrast with the nation's needs and the legislative history of the Watershed Protection and Flood Prevention Act, funding has been too little and too late. The President's Task Force on Rural Development has recommended, "accelerated annual appropriations to develop more small watersheds each year and to provide adequate funds to complete the projects within the estimated work schedule."

For example, nearly 9,000 watersheds where feasible projects could be undertaken are listed in the conservation needs inventory. Only a small fraction of these has received attention. There is a vast amount of work remaining to be done—work that will demand many people, many talents, and many dollars.

Second, we must continue to work for a maximum of harmonious action among the several Federal agencies and departments concerned with water development programs.

Third, we must strive for still better Federal-State working relationships. This Administration is dedicated to the premise that State and local governments must have a greater role. Assumption of that role will require Federal leadership and assistance—supportive not dominating.

Fourth, we must take advantage of the rising public interest and concern in water problems by showing citizens how they can help.

This upsurge of public concern over the present and future state of the natural environment has thrust all of us here into the foreground.

If we take advantage of the opportunities now before us, there is indeed reason for optimism.

We continue to produce more and more on fewer and fewer acres in this country. Today less than 50 percent of the nation's total land area is in farms. Less than 20 percent is classified as cropland. Less than 3 percent of our total land area is in urban and related intensive uses. Thanks to a highly developed agriculture, this country has ample land.

I personally believe that within the Continental United States alone there are natural resources enough when combined with the coming technology to provide food and fiber for a billion people.

I would hasten to add that I do not suggest we try to bring this about, only that the capability is there from both standpoints—human and resource production. It would mean accepting severe environmental impacts. Space to move, to get away, to maintain direct contact with the natural scene seems to be an essential need.

If it develops that our demand for water does in fact triple by the year 2000, I believe technology will successfully meet that challenge.

Up to now we have lived in a water economy of abundance. Water was used once—for a single purpose—and then it went off to rivers and out into the seas.

In decades to come there will be much less single use of water and much more reuse. Municipal water will undergo waste treatment to make it reusable. More water containing industrial waste will have to be decontaminated. Brackish water will be demineralized. In coastal areas there will probably be large-scale desalting of sea water.

Farmers will learn more scientific methods of watering their crops. The prices of irrigation water will rise.

Improved soil and forest management will prevent erosion of land and will hold back rapid runoff of water. A great many water consuming weeds will be eliminated. There will be the perfecting of chemical film for reservoirs and lakes to have billions of gallons of water now lost by evaporation. Chemical films or other coatings on land will promote the runoff of needed water where its retention in the soil is not needed.

All these things are already being treated and some are being applied.

A few centuries ago less than a million Indians existed in an unmanaged environ-

ment on this vast continent. In contrast, if we and our children put existing and coming technology to proper use in a *managed* environment, our present population of 200 million, which appears on the verge of increasing by half or even doubling, can still enjoy an ever-increasing affluency.

But this will require the fullest application of the New Federalism proposed by the Nixon Administration. The New Federalism involves close and effective cooperation not only between the Federal, State, and local governments, but also between government at all levels and the individual citizen.

Government must be brought back as close to the people as possible. With leadership from the Federal Government, local governments must take on as much responsibility as they can handle. If we have learned anything in the first two centuries of our existence as a nation it is that everything cannot be successfully run from Washington, D.C.—not if we are to continue as a free society.

As I close, permit me to make just a brief comment on our free society. Civilization can be defined as the inhibitions imposed by society, government, religion, and custom on the individual's natural inclination to be a savage.

Today, we are witnessing an erosion of the social environment just as for some 200 years there was an erosion of the natural environment before we began to protect, conserve, and rebuild natural resources. A small minority are seeking instant success—without climbing the ladder of fruitful endeavor to achieve success. They are seeking instant authority—without responsibility and without achieving authority through the time-honored system of the ballot.

Much of the current protest is directed against our efforts to clean out major enemy sanctuaries on the Cambodia-Vietnam border. For years, not only in Vietnam but going way back to the Korean conflict, it has been widely recognized that our forces had to fight with one hand behind their back because of the immunity of enemy sanctuaries. By cleaning out the Communist bases in Cambodia we will lower American casualties in the coming months—assure continued progress in the Vietnamization program—hasten the day when our forces can safely return home—and make clear that we will not hestitate to take firm action to keep the enemy from escalating the war as we withdraw.

This very small number in the total population who are currently creating social upheaval are not the underprivileged, the hungry, the ghetto dwellers—no, they are the overprivileged who have been brought up without a true sense of responsibility to their country, their neighbors, or even the other members of their own families.

But just as this nation has survived a period of deterioration in the natural environment and has begun to correct it, so also will we survive the current social upheaval. As we are learning to manage the natural environment, so also the social environment will be managed in our free society by the civilizing process of inhibiting, restricting and suppressing those who are inclined to think and behave like savages.

What we must finally learn is that the various aspects of our natural and social environments are all connected. They tend to merge. And we can overlook this fact only at our peril as a civilized society.

LABOR-MANAGEMENT PROVISIONS OF THE POSTAL REFORM BILL

Mr. BELLMON. Mr. President, the Committee on Post Office and Civil Service recently completed action on the postal reform bill, one of the most progressive and forward-looking pieces of legislation ever conceived to meet one of the most pressing problems facing this Nation.

During the consideration of the bill by the committee, various statements were made concerning the labor-management provisions of the bill, including the conjecture that compulsory unionism would result from the establishment of a new postal system operated by a Government-owned corporation.

In order to provide a factual basis for evaluating these provisions, I have obtained statements from the Postmaster General, the Honorable Winton M. Blount, and the Deputy Postmaster General, E. T. Klassen, which serve to explain and clarify this matter.

Mr. President, I ask unanimous consent that these statements be printed in the RECORD.

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

THE POSTMASTER GENERAL,
Washington, D.C., May 26, 1970.

Hon. HENRY L. BELLMON,
U.S. Senate,
Washington, D.C.

DEAR HENRY: During recent weeks, concern has been expressed over the issue of "compulsory unionism" for postal workers. Neither the Administration nor the Post Office Department has ever proposed that there be a union shop in the Postal Service. We have simply proposed, as one phase of a broad plan for dealing with the unique problems faced by the Post Office Department, that postal labor-management relations be governed generally by the same laws that apply to the private sector—including the Taft-Hartley and Landrum-Griffin Acts—with the major exception that strikes by postal employees would continue to be banned.

It is obviously not feasible to use the postal reorganization bill as a vehicle for reforming the Taft-Hartley Act. Accordingly, one consequence of putting the Postal Service under Taft-Hartley would be that postal management—like management in the private sector—might be required to bargain over union shop arrangements in states other than those having the right-to-work laws. (The obligation to *bargain* would, of course, impose no obligation to *agree* to a union shop arrangement.)

In order to avert a misunderstanding of this aspect of the bill, I am enclosing a statement on this issue which I hope will assist you in responding to inquiries from your constituents.

We believe that the basic policy issues involved in the union shop question should only be considered in the context of an appraisal of the general labor law. The need for postal reorganization is too urgent, in my opinion, to await the outcome of any such appraisal.

Sincerely,

WINTON M. BLOUNT.

STATEMENT ON COMPULSORY UNIONISM

During the past several weeks, a question has been raised as to whether nationwide "compulsory unionism" would be sanctioned by H.R. 17070, the postal reorganization proposal that is being jointly sponsored by the Administration, the AFL–CIO, and the seven postal employee organizations holding national exclusive recognition.

By way of background, it should be noted that one of the premises underlying the postal reorganization bill is that the postal service, which is essentially a materials handling operation, resembles, in many respects, the services furnished by major public utilities, and the postal establishment can better carry out its responsibilities to the American people if it is given the authority to operate in a way similar to that in which well managed service enterprises operate in the private sector. This concept is reflected in each of the major portions of the proposed Postal Reorganization Act.

With respect to labor-management relations, we have recommended that the Postal Service and its employee organizations be subject generally not only to the Landrum-Griffin Act, but also to the National Labor Relations Act, as amended by the Taft-Hartley Act. With but few exceptions—the main one being that strikes by postal employees would continue to be against the law—labor-management relations in the Postal Service would be conducted under the same statutory ground rules that are applicable to large enterprises in the private sector.

By adopting the National Labor Relations Act, as amended, the proposed legislation would make it an unfair labor practice for the management of the Postal Service to refuse to engage in collective bargaining with recognized representatives of its rank and file employees over wages, hours, and, in general, other working conditions that are subject to collective bargaining in the private sector. To the extent that union security provisions are bargainable in private industry, therefore, they would be bargainable in the Postal Service. It is important to recognize, however, that a statutory duty to bargain over a union demand does not imply the existence of a statutory duty to agree to that demand.

Under the bill, labor-management relations in the new Postal Service would be governed for most purposes by the provisions now codified in Subchapter II of Chapter 7 of Title 29, United States Code, among which is included Section 14(b) of the National Labor Relations Act as added by the Taft-Hartley Act.

Subchapter II would explicitly make it an unfair labor practice for the reorganized Postal Service "to encourage or discourage membership in any labor organization," whether "by discrimination in regard to hire or tenure of employment or any term or condition of employment." 29 U.S.C. 158(a)(3). If this provision stood alone, union shop contracts would not be bargainable anywhere. In this connection, however, two other provisions of Subchapter II must also be considered. The first is a proviso stating that nothing in the Subchapter bars an employer from making an agreement with a labor organization to require union membership as a condition of employment after the thirtieth day from the beginning of such employment (29 U.S.C. 158(a)(3)), and the second is the provision contained in section 14(b) which reads as follows:

"Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory where such execution or application is prohibited by State or Territorial law." 29 U.S.C. 164(b).

The effect of the quoted language is to cancel out—in those states or territories that have right-to-work laws—the proviso saying that an employer is not barred from making union shop agreements. Any such agreement entered into by the Postal Service would thus be inapplicable—as a matter of Federal law—in a state or territory having a right-to-work statute.

It has been suggested that a Federal law prohibiting Federal agencies from executing or applying union shop agreements in states having right-to-work laws would not be effective on "enclaves" over which the Federal Government exercises exclusive legislation jurisdiction. In the opinion of the Post Office Department's General Counsel, this suggestion is simply not correct.

The Post Office Department does, to be sure, have some facilities located on property that the United States purchased "by the consent" of the legislature of the state in question. (See Article I, Section 8, Clause 17 of the United States Constitution, which gives Congress the power "To exercise exclusive Legislation . . . over all Places purchased by the Consent of the Legislature of the State in which Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings . . .") The better part of the space presently occupied by the Department does *not* fall in this category, but this is a purely fortuitous circumstance that has nothing to do with the scope of the proposed legislation. Congress clearly has the power to enact a statute forbidding an executive agency of the Federal Government from making or applying a union shop agreement in any state or territory where such agreements are prohibited by state or territorial law, whether or not the agency's activities are conducted on Federal enclaves. As stated by the House Post Office and Civil Service Committee in its report on H.R. 17070, the postal reform legislation that the Committee voted to report out on May 19 of this year:

"From a constitutional standpoint, there is no reason whatsoever why the Congress, by duly enacted statute, may not 'give the right of way' to State right-to-work laws insofar as employees of a Federal instrumentality are concerned, *whether such employees work in an enclave over which the United States has exclusive legislative jurisdiction* or whether they work in an area over which the State Government has jurisdiction. *This is pecisely what H.R. 17070 does.*" House Report No. 91–1104, 91st Congress, 2d Session, May 19, 1970 at page 16. (Emphasis supplied.)

It might be added that the Federal Assimilated Crimes Act, codified at 18 U.S.C. 13, is a good example of another Federal statute that draws state law into the body of Federal law applicable on Federal enclaves.

The right-to-work statute of one state—Georgia—specifically excludes the United States from its definition of an "employer." Here again, however, the postal reorganization bill would put the Postal Service in the position of a private employer, for these purposes, and Georgia is unquestionably a state "in which . . . execution or application (of union shop contracts) is prohibited by State . . . law," (29 U.S.C. 164(b)). It is clear that the bill would bar the reorganized Postal Service from enforcing a union shop agreement in Georgia.

This conclusion is supported by the openning paragraph of the section of the House Report dealing with the matter of union security, which declares flatly that the postal reform bill:

". . . would not permit the Postal Service to enter into or attempt to enforce a union shop agreement in *any* State having a law that prohibits the execution or application of agreements requiring membership in a labor organization as a condition of employment." House Report No. 91–1104, 91st Congress, 2d Session, at page 15. (Underscoring supplied.)

The need for a workable postal reorganization bill is acute. It would be unfortunate if Congressional consideration of this vital measure were beclouded by public misunderstanding of the labor-management provisions of the bill, and it is hoped that this statement may be of some assistance in that regard.

THE DEPUTY POSTMASTER GENERAL,
Washington, D.C., May 28, 1970.

HON. HENRY BELLMON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BELLMON: We should like to express our appreciation for your counsel and your support in our efforts to reorganize the postal service. The purpose of this letter is to help dispel some of the myths regarding conflicting opinions that have been generated during the past several weeks about the labor-management sections of the Administration's postal reform plan.

On May 26, 1970, during an executive session, the Senate Post Office and Civil Service Committee voted against a so-called right-to-work amendment to S. 3842, the Senate version of the Administration's postal reform bill.

President Nixon is completely dedicated to a total overhauling of the postal system, and has made recommendations for thorough reform. The reasons for a comprehensive reform of the postal service are many, and they were vividly brought to the public's attention during the recent postal walkout. It is clearly evident that only an enlightened business concept approach would alleviate the many facets of the postal crisis. To that end, President Nixon has proposed a reorganization of the postal system which would allow it to adopt proven and sound business practices.

In the field of labor-management relations, such an approach would entail the creation of a new bargaining framework for federal employees. In an April 16, 1970 message to the Congress, President Nixon stated, "I propose that the new U.S. Postal Service be empowered to engage in collective bargaining with recognized employee organizations over wages, hours, and working conditions generally, with negotiating impasses being finally resolved, if necessary, by binding arbitration."

Under this proposal, postal employees would no longer have to depend on the political climate in Congress for wages and other benefits, but would instead bargain for their rights through the same procedures as in the private sector.

Since the thrust of postal reform is toward a complete reorganization along efficient and economical business lines, labor-management relations *must* come under the jurisdiction of the nation's major labor laws, including Taft-Hartley and Landrum-Griffin. To do otherwise would be to take the heart out of the reform effort.

Opponents of the union shop have been arguing that through the applicability of the nation's labor laws, we are automatically introducing the element of compulsory unionism to the field of federal employment. This is not true.

Under our labor laws, it is an unfair labor practice for management to refuse to *bargain* over a union shop in those states not having state right-to-work laws. In other words, the union shop merely becomes a negotiable item in the collective bargaining process. The duty to bargain certainly does not carry with it a *requirement* for management to agree to such a labor proposal.

The Administration has never agreed nor advocated that there should be compulsory unionism for postal employees. All that has been proposed is that collective bargaining in the postal service be carried out in accordance with the labor laws of the land, including state right-to-work laws. In no way can this be construed as a commitment to or endorsement of compulsory unionism.

It should be emphasized that although the union shop may be a bargaining issue in states which have not adopted a right-to-work statute, there is absolutely no question that in the 19 states which do have a state right-to-work law, the union shop is prohibited as it is in private labor-management relations.

The single exception to labor-management practices in the private sector will be that *strikes by postal employees will continue to be illegal.*

If the postal system is to be run on a sound, businesslike basis, its employees must work under the same general rules that are applicable to the private sector of the economy. Thus the Administration has insisted that not only Taft-Hartley but also the Landrum-Griffin Act must govern postal labor-management relations. This law contains a number of requirements that are designed to prevent improper practices of various sorts on the part of labor unions. This is ample evidence of the Administration's desire to establish an equitable framework for labor-management relations in the postal service.

"Right-to-work" is not an issue in postal reform. This legislation should not be considered a vehicle for change by either those who support the union shop or those who oppose it. The battle over this particular collective bargaining issue should be fought through amendments to the nation's basic labor laws and not through the postal reform legislation. The postal reform proposal is a critically needed legislative proposal which must not be used as a battlefield to resolve the extraneous union shop issue.

Sincerely yours,

E. T. KLASSEN.

PRISONERS OF WAR

Mr. GURNEY. Mr. President, the plight of American prisoners of war who are now and who have been for years languishing in North Vietnamese prison camps under conditions that have been reliably described as subhuman and abominable has not, in my judgment, attracted sufficient attention from the American people. We have tended to ignore these brave men in our discussions concerning the war. The Dole amendment was defeated last week by a vote of 36 to 54, and its defeat caused hardly a ripple in the press.

I am heartened to report, however, that a substantial body of sentiment in our country is concerned with the American prisoners of war. My mail has reflected this concern, and the rally which my colleagues staged in Constitution Hall on May 1 served a useful purpose in bringing together many people who share a concern and who have not forgotten.

I am happy that the legislature of the State of Florida has voted Senate Memorial No. 880, dealing with our POW's. I ask unanimous consent that the memorial, dated June 2, 1970, be printed in the RECORD.

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

SENATE MEMORIAL NO. 880

A memorial to the Congress of the United States urging the improvement of present policies with relation to prisoners of war in North Viet Nam.

Whereas, the lot of a prisoner of war is at best an unhappy one, and all governments should be persuaded that the mistreatment of the prisoner of war lends no support to the political and military causes those governments espouse, and

Whereas, the conditions in North Vietnamese prison camps are known to be shocking and inhumane, and

Whereas, North Vietnamese prison camps refuse to release sick and wounded prisoners of war in need of intensive medical attention, refuse to permit neutral inspections in accordance with the Geneva Convention which they ratified, and refuse to permit a regular flow of mail, and

Whereas, the effects of the knowledge of the inhumane treatment coupled with the

absence of knowledge of who has survived to endure that treatment extracts an unconscionable toll of grief and anxiety from the families of those missing in action or known to be prisoners of war, and

Whereas, the Florida Legislature feels compelled to act in whatever capacity it may to be of assistance in this matter, now, therefore, Be It Resolved by the Legislature of the State of Florida:

That the United States Congress take all appropriate measures to insure that the United States Government redouble its efforts on behalf of those persons imprisoned in North Viet Nam, to curtail flagrant violations of human decency, to mollify the familiar pang of anxiety and anticipation, to bring about safe and more tolerable conditions, and to urge the release of the identity of prisoners, release of the sick and injured, initiation of neutral inspections and the permitting of a free flow of mail.

Be it further resolved that copies of this memorial be transmitted forthwith to the President of the United States, the Vice-President of the United States, the President of the Senate, the Speaker of the House in the United States Congress, and each member of the Florida delegation to the Congress of the United States.

Approved by the Governor June 2, 1970.

Filed in Office Secretary of State June 2, 1970.

I, Tom Adams, Secretary of State of the State of Florida, do hereby certify that the above and foregoing is a true and correct copy of Senate Memorial No. 880, Regular Session 1970, as approved by the Governor and filed in this office.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the 3rd day of June, A.D. 1970.

GENE ADAMS,
Secretary of State.

A PLEA FOR PEACE

Mr. MATHIAS. Mr. President, we are deeply aware that we live in a period of national anxiety and demand for change. These tensions are not a new experience for the Republic.

The American political system encourages peaceful change by inviting all to work, argue, and compete within its boundaries. In this tradition, James W. and Elizabeth W. Rouse, of Columbia, Md., wrote to the President of the United States. They first chose to publish their letter in the Washington Post on May 8, 1970, in order that men of like mind might join in their plea. Since that date, more than 300 concerned citizens have added their names to the original letter. The message, through the contributions of the Rouse family and others was published in the New York Times of May 31, 1970.

Our form of government requires and demands participation in a peaceful and proper way by all citizens in the formulation and execution of national policy. As they have done in the past, Mr. and Mrs. Rouse lead in this effort to demonstrate faith in that system.

The signers seek, as each of us in Congress seeks, unity for our Nation. Their letter passionately urges the President to "wage peace as it has never been waged before."

In essence, they ask their fellow citizens to reassess our goals as a nation and, in that process, to find again the true American spirit. The personal fervor of the authors has been translated rightfully into a plea for the political system to respond.

Their plea speaks well enough for itself. I ask unanimous consent that it be printed in the RECORD.

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

[From the New York Times, May 31, 1970]

WAGE PEACE, MR. PRESIDENT

(NOTE.—This letter to the President of the United States from James W. and Elizabeth W. Rouse was published by them as an advertisement in the Washington Post on May 8, 1970. It has been endorsed by the undersigned whose contributions have made possible this publication.)

MAY 7, 1970.

RICHARD M. NIXON,
The White House.

DEAR MR. PRESIDENT: We know it is your purpose to lead our country to peace. We write to help; to plead the case for a course of action that can bring peace—and hope and new unity to our country.

Mr. President, it is not the Viet Cong nor the people of Vietnam nor of China who threaten our country. It is war itself.

You can "win" this war. That is, you can annihilate the people we are fighting, their land, and their homes—and you can do it quickly, but at the price of using weapons so dreadful and spreading destruction so appalling that neither your conscience nor that of our nation will permit it. To so "win" the war would be to lose the soul of our nation and our people.

So we wage war within the narrow outer limits of our national conscience, destroying over time the nation we seek to save and eating away the fabric of our own society here at home.

Responsible, adult Americans are sickened by this war. They are horrified by the world-wide image of America as a brutual bully among little nations a long way from our shore. They are deeply worried about the widespread erosion of faith in our nation among the fine young people in our schools and colleges. They are worried about the ability of our country to survive the disillusionment and division that is making violence and counter violence commonplace in American life.

And what if we should "win," Mr. President—within the limits of destruction to which our national conscience so far has been stretched? What if the Viet Cong and the North Vietnamese give up and go back north? What then? Do we bring our boys home and wait—wait for the next Communist excursion in Southeast Asia? And do we then move in again to protect South Vietnam or Cambodia or Laos? And what about Europe—and the Middle East—and Africa? Do we really mean to police the world with American resources and American lives? Can we defend the freedom of the world by war without destroying the very freedom and dignity and morality we mean to uphold?

Mr. President, isn't war itself our proven enemy—isn't war itself obsolete—isn't war an unreliable system for the protection of freedom and democracy? Isn't it, in fact, the greatest danger that confronts our people and our way of life?

Mr. President, you can use the enormous investment in Indo-China to mark victory for mankind. Let this be where a great nation discovered the futility of war and had the courage and wisdom to proclaim that discovery to the world.

Be the giant of this century, Mr. President, by letting the world know that war itself is man's greatest enemy. Pledge this nation to building—beginning now—a system of order throughout the world to replace war as an instrument for settling differences among nations.

Go before the nation, before Congress, before the U.N.; instruct your embassies throughout the world that the U.S. means business in ending war.

Begin by announcing the earliest possible withdrawal of all American troops from Southeast Asia and schedule the withdrawal, in the shortest possible time, of all American troops from foreign lands everywhere. Lead the country to committing a big share of the billions of dollars thus saved for the improvement of environment and for the advancement of health and education throughout the world.

Enlist the resources of business, of youth, of the universities, of our vast technology in a massive effort to build a system to maintain peace without the threat of war. Commission a group of our most resourceful leaders to design the techniques for waging peace.

Wage peace, Mr. President, as it has never been waged before.

Some will point to the risk of waging peace—and there is risk. But let it be measured against the risk of waging war—the risk of financial, social, and moral exhaustion such as our country now faces. Let's start taking risks, Mr. President, on the side of peace—of morality—of justice. Let's align our people and our nation with love and hope instead of hate and fear.

And there are those who point in despair to the inevitability of war. Let them note that institutions change. Slavery, child labor, and second-class citizenship for women have largely disappeared in modern times. Mankind surges forward, in our day, in its claim for freedom and dignity, wiping out colonialism—building civil rights into the structure of law. The time has come to destroy the most oppressive, extravagant, archaic, and irrelevant institution of all—War!

In this campaign, Mr. President, you will bring inspired new purpose to our nation. You will give force and meaning to freedom and democracy throughout the world. You will light up the young with hope. You will restore the revolutionary flame that has made America great.

Mr. President, you are the one who can do it.

God will bless you in the task.

Sincerely,

Catherine J. Adams, Joel and Maxine Adler, Dr. Gordon Allen, William C. Allen, Nancy L. Allison, Betty Ammerman, Dr. and Mrs. Gordon F. Anderson, Sarah and Marc Anderson, Hortense Auerbach, Cynthia and Edward Auerbach, Shirley and Sue Auerbach, Treasurer, Browell Ault, Florence Bain, Elizabeth M. Baker, Libby Baker, Clinton Bamburger, Lucia Barley, R. Denning Barnes, Lillian W. Barron, Thomas Barry, David Barton, C. Ed Behre, Marvin Bendavid, Frederick and Nancy Betz, Mark and Barbara Bishoff, Fern M. Bishop, Norm and Ann Bitterman, Becky Blevins, Barbara Book, George H. Booth, Capt. W. Lawrence Brantley, Lynne D. Braund, Eleanor D. Breed, Mr. and Mrs. W. J. Brickman, Marian B. Bromwell, Mrs. Gilbert T. Brown, Judith K. Brown, Molly Brown, Charles S. Bucans, Bill Buchanan, Benjamin, Paul and Josephine Buchbinder, Peter J. Butler, Robert M. Cameron, Dr. Frank S. Caprio, Thomas Carcaterra, Mr. and Mrs. Churchill Carey, Jr., Churchill G. and Juliet M. Carey, Jack Carr, Susan Carroll, Ann Michele Carson, Creston and Carol Carthcart, Joseph P. Champley, Nancy Chance, Theodore Chandler, Phoebe C. Chang, Harden Church, Susan T. Clarke, Chester Cleaver, Peter J. Cline, Glenn F. Clulow, Milton Cohen, Victor Colburn, Donald F. Cole, Koo S. Condre, D. E. O. Connell, Jack

and LaVerne Conway, Kathleen Cosgrove, Marion Hanson Cowan, Roger and Susan Cramer, Mr. and Mrs. Robert S. Crites, Mr. and Mrs. Edwin A. Daniels, Jr., Ann M. David, Frank D. Davies, Jerome Davis, Robert A. Day, Mr. and Mrs. Benjamin F. DeFord, Jr., W. Scott Ditch, Richard R. Donnell, Dennis Doyle, Robert Ermerins, Sgt. Jack R. Etstrom, Julian Fahy, Harry A. and Patricia A. Fay, Elizabeth Feducia, John J. Fennema, Mr. and Mrs. James Ferrara, Mr. and Mrs. Kenneth Ferrington and family, William E. Finley, Fred Flexman, H. Adele Fleischer, Mary Ann Foohey, Ruth Skewes Ford, Mr. and Mrs. Robert Forrie, Zilpha C. Franklin, Harry and Patricia Frig, William B. Fussell, Helen M. Gagon, Seymour Gardner, Dilworth Scott Gilbert, Mr. and Mrs. Charles Gillihan, Tracy M. Gilmartin, James Ginsburg, Ann Goldberg, Hirsh and Barbara Goldberg, Eugene Gonda, Alvenceze Gonsouland, Robert and Marcia Gorrie, Marilyn F. Gowl, Barbara L. Grahl, Mr. and Mrs. Glenn Greishman, Werner and Andrea Gruhl, Mr. and Mrs. Robert L. Hale, Jr., Mr. and Mrs. E. Haladay, William Lee Hamlin, Mallory Harris, Mr. and Mrs. Neal Harris, George and Barbara Hayman, Mary W. Hemingway, Katherine E. and Richard Henderson, Susan Wright Henderson, Doris W. Henry, Kathryn S. Herndon, Dr. and Mrs. Robert Herndon, Elizabeth D. Hewins, Karen D. Hillman, Mrs. J. F. Hirshberg, Charles D. Hoffman, R. Hayes Hofler III, Sidney Hollander, George A. Hoy, Jr., Daniel Gudren Huden, Kata Hull, Anne Taylor Hunter, Inge Hyder, Paul and Anita Iribe, Carin Irons, Ernest Neil Jacobs, Dr. C. K. Jen, Cernoria D. Johnson, Emery F. Johnson, Henry Pinckney Johnson, Peter Boyd Kahn, Robert I. and Barbara A. Kaplan, Lawrence S. Kash, Meyer Katzman, Albert Keidel, Jr., Margaret Kerwin, Mr. and Mrs. William Kidder, Peter King, Jr., Mary Lou Kirchner, Helen H. Kittrell, Helen Klein, Mr. and Mrs. Richard Kleiner, F. V. Knox, Pamela Krause, Lisa Ladd, Neil B. and Marja N. Lang, Mary A. Lattimer, William E. Lawrence, Christine R. and James F. Lee, Ruth Leffler, Mr. and Mrs. Gerhard E. Lenski, Jr., John and Dede Lavering, Mr. and Mrs. Lewis Levy, Mr. and Mrs. John A. Lewis, Michael H. Lipson, Charles and Ruth Long, and Margaret E. Lowe.

Dr. & Mrs. David L. Leuche, Robert P. Lynch, Douglas & Beulah Mackenzie, George S. T. Maisel, III, Martha Churchill Markush, Martz Martinez, Jane Mason, Dr. Robert Mason, Ralph S. Mavrogordato, Mr. & Mrs. George B. McAdams, Dr. and Mrs. John A. McBride, Patricia McBryde, Peter L. McCandless, Mr. & Mrs. Robert D. McCleary, Mr. and Mrs. James McDonough, Carole McKewin, Claude & Mimi McKinney, Bonnie & Paul Medlock, Jeanne Melvin, Dorothy Metcalf, Mary Meyer, Jack Meyerhoff, Cathy Meyers, Mary B. Miller, Dorothy Mitcalf, James H. Montague, Laura R. Moy, Dr. & Mrs. Bernard Mozer, Judith Chayes Neiman, Meigs A. & Leone I. Newkirk, Mary-Cushing Niles, Mr. & Mrs. James F. Noonan, Alfred E. Notarianni, Edward & Robin Norton, Terri M. O'Berry, Robert J. O'Connor, Brendon O'Neill, Mark H. Orms, Trish Parker, Mr. & Mrs. Stephen Perloff, Janice & Elliott Perrett, Marylou Peterson, Robert & Joanne Philleo, Neal Potter, William H. & Anne J. Potts, John Prentiss, Linda Puglisi, T. W. Putsavage, Jr., Martha Lee Ramsey, M. Elaine Rand, Miriam H. Rasmussen, Anne C. Reade, Evelyn V. Reader, Eleanor H. Reddy, Nanci Reese, Kathleen A. Regan, Barbara V. Reid, Charles Reid, III, Ann L. Reider, Mr. & Mrs. John Kenner, John Rennie, G. Charles Rhoads, Bente & Charles Richard, Migsie & Gar Richlin, Paul Riley, Samuel Rose, M. C. Rosebrook, David Rosenstreich, James W. & Elizabeth W. Rouse, John & Eva Rouse, Willard G. Rouse, Thomas Rowan, John H. Rubel, William R. Russell, Jr., Phyllis C. Sabean, Morris Sackman, Mr. & Mrs. Daniel Safran, Albert J. St. Denis, Mr. & Mrs. Dennis L. Salvaryn, Katherine Sarfaty, William H. Savage, Reynold Sawatzky, Henry & Harriet Scarupa, Bill & Martie Schmidt, Barry Schuttler, Thomas Schweizer, Michelle Segal, Harry B. Seidenberg, David Edgar Sellers, III, William Randolph Sengel, Mr. & Mrs. Jeffrey M. Shaman, Barbara Shear, Cornelius B. & Hetty H. Shear, Harriet K. Shepardson, Mal & Miriam Sherman, Dr. Herschel Shosteck, Sargent Shriver, Robert & Joyce Shuman, Susan C. Sickler, Robert M. Silverwood, Mr. & Mrs. Bruce Simpson, Kurt Charles Simpson, Mary Jane Simpson, Rev. & Mrs. Clarence Sinclair, A. Innes Smallwood, Doris V. Smith, Mary Carol Smith, Mary Smoot, Virginia Smucker, Ann Sollenberger, Susanna Solomon, Roger W. & Martha K. Speidel, Dr. & Mrs. Samuel Stayton, Janet Upjohn Stearns, Mr. & Mrs. John W. Steele, George Stemberg, Philip & Kathleen Stevens, George D. Stillson, Phyllis & Howard Stokes, Mildred Stroues, Kirsten & Jorgen Stram-Tejsen, Anita & Owen Swartman, Kathleen Swift, David Tartter, Georgina Taylor, G. H. Tepaske, Nan & Walt Terry, Todd B. Tibbals, Courtland K. Townsend, David Tripp, Mr. & Mrs. Donald L. Tripp, Thomas Trowbridge, Jr., Adelaide H. Truesdell, Nancy M. Tucker, Edmund Uehling, Mr. & Mrs. Ullberg, Peter Unger, Johanna Van Burkom, Barbara J. Vance, Merry Suzanne Vance, Mary & Ronald Van Deren, David W. Voas, Gerold & Francoise Von Mayer, Mr. & Mrs. R. D. Wagner, Mr. & Mrs.. Harold M. Wakefield, Robert L. Wald, John J. & Lorraine Walsh, Carl & Ruth Warmington, Peter Wastie, Mrs. Raymond D. Watts, George M. & Marjorie S. Weber, Stuart Wechsler, Mr. & Mrs. Harold Weiss, Paul Weiss, Bill Wellons, Mr. & Mrs. Alan Weymouth, Peter & Jo Weymouth, Michael Wieland, Dr. & Mrs. Theodore H. Wilson, Jr., Mark & Catherine C. Winkler, Thomas W. Winstead, Evelyn L. Witeck, Allan S. Wyman, Jr., Glorida Wyman, Wes & Rose Yamaka, Peter K. Yeskel, Leland L. Yost and Harry D. Zink.

Mail contributions to: Wage Peace, P.O. Box 926, Columbia, Maryland 21043.

We invite contributions from those who support this plea. ALL proceeds will be used for reprinting this message here and in other cities. Copies of the ad with your signature will be sent to the President of the United States and each of the members of the U.S. Senate.

—You may use my name in future printing of this letter.

—Please do not use my name.

Signed ----------

Address ----------

RIGHTS FOR CONSERVATIVES

Mr. BELLMON. Mr. President, the distinguished junior Senator from Kansas (Mr. DOLE) has commented previously about the dismissal of William Woestendiek as news editor of WETA–TV, Washington, following the employment of his wife as press secretary to the wife of the Attorney General. His statements have been most beneficial in bringing this matter to the attention of the public.

An article entitled "In TV and Foundations: No Rights for Conservatives?" published recently by Human Events, serves to illuminate this incident further. I ask unanimous consent that it be printed in the RECORD.

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

[From Human Events, May 16, 1970]

IN TV AND FOUNDATIONS: NO RIGHTS FOR CONSERVATIVES?

(By Ralph de Toledano)

Fred Friendly, now of the Ford Foundation, made a career of touting free speech and the free conscience of broadcast journalism. Whenever there was the slightest hint that the rampant "liberals" of the networks was under the mildest attack, Mr. Friendly would speak out loud and clear. The broadcaster was to speak his mind, and woe unto those who raised their voices in criticism.

Mr. Friendly, obviously, has either changed his way of thinking or his principles of broadcast freedom have developed an elasticity that few suspected. For it now turns out that he was informed in advance of the imminent firing of one William Woestendiek, news editor of a program on Washington's educational station, WETA–TV.

Mr. Woestendiek's crime was not bad—nor was it for conservative thoughts, utterances or grimaces. He was fired because his wife took a job as press secretary to Mrs. John Mitchell, wife of the United States attorney general. He was therefore indirectly charged with guilt by marriage and summarily turned loose from WETA–TV.

The specific bill of attainder against Mr. Woestendiek was "conflict of interest." Presumably, he was given a choice between losing his job or having his wife quit hers—because she had committed the unforgivable sin of going to work for (gasp!) a woman who was a Republican, controversial, and somewhat overdone as a conservative.

I bring Mr. Friendly into this discussion because the Ford Foundation, out of the abundance of its kindness, put up the money for the show that Mr. Woestendiek was producing for WETA–TV. When the station called him "out of courtesy" to tell him that it was riding Mr. Woestendiek on a rail, Mr. Friendly did not say: "Put down the tar and feathers!"

Les Midgley, the executive producer of the Walter Cronkite show, was not fired because his wife, Betty Furness, worked for Lyndon Johnson. Eric Sevareid and David Brinkley were not fired when their wives went to work for Hubert Humphrey in 1968. WETA–TV did not fire Walterene Swanson even though she is married to a man who works for Sen. Alan Cranston (D.–Calif.).

According to the record, Mr. Fred Friendly listened to the news of what was in store for William Woestendiek, put the phone back on its cradle, and returned to whatever he was doing. There was no thunder from him about "fighting for the freedom of broadcast journalism"—his phrase—and no threat that WETA–TV would find itself bereft of Ford Foundation funds if it perpetrated this act of bigotry.

Mr. Friendly now says that he did not give his official sanction to the political lynching of Mr. Woestendiek. But by the same token, he does not say that he lifted a finger to prevent it.

I have seen too many Fred Friendlys at

work to be overly exercised by the Woestendiek case. But I think it is worth pointing out that had the victim been a broadcaster whose wife had gone to work for Abbie Hoffman, Students for a Democratic Society, or Kingman Brewster of Yale, Mr. Friendly and the Ford Foundation might have been thundering from every New York and Washington rooftop above civil rights, dissent and the black silence of fear. And probably thundering along with them would have been every jackanapes editorial writer who had nothing better to fulminate against that day.

It's all quiet along the Potomac—and the Hudson, too—because the dissenter is Martha Mitchell, whose politics, parboiled or not, are on the right. There is quiet because the processors of protest are dealing with Republicans and conservatives.

Sen. Robert J. Dole (R.-Kan.) made this point in a speech on the Senate floor that got only marginal coverage in the press. "It is not the politics that is bad," Sen. Dole said, "it is only the Republicans. . . . I resent the blatant dishonesty. And regardless of party, it should not pass unchallenged."

CONGRESSIONAL REPRESENTATION FOR THE DISTRICT OF COLUMBIA

Mr. MATHIAS. Mr. President, on February 25, 1969, I introduced Senate Joint Resolution 52, which would provide full congressional representation for the District of Columbia.

On June 1, 1970, I was privileged to testify before the Constitutional Amendments Subcommittee hearing on that resolution and related proposals.

An editorial in the Washington Post of June 6, 1970, cites those hearings and calls for congressional action to lift the burden of taxation without representation from the 800,000 residents of the District of Columbia.

Mr. President, as I stated before the subcommittee, over 6,000 proposals to amend the Constitution have been introduced in the history of the Congress. I respectfully submit that none has been more deserving of passage than that providing a proper voice in the Federal Government for the citizens of the Federal city.

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:

EQUAL IN DEATH AND TAXES

The people of Washington are equal to other citizens, it seems, in the payment of taxes and in dying for their country in Vietnam and elsewhere but not in voting. In that vital matter of representative government, they are permitted to vote only for members of the school board and less than a full quota of presidential electors. The denial of home rule and representation in Congress remains the most glaring inconsistency in our generally admirable political system.

Attention has been directed to the absence of any District representatives in Congress this week in hearings before the Senate Subcommittee on Constitutional Amendments. The subcommittee has before it a long-overdue resolution that would give this politically starved community two senators and representatives on the basis of population. Senator Kennedy, testifying for the resolution, pointed to the fact that 11 states with fewer people than the District now elect 39 Senators and Representatives. In the century and nearly three quarters since it came into being, the District has never been able to cast so much as one vote in the Congress which makes its laws as well as those for the nation.

Because of the long history of congressional failure to act on this vital reform, Senator Kennedy intends to offer the District-representation proposal as an amendment to the resolution providing for direct election of the President when it reaches the Senate floor. Ordinarily it is bad strategy to link two constitutional amendments in one resolution. Each is likely to take away some strength from the other. In this instance, however, arrangements would be made for separate votes by the states in the ratification process, and it is our understanding that the District-representation amendment (which could be attached to the direct-election amendment by a majority vote) will not be pressed if it is obvious that it could not win the two-thirds vote essential to send a constitutional amendment to the states for ratification.

Certainly nothing should be done to impede or jeopardize the important amendment for popular election of the President. But equal representation for the District is also a vital issue. We hope that the Senate will approve it on its own merits.

VETERANS HOSPITALS

Mr. FULBRIGHT. Mr. President, for some time I have been greatly concerned about the situation in our Nation's veterans hospitals. I have followed with interest the hearings on this subject which have been held in the House and the Senate, the statements made by Veterans' Administration officials, and the coverage in the press.

I have personally heard from many who are concerned about this matter, including veterans and veterans' groups who made serious complaints about the hospitals.

The majority of the correspondence I have received and a number of news reports I have seen or read indicate that there are serious problems in the hospitals, and that they simply are not able to provide the kind of medical care that veterans require and deserve. However, this is consistently denied by the Administrator of the Veterans' Administration.

I am aware that in April President Nixon announced that he approved adding $50 million to the 1971 budget for VA medical care. This, I think, was certainly a move in the right direction, but if the situation is truly as critical as many have stated, it would not begin to alleviate the problem.

Most recently, the Arkansas Democrat, in Little Rock, has published a series of articles on Veterans' Administration hospitals in Little Rock and North Little Rock, and the need for a new facility.

The Democrat articles by Martin Kirby point out that although the Little Rock hospital is "one of the best of the 125 VA general medical hospitals in terms of patient care," it nonetheless has "serious inadequacies." Among the inadequacies cited are: "lack of money, lack of space, lack of staff, lack of equipment."

These "lacks" are rather significant, I believe, and we must act to overcome them. In a newsletter to my constituents dated March 10, I wrote:

The sad paradox is that while we have spent billions of dollars in Vietnam, we have not provided sufficient funding for medical care for veterans. Certainly the Vietnam veteran is entitled to the best care that can be offered. Committees in both the House and Senate are now looking into disturbing evidence that this is not the case. I have received a number of complaints in recent months about inadequacies in veterans care.

At a time when more personnel are needed, and with medical and drug costs rising, the VA hospital system is unable to keep pace with the heavy demands being placed on it . . .

I can find no justification for providing anything other than first-rate care for those who have sacrificed so much for this country. This obviously is going to require more money and indeed must rank as one of our top priorities.

I believe this is an extremely important matter and I think we must take steps to insure that the best possible care and the finest facilities are available to our veterans.

Mr. President, I wish to review some developments of the past 6 months in an effort to clarify exactly what the situation is in regard to the hospitals.

On January 8, the Arkansas Democrat printed an article entitled "VA Care: Outdated, Deficient," written by Don Oberdorfer. After reading the article, which referred to "obsolete equipment and outdated procedures facing Vietnam veterans and others in VA hospitals," I wrote on January 12 to Mr. Donald E. Johnson, Administrator of the VA, asking for a detailed report on the subject.

Mr. Johnson replied to me on January 23, stating that he was confident that "inquiry at any time into operations of our hospitals will demonstrate that we are giving more than adequate care to veterans."

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the article by Mr. Oberdorfer and the correspondence between Mr. Johnson and myself.

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

[From the Arkansas Democrat, Jan. 8, 1970]

VA CARE: OUTDATED, DEFICIENT

(By Don Oberdorfer)

WASHINGTON.—On Oct. 31, Pfc. Ronnie Boggess was leading a squad down a trail near Song Be in the Cambodian Border region of South Vietnam when he walked into a murderous crossfire from enemy troops hidden in ambush positions on either side. His left leg was blown away, his left arm was shattered and a bullet tore away a large chunk of his left shoulder.

In an earlier war, this 20-year-old soldier would probably have died on the spot. Thanks to the helicopter and to intensive battlefield medicine and to the army's evacuation procedures, he could grin back at a visitor this week from amid the holiday decorations of Ward 34 of Walter Reed Army Hospital and speak of spending Christmas at a local hotel with his parents and his best girl from Decota, W. Va.

The nation is very conscious of the 40,000 Americans killed in action in Vietnam since the decade began, but the fate of the badly-wounded survivors has received less attention. Lately a Senate subcommittee headed by Sen. Alan Cranston, D-Calif., has been digging into the story, and what it has been finding is not calculated to fill anyone with cheer at this or any other season.

MORE THAN 260,000 WOUNDED

More than 260,000 men—a quarter of a million—have been wounded in Vietnam, about half of them badly enough to require

hospitalization. A substantial number of these—precisely how many is yet undisclosed have been very severely wounded.

According to Sen. Cranston, the fighting in Vietnam is producing total disability cases at a rate nearly double that of the Korean War and almost triple that of World War II. Out of every 100 veterans receiving compensation for wounds received in action in Vietnam, Cranston says, some 12.4 per cent are totally disabled—compared to 6.7 per cent during the Korean War and 4.4 per cent in World War II.

An Army study of 1,000 men separated from the service for disability because of Vietnam wounds disclosed that 28 per cent were amputees, 25 per cent suffer from paralysis of extremities, and 14 per cent suffer from what is termed "impairment of sense organs." These are much higher percentages than in previous wars. A witness from the Blinded Veterans Association told the Cranston subcommittee that the rate of blindness from the Vietnam War is triple that of World War II.

Like Pfc. Boggess, many of these men have received superb medical treatment on the field of battle and excellent medical treatment in an Army hospital such as Walter Reed when they have been evacuated to the U.S.A. In the military hospitals, they are important people—men from the front—but ultimately they are reassigned to the Veterans Administration hospitals for long-term treatment, and that is where the difficulty begins.

GEARED TO VETERANS

The VA Hospital system is geared to the older veterans of earlier wars, and it is greatly overburdened by a failure to grow with a growing challenge. Because of congressional action, the VA was forced in 1968 to reduce its personnel back to the 1966 level, when the Vietnam casualties were just beginning to arrive in large numbers. After the congressional cutback was lifted, the Nixon administration continued the ceiling as part of it battle against inflation.

The result, according to the Senate testimony, is that the VA is overworked, understaffed and to a considerable degree behind the times. The wounded veteran of Vietnam combat goes from a helicopter-jet plane era of medicine in the war zone to a Model-T era in the VA hospitals.

Dr. Louis J. West, a member of VA's national advisory committee on psychiatry, testified that many mental patients are being kept tranquilized in "chemical cocoons" in VA hospitals because of insufficient professional staff to deal with the real problems. Other witnesses described obsolete equipment and outdated procedures facing Vietname veterans and others in VA hospitals.

The tragic history of the Vietnam war has been that the nation was willing to wage it, but not to pay for it. In the case of wounded veterans, this is particularly tragic and indefensible.

Whatever one thinks of the merits or demerits of the war, surely the men who are sent to fight are entitled to the best medical care and the best chance for complete recovery and rehabilitation. The Cranston subcommittee has uncovered disturbing evidence that they are not getting it today.

JANUARY 12, 1970.

Mr. DONALD E. JOHNSON,
Administrator, Veterans' Administration, Washington, D.C.

DEAR MR. JOHNSON: I have just read an article entitled "VA Care: Outdated, Deficient" which appeared in the *Arkansas Democrat*, January 8.

The article by Mr. Don Oberdorfer contains a number of statements about Veterans' Administration facilities and the treatment of wounded Vietnam veterans. For example, Mr. Oberdorfer refers to "obsolete equipment and outdated procedures facing Vietnam veterans and others in VA hospitals".

I am enclosing a copy of the article and I would appreciate receiving from you a detailed report on this subject.

With best wishes, I am

Sincerely yours,

J. W. FULBRIGHT.

VETERANS' ADMINISTRATION, OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., January 28, 1970.

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: I am pleased to respond to your inquiry about the medical programs of the Veterans Administration Hospitals. I recognize there are areas in which improvement can be made; however, I am confident that inquiry at any time into operations of our hospitals will demonstrate that we are giving more than adequate care to veterans.

As has been true in the past, it continues to be difficult to provide what we consider totally adequate care for the severely disabled veterans. I can assure you, however, that our Medical Service is continuously aware of the needs of these individuals and the compassion necessary to make their lives a little easier. The psychiatric patient has benefitted from the upgrading in treatment resulting from proper application of new medicines and techniques of the last decade as shown by the continuing rise in the monthly turnover rate for psychiatric units.

In VA we have, as does every other agency of the Federal Government, a money problem. Nonetheless, although President Nixon's revised budget for F.Y. 1970, submitted to Congress last April, generally pared proposed government expenditures as a major effort to halt spiraling inflation, his request for the VA provided an increase of $262-million over VA appropriations for the prior fiscal year. This request, plus anticipated supplemental appropriations, will set VA appropriations for F.Y. 1970 at about $8.3-billion, the highest budget in 23 years. It is very likely that the amount requested for VA for the next fiscal year will exceed even this amount.

Naturally, as Administrator, I make every effort to judge the validity of demands made on the VA by its professional medical staff, and, most certainly, the needs of our newest veterans are uppermost in my mind. Our goal will continue to be to provide our veterans with the finest medical care available.

Sincerely,

DONALD E. JOHNSON,
Administrator.

Mr. FULBRIGHT. Mr. President, in the following weeks, I had correspondence with several persons who complained about conditions in veterans' hospitals, and on February 15 the Arkansas Gazette, Little Rock, published an article entitled "VA Hospitals Are Caught in Crunch of Inflation." The article, written by Ed Johnson, quoted a report from Representative OLIN D. TEAGUE, chairman of the House Veterans' Affairs Committee. I quote one paragraph from the article:

Last week, Teague released a report that showed the Little Rock and Fayetteville VA hospitals were $1.3 million short for operations this fiscal year at a time the year was half over. The situation has resulted from them being caught in an impossible squeeze between higher medical and drug costs and rising workloads without receiving proportionately higher funding and staffing allocations. In January, the two facilities got a total of $267,000 in supplementary funds to be applied toward the shortage. That helped but it was not enough to make up deficiencies in staff equipment and maintenance needs.

Then, on March 2, a report on the CBS Evening News described conditions at the Miami, Fla., VA Hospital, which appeared to be in direct contrast to the statement in Mr. Johnson's letter of January 23.

Once again, on March 3, I wrote to Mr. Johnson asking for a clarification, in view of the CBS report. In reply, I received a lengthy letter from Mr. Johnson saying that the telecast had left a false impression and that issue could be taken with "a number of specifics in the newscast."

In the meantime, on March 9, I issued my newsletter on "Better Care for Veterans," citing the reports I had received on inadequacies in veterans care and stating that this must rank as one of our top priorities.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the text of the exchange of correspondence with Mr. Johnson and of my newsletter of March 10.

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

MARCH 3, 1970.

Hon. DONALD E. JOHNSON,
Administrator of Veterans' Affairs, Veterans' Administration, Washington, D.C.

DEAR MR. JOHNSON: Thank you for your letter of January 23 in response to my inquiry about the medical programs of the Veterans Administration hospitals. In your letter you stated, "I am confident that inquiry at any time into the operation of our hospitals will demonstrate that we are giving more than adequate care to veterans."

The CBS Evening News, with Walter Cronkite, on March 2, 1970, contained a report describing conditions at the Miami, Florida, VA Hospital which appeared to be in direct contrast with the above statement taken from your letter.

Either CBS and the patients interview during the report have misrepresented the facts or patients at the Miami VA Hospital are, in fact, receiving much less than adequate care. I would appreciate a report on this matter at your earliest convenience.

Sincerely yours,

J. W. FULBRIGHT.

VETERANS' ADMINISTRATION, OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., Mar. 25, 1970.

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: I appreciate your recent inquiry affording me the opportunity to comment on the CBS–TV news presentation of March 2.

It is most unfortunate that the telecast left an impression in millions of American homes that Veterans Administration hospitals are giving totally inadequate care, and that the Chief victims of this alleged inadequacy are our younger veterans returning from Vietnam.

Aside from a fairly lengthy taped interview with me, which in the process of editing by CBS–TV was reduced to a fleeting 30 seconds actual exposure on the screen, just one sentence in the entire program is given to the overall VA position and the positive side of VA medicine.

I do want to emphasize the verity of that one sentence when the announcer said, "The head of the VA Donald Johnson, says there is

no danger that any war wounded veteran will receive slow or second-rate care."

We could take issue with a number of specifics in the newscast such as the statement, "One budget cut forced the removal of orange juice from the daily menu. Now, it's given only with doctor's prescription." Or the claim that, "A few weeks ago, this hospital dropped 65 employees. It didn't have the money to pay them." Or, "Now there is only one therapist in this hospital for 25 patients." There is not an iota of truth in any of these statements.

What concerns me most, however, is what was *not* reported on the programs. The network apparently chose not to clutter the minds of viewers with such facts as these—which were provided to CBS nearly two weeks in advance of the actual broadcast:

The VA appropriation for medical care for the current fiscal year, approved by the President on November 26, 1969, is the highest in history. This sum of $1,541,701,000 is the full amount recommended by the prior President and by Congress, and is available in full to the VA.

Then, on February 2, 1970, the President submitted to Congress for Fiscal Year 1971 a budget that included $1,702,200,000 for VA medical care. This is $160,499,000 in excess of the previous record budget request, and is $281,936,000 over the request for Fiscal Year 1969.

VA's 166 hospitals do have the capacity to care for Vietnam era veterans requiring hospitalization. During the past fiscal year, only some 44,000—or slightly over five-percent—of the total VA patients treated were Vietnam era veterans. That number is expected to reach about 60,000 this fiscal year. The numbers will increase, but so has VA's ability to treat more and more veterans.

VA is treating more sick and disabled veterans than ever before in history. This fiscal year VA will treat in its hospitals more than 780,000 veteran-patients, and this figure will be exceeded next year. The 780,000 figure is 172,000 above VA's patient capacity as recently as 1958.

VA hospital staffs have been augmented. Six months ago, at a time when he was reducing employment elsewhere in the government by about 50,000 jobs, the President authorized an increase of 1,500 employees for VA with the vast majority earmarked for the medical program. The new budget for the next fiscal year calls for another increase of 2,123 VA medical employees.

The ratio of VA hospital staffs to patients has increased steadily. The ratio in VA general hospitals was 146.2 employees per 100 patients last year; is 150.2 this year, and will go up to 156.8 in the new budget.

Contrary to charges that young Vietnam veterans are doomed to a life-long stay in VA mental hospitals for lack of proper treatment is the fact that VA has pioneered in cooperative research that has scientifically established the value of psychotropic drugs, and helped to nearly double the patient turnover in mental hospitals throughout the nation. The hospital discharge rate each month for VA mental patients has grown from only 5.3-percent in 1950 to 10.6-percent by F.Y. 1966; to 12.7-percent in F.Y. 1967; to 15.4-percent in F.Y. 1968, and to 18.4-percent last year.

Helping VA to maintain the quality of medical care are 79 of America's leading medical schools—which are closely affiliated with 93 VA nospitals—as well as leaders in American medicine who serve as program advisors and as consultants at VA hospitals.

What concerns me most about the CBS presentation is that the public and our veterans might reasonably conclude that VA is giving inferior care, and that the Vietnam veteran, in particular, will suffer for lack of proper VA medical attention.

Such a conclusion would be erroneous, and would reflect unfairly on the many thousands of dedicated physicians, nurses and other employees who are working hard to serve our hospitalized veterans.

Considering the constant shortage of personnel in the health fields, and the continual climb in the cost of delivering health services, it is probably true that there is no hospital in the United States, including those in the VA system, that could not effectively use more funds or more staff.

Like other medical programs, the VA program is always subject to improvement. It always has been, and always will be.

I assure you the VA will strive constantly for improvement, because the best possible medical care for the nation's war veterans has been the continuing and common desire of the American people as well as each President and each Congress.

As we all work together to achieve these improvements, I do feel it is very important for our veterans, and especially the young men disabled in Vietnam, to know that their medical needs will be met.

Sincerely,

DONALD E. JOHNSON,
Administrator.

BETTER CARE FOR VETERANS

One of the most vivid indications of how much our national priorities are out of order is the current situation in our veterans' hospitals. Reports indicate that Veterans' Administration facilities simply are not able to provide the kind of medical care that veterans require and deserve.

Of the young men we have sent off to Vietnam, more than 40,000 have been killed in combat and 7,000 have died of non-hostile causes—accidents and disease. Additionally, some 260,000 Americans have been wounded, many of them requiring long-term care.

The sad paradox is that while we have spent billions of dollars in Vietnam, we have not provided sufficient funding for medical care for veterans. Certainly the Vietnam veteran is entitled to the best care that can be offered. Committees in both the House and Senate are now looking into disturbing evidence that this is not the case. I have received a number of complaints in recent months about inadequacies in veterans care.

At a time when more personnel are needed, and with medical and drug costs rising, the VA hospital system is unable to keep pace with the heavy demands being placed on it.

A recent investigation of veterans' hospitals in Arkansas revealed funding deficiencies in fiscal 1970 of more than $1 million for the operation of the facilities at Fayetteville, Little Rock and North Little Rock. Under these circumstances vacant staff positions are not being filled and there is a threat of further staff reductions. With these conditions the hospitals are not able to keep up with the greatly increased workloads and the vast improvements in medical treatment and technology.

The President's proposed budget for fiscal 1971 provides a relatively minimal increase of $9 million for veterans hospitals and medical care—from $1.787 billion in 1970 to $1.796 billion. According to press reports, this represents only 60 per cent of the agency's request to the Budget Bureau. The slight increase which is proposed is likely to be absorbed by the effects of inflation and by increased pay to federal workers, including VA hospital employees.

I can find no justification for providing anything other than first-rate care for those who have sacrificed so much for this country. This obviously is going to require more money and indeed must rank as one of our top priorities.

It is no secret that I have strongly opposed our continuing involvement in Vietnam. However, I believe the nation has an obligation to those who have served there. This applies not just to medical and psychiatric care, but to other veterans' programs as well. In October of last year I was one of those who spoke in favor of increased educational benefits for Vietnam war veterans, despite a threatened Presidential veto. At the time, I said, "Certainly we need to be concerned about inflation, which has been greatly heightened by the war in Vietnam. However, limiting the educational opportunities available to those who carried the burden in the Vietnam war hardly seems the proper way to combat inflation."

Once again, the question is the same that I have posed many times in recent months: How can we even consider spending billions more for projects like the ABM or the SST or the MK-48 torpedo until we meet our vital human needs?

Vietnam veterans need and deserve improved medical and psychiatric facilities plus better educational opportunities. But, of course, as the noted psychiatrist Dr. Robert Jay Lifton has pointed out, "If we are really concerned about the psychological and spiritual health of America's young men—and indeed, about our own as well—we shall cease victimizing and brutalizing them in this war."

BILL FULBRIGHT.

Mr. FULBRIGHT. Mr. President, on March 21, the Arkansas Gazette published a long letter from Mr. Johnson in which he said:

What concerns me most is that the public and our veterans may conclude that VA is giving inferior care to sick and disabled veterans of all wars, and that the Vietnam veteran, in particular, will suffer for lack of proper VA medical attention. Such a conclusion would be erroneous. . . .

However, at this same time I was receiving additional letters from veterans and veterans groups complaining about care in VA hospitals. I submit a sampling of the letters I received with specific complaints from veterans and ask unanimous consent that they be printed in the RECORD. I have deleted the names. I realize that in many of these cases there may be another side to the story. However, these letters are examples of the kind of complaints I have received.

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

STATEMENT OF ——— ———, LITTLE ROCK, ARK.

I was in the United States Army from November 1964 to November 1967.

I served in Viet Nam in 1966 until the time that I was wounded. I was shot in the back twice by rifle fire. The second bullet went through my back and lodged at the base of my brain. The first bullet exploded and left me with five pieces of metal in my neck.

I spent over a year in the hospital. I was at Walter Reed for five months and then was sent down to a Texas hospital until I was discharged in 1967.

Since I got home to Little Rock two years ago, I have been going to the Veterans Administration hospital to try to get them to do something about the pain that I suffer from the metal that is stuck in my brain. They have always refused to give me any help. They just give me pain pills and tell me to come back in three months.

In November of 1968 they finally operated on me and cut a tumor out of my head. This helped me some for about two weeks after the operation but the pain from my wounds came back. I kept going back to the Veterans Administration Hospital for help but they said that I was only suffering from tension

headaches. They were very hateful to me every time I went to the hospital; but one time recently it was really bad.

I asked the man at the desk to let me see a doctor and then me and my wife went over and sat down. All of a sudden this fellow at the desk started hollering at me and said I couldn't see a doctor.

When I complained to your office about this and they checked it out, the Veterans Administration said that I had caused a disturbance. I don't see how I was causing a disturbance when me and my wife were sitting on a bench and this fellow at the desk was doing all the shouting.

Things are so bad out there that I can't face going back. In all the time I have been trying to get treatment I have not met one person who seemed concerned about helping the veterans.

I had just as soon die as to have to go back and have them talking hateful to me and then just give me some pills to get rid of me.

Lately I have been going to the University of Arkansas Medical Center and they are helping me. They think they have found that I have some metal pressing against my spine. If they can help me why can't the VA? Why do I have to pay to get treatment for a wound that the VA has rated 100% disability?

You may think I am just a sore head who is complaining but a lot of people are having the same problem . . .

STATEMENT OF ——— ———, LITTLE ROCK, ARK.

I am a veteran of World War II. I served from September 1942 to January 1946. I was with the 7th Air Force and served in the Asiatic-Pacific Theater for 36 months.

After I got home from the War I was doing real well working at a construction job and making about $175.00 a week.

In 1963 I had a massive coronary attack which completely disabled me. I have had two attacks since this time and on both occasions was taken to the Veterans Administration Hospital in an ambulance. The last time I had an attack I laid on the stretcher in the hall of this hospital for One Hour and Forty-Five minutes before I received any medical attention. During my stay in the hospital I found that the hospital staff was very negligent in their attention to me and, in addition, the doctors and staff members were quite abusive in their conversation with me.

Also, from time to time I have been back to the Veterans Administration Hospital to get treatment for other illnesses but they refused to treat me for anything other than my heart condition. They refused to even give me a prescription so that I can buy medicine.

Now, I am totally disabled and draw $95.00 a month veteran's pension and $46.00 a month social security. It takes half of these two small checks to pay for my medicine and my private medical care since the Veterans Administration Hospital isn't furnishing these to me.

It seems like the hardest thing for me to take is the way they talk to me and the abusive manner when I go to the Veterans Administration hospital to try to get treatment. That is pretty hard on a man who is already about to starve to death trying to live on $75.00 a month I have left after paying my medical bills.

During the war I spent 36 months with no furlough and did everything I could for my country. It looks to me like the Country would do something for me now that I am in such bad shape.

I do a lot of church work that involves visiting the veterans at Fort Roots and Roosevelt Road. These veterans I visit in the hospital all tell me that they are having about the same troubles that I am. . . .

BRADFORD, ARK.,
March 24, 1970.

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: I was in the U.S. Army during the time period of January 1962 to October 1964. During this time I served a tour of duty in Viet Nam. While I was in Viet Nam I was in a helicopter crash that horribly damaged my back.

After completion of my Viet Nam tour I was stationed in Hawaii. I further injured my back in a jungle training exercise in Hawaii and was referred to Tripler Hospital in Honolulu. They set me up for a series of tests and physical therapy. After returning to my company I was forbidden by my Company Cadre to go back to Tripler for treatment. I obtained treatment at Schoffield Barracks from an old chiropractor. I finally got able to resume my duties but I was always plagued with back pain.

After my release from active service I immediately went to the Veterans Administration Hospital to try to obtain treatment for my back. I have been denied this treatment to this date because for some strange reason the Army's information on my back injury isn't on record at the Veterans Administration.

I worked as a carpenter after my release from service. My weekly wage was approximately $180.00 per week. Since my back condition has gotten so bad I have been advised by private doctors to seek another kind of employment.

I am currently employed by O.I.C. school at the weekly rate of approximately $90.00.

Because of my back trouble, which I sustained while in service, I have had to seek employment taking a reduction in pay of approximately 50%. I have gone in debt because of this error. Everytime I go to the Veterans Administration Hospital for treatment of my back or other illnesses they talk to me like I was a dog and refuse to help me. I have several times waited all day to see a doctor at the Veterans Administration Hospital.

The Army gave me a lot of medals. I guess these hunks of tin are all that I will ever get for my service. I don't want a pension. I just want to be treated and relieved of this constant pain so I can make enough to support my wife and two kids.

I ask you Senator, is this my reward? Is this why I've served my country so faithfully?

Respectfully yours,

——— ———.

Mr. FULBRIGHT. Mr. President, also, I ask unanimous consent to have printed in the RECORD a few of the letters I received from representatives of veterans groups in Arkansas.

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

DISABLED AMERICAN VETERANS,
Conway, Ark., March 9, 1970.

Hon. W. FULBRIGHT,

DEAR SENATOR FULBRIGHT: We, the undersigned members of DAV Chapter #10, Conway, Arkansas, are most concerned about the apparent deterioration of the Veterans Administration medical and hospital programs and we will sincerely appreciate your indulgence and support in correcting this most serious situation.

We are positive a majority of our American citizens and Members of Congress wish to provide the finest medical care and rehabilitation program for the disabled veterans of our great Nation. We also believe it is the intent of the Veterans Administration Department of Medicine and Surgery to provide such medical care.

Reports from reliable sources show serious deficiencies exist in the present operation of the VA Hospitals in Arkansas and the primary cause of such deficiencies is the shortage of funds and medical personnel. Reliable reports show our VA Hospitals had funding deficiencies in the current fiscal year of over 1.3 million in operating 1,900 beds to serve 213,000 Arkansas veterans.

At this time, our hospitals are understaffed and maintenance is poor in many areas. Much of the equipment needs repair and new equipment is badly needed.

Unless immediate and appropriate action is taken to provide sufficient funds for our Veterans Administration Medical Program, it will soon deteriorate to the point of being a second-rate system.

We do not believe the fight against inflation should be at the expense of inadequate care for our disabled veterans. We will appreciate your support and appropriate action.

(Signed by 21 persons.)

DISABLED AMERICAN VETERANS,
Hot Springs, Ark., March 18, 1970.

Hon. J. WILLIAM FULBRIGHT,
Washington, D.C.

DEAR SIR: There was an article in the Hot Springs New Era of March 17 that I would like to congratulate you on.

The article is about the way our Veterans are being treated in our Veterans Administration Hospitals. We here in Hot Springs, as well as every one in Arkansas, are proud of you for speaking out on this subject. We have the same feeling that America must provide the best medical care possible for its Veterans.

I can assure you that this information will be passed on to all our members at our next meeting.

Again may I say thanks for speaking up in our behalf, we do appreciate your feelings very much.

With kind personal regards, I am

Yours very truly,

H. ROSS WISELY,
Commander.

DISABLED AMERICAN VETERANS,
Jonesboro, Ark., March 18, 1970.

Hon. J. W. FULBRIGHT,
Senate Office Building,
Washington, D.C.

DEAR SENATOR FULBRIGHT: So many times so many of us only write to or call upon our Senators and Congressmen when we wish to criticize them for something with which we disagree. I cannot pass this opportunity to express to you my sincere thanks for your recent statements concerning the shortage of funds with which our V.A. Hospitals are being forced to operate with.

We believe that any veteran who has contributed enough when he fights the shooting war and that he should not be expected to fight the inflation war also at the expense of his health.

Thank you again for your efforts in this matter, and we hope that with your help and the many others who are interested in this problem, that the veterans of this nation will be able to receive the medical treatment to which they are entitled.

Sincerely,

CECIL W. STEVENSON,
National Sr. Vice Commander, Disabled American Veterans.

THE AMERICAN LEGION,
Magnolia, Ark., March 24, 1970.

Hon. J. WILLIAM FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: As a Veterans Service Officer and a member of the American Legion, I am most concerned about VA benefits to service connected, disabled veterans and pensions to veterans who are financially in need. I am one who thinks this group of people are deserving of a consideration before peo-

ple, countries, and especially those countries that do not appreciate our financial help. Don't misunderstand me, I am in favor of helping sick and hungry people in the world, but not the other millions of dollars our government spends all over the world on wars, armaments and many unnecessary expenditures. I think our people here in the good old USA should come first.

Our VA appropriations have been cut until it is bringing hardships on veterans and their families. I have just been advised by the VA Hospital in Shreveport, Louisiana and the VA Hospital in Little Rock, Arkansas (where I assist a number of veterans to be admitted) that our VA nursing program has been reduced 9 months to 2 months. Example, veteran John T. Booth C-1 826 622 was transferred from the VA Hospital in Shreveport last week to The Magnolia Manor nursing home here in Magnolia, and when his nursing home care paid by the VA expires, and his wife will have to pay the bill out of his pension and Social Security, she will have left approximately $31.00 per month to live on. Have many more cases just about like this.

I also think that these Vietnam boys, coming home, without more than a high school education need more help to get back in school rather than digging ditches the rest of their lives. They have served our country faithfully and a number of them are coming home with combat disability. I think our pension rates should be increased. Lets get our nose out of so many involvements and expenditures all over the world, and take care of our own.

Sincerely,

SAM W. CAPPS.

Mr. FULBRIGHT. Mr. President, subsequently, articles in the New York Times, Life magazine, and the Knight newspapers, plus testimony before the Senate Subcommittee on Veterans' Affairs, presided over by the Senator from California (Mr. CRANSTON), came to my attention. All the articles and testimony pointed out what would appear to be serious inadequacies in the hospitals, although once again the VA Administrator, Mr. Johnson, disagreed.

The New York Times article of April 3 said:

The VA and military hospital systems are having a tough time coping with the crush. Frequently military hospitals are forced to shuttle men in or out quickly because of the demand for bed space. The VA hospitals, by their own admission, have deteriorated in the last five years.

I quote three paragraphs from the Life article of May 22.

. . . A man hit in Vietnam has twice as good a chance of surviving as he did in Korea and World War II—helicopter teams evacuate the wounded faster, often within minutes, support hospitals perform miraculous repairs on injuries that tend to be more devastating than ever before. But having been saved by the best field medicine in history and given initial treatment in first-rate military facilities, one out of every seven U.S. servicemen wounded in Vietnam is fated to pass into the bleak backwaters of our Veterans Administration hospitals.

With 166 separate institutions, the VA hospital system is the biggest in the world. The 800,000 patients it treats in a year, mainly men wounded in earlier wars, range from cardiac to psychiatric cases. It is disgracefully understaffed, with standards far below those of an average community hospital. Many wards remain closed for want of personnel and the rest are strained with overcrowding. Facilities for long-term treatment and rehabilitation, indispensable for the kind of paralytic injuries especially common in this war of land mines and boobytraps, are generally inferior. At Miami's VA hospital, while sophisticated new equipment sits idle for lack of trained personnel, patients may wait hours for needed blood transfusions. At the VA's showplace hospital in Washington, D.C., a single registered nurse may minister to as many as 80 patients at a time. At the Wadsworth VA Hospital in Los Angeles, doctors who work there describe ward conditions as "medieval" and "filthy."

Veterans Administration Director Donald E. Johnson insists publicly that veterans receive "care second to none." The evidence is overwhelmingly against him. A five-month inquiry by a Senate subcommittee chaired by California's Alan Cranston has documented gross inadequacies and laid the main blame directly on a series of cutbacks in the VA medical budget. This sum presently amounts to roughly $1.6 billion a year, somewhat less than the cost of one month's fighting in Vietnam. Additional appropriations of $122 million for next year await probable congressional approval and could help ease the immediate crisis. But within the next 12 months 16,000 more men from Vietnam are expected to come under the Veterans Administration's care.

I would also refer to a portion of an article written by Mr. John S. Knight, of the Knight newspapers, which was published on March 16, and reads as follows:

(By John S. Knight)

Are the people of America failing to honor our servicemen returning from Vietnam?

Do they appreciate the sacrifices of these young men who fought in a war brought on by the miscalculations of their Nation's leaders?

Is adequate tribute being paid to those who have suffered so much while we at home make no sacrifices whatsoever?

Plain-spoken Lt. Gen. Herman Nickerson Jr., retiring Marine commander in Vietnam, says he is "disappointed in the silent majority" for not honoring Americans who have lost life and limb in Vietnam.

"There are relatively few places," the general added, "where they waved flags and honored our servicemen as they did in the great days when the boys came home as heroes. They're not interested in the exploits of our young men. Maybe we're getting to be pretty blase about the whole thing."

The general's indignation is shared by others. As one Veterans Administration official remarked, "The guys who fought in World Wars I and II found gratitude and the traditional hero's welcome when they came home. These guys get no bands, no parades, not even a flicker of interest."

This shabby lack of attention is bad enough. But a more severe indictment can be drawn against the treatment of wounded veterans in government hospitals. . . .

Dr. Stewart Wolf of the University of Oklahoma says "There is real danger that the administration and Congress are about to see veterans hospitals revert to mediocre status of the 1920s and 1930s when tired physicians and political jobholders provided the care for the defenders of our country."

And Dr. Ernest H. J. Bors of the VA hospital in Long Beach, Calif., blames lack of people for the deterioration in the care of paraplegics. "We don't have the hands to do the job," says Bors. "It boils down to a matter of the budget."

EVIDENCE TO THE CONTRARY

Donald E. Johnson, newly appointed head of the VA, insists that veterans still receive top quality care—"Care second to none."

Yet most of the evidence is to the contrary.

The cruel nature of the Vietnam war—bobby traps, jungle ambushes, mines and hidden spikes—has taken a gruesome toll of combat troops. More than a quarter of a million Americans have been wounded in Vietnam, with about half of them requiring hospitalization. . . .

President Nixon and the Congress have an imperative responsibility to upgrade the quality of care being given to wounded veterans in government hospitals.

WORDS STRIKE DISCORDANT NOTE

Words such as "economy" and "budgetary considerations" strike a discordant note when applied to the obligation we owe to young men whose lives and bodies have been shattered in the service of their country.

The fortunate ones—those who returned sound of mind and body—can abide the neglects as they move almost invisibly through civilian life.

They don't talk much, but the distrust within them runs strong and the bitterness lies deep.

As 25-year-old Wally McKay, a much-decorated Marine veteran, has remarked: "I just keep my mouth shut about the war. If anybody asks me about Vietnam, I just refer them to the library."

Mike Sergieff, an ex-sailor, put it this way: "I didn't expect to be treated like a hero when I got home. But I didn't expect to be ignored.

The tragic neglect of our Vietnam veterans is a sad commentary on present-day society, steeped in greed and devoid of compassion.

We should hang our heads in shame.

Mr. President, I am not an expert on these matters. However, the evidence available to me would seem to indicate that, despite the denials by the Administrator of the Veterans' Administration, our veterans hospitals are seriously in need of improvement and upgrading. I am happy to note that Senator CRANSTON has taken the lead in trying to secure additional funding for this purpose.

One of the interesting and informative articles on this subject was written by Dr. Howard A. Rusk and published in the New York Times of June 7. Dr. Rusk summarized the current situation in regard to appropriations:

To attempt to rectify the deteriorating and in some places tragic conditions in Veterans Administration hospitals, the House has just passed an appropriation for the VA for the fiscal year 1971 of about $122 million more than has been, or will be, appropriated for the fiscal year 1970.

This 7.5 per cent appropriation increase barely covers enormously inflated costs of providing medical care.

It certainly provides no substantial margin for making some very necessary improvements in the VA system. To do that would probably require at least another $130 million.

Dr. Rusk concluded:

The debate in Congress will tell the tale in the next few weeks. There are certainly more compassionate economies that can be made rather than short-changing wounded veterans in the vital services necessary not only to save lives but to preserve their dignity and self-respect.

I can only restate what I have said previously. Probably nothing demonstrates more vividly how much our national priorities are out of order than this situation in our veterans' hospitals. Care for those who have been wounded while serving this Nation must rank as a top priority.

Finally, Mr. President, I ask unanimous consent that two of the articles

published in the Arkansas Democrat series be printed in the RECORD.

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

VA HOSPITALS

(By Martin Kirby)

Administrators of the University of Arkansas Medical Center and the Little Rock and North Little Rock Veterans Administration hospitals are quietly pursuing a campaign to obtain a new VA hospital located near the Medical Center.

The leader of the campaign and its most enthusiastic proponent is Eugene J. Towbin, M.D., Ph.D., chief of staff of the Little Rock VA Hospital, professor of medicine, associate professor of physiology and associate dean of the UA medical school.

Towbin has been trying to enlist the support of community leaders for the idea for the past two years, and he has been generally successful. He said he was particularly anxious to have the support of veterans' groups, and has been traveling around the state to discuss the idea with them.

The state American Legion commander, Lon Reed of Heber Springs issued this statement in regard to a new VA hospital:

"The American Legion Department of Arkansas is deeply concerned over the outmoded and crowded facilities of the VA hospitals in North Little Rock and Little Rock. Realizing the need for facilities and equipment to care for veterans, the American Legion feels the facilities should be in the vicinity of the UA Medical Center."

The project is still in the early, tentative stages. The primary obstacle to be overcome is something that even unlimited local support could hardly affect—the lack of federal funds for new construction.

Another problem is the question of what would be done with the present Little Rock VA hospital building and the 415-acre Ft. Roots site, where about 1,100 persons are employed.

Towbin has suggested that Ft. Roots is an ideal site for almost any kind of large public institution. He said he thought it would be particularly well-suited for a college.

Giving substance to Towbin's vision is the fact that last summer at least four influential Arkansans wrote to Donald E. Johnson, the federal administrator of veterans affairs, expressing support for the idea of a new VA hospital located near the Medical Center.

They were Governor Rockefeller; Storm Whaley, vice president of the UAR for health sciences; Edward Rensch Jr., director of the state Health Planning program, and A. Allen Weintraub, president of the governing board of St. Vincent Infirmary.

Portions of Rockefeller's letter, dated July 11, said:

"I have been concerned that the veterans of Arkansas have not had some of the advantages of the Veterans Administration's highly sophisticated medical programs . . .

"To a large extent these deficiencies derive from the fact that neither the Little Rock nor the North Little Rock hospital buildings can successfully meet the demands placed upon them by a dynamic professional staff and a rapidly advancing technology . . .

"Despite the considerable inconvenience of the separation from the medical school, a vigorous partnership has been developed between your VA hospitals and our State University School of Medicine. . . .

"In order to fully develop the patient care and educational potential that can be realized in our community, I would recommend that the Veterans Administration replace the two existing facilities with a new veterans complex adjacent to the Medical School."

Rensch said the Health Planning Program office supported the project. "We have long been aware of the need for better coordination and consolidation among health services in the Little Rock area," Rensch said. "We would appreciate any favorable consideration you could give to the request."

Carbon copies of Whaley's letter to Johnson, dated July 11, were sent to Towbin and to the entire Arkansas Congressional delegation.

Whaley's letter said in part:

"As we look to the future I can see serious impediments to the further local development of the mutually beneficial Medical Center VA relationship . . .

"I strongly recommend that the Veterans Administration plan to build a new VA complex adjacent to the University of Arkansas Medical Center. This complex . . . would place the VA in the best position to further capitalize on its relationship to our Medical School and to best take advantage of the growing partnership among the community hospitals, the State Hospital, the state Department of Public Health, and the University of Arkansas—all of which lie in close proximity to each other . . ."

Weintraub's original letter was not available, but his office supplied a draft of the letter. It said, in part:

"Having Veterans Administration Hospitals within close range of all major hospitals would bring out better cooperation in sharing and integration of specialized services.

"Since our local Veterans Administration hospital is a vital part of the University of Arkansas Medical School and since the Medical School is now taking a leading role in coordinating their services with the local major non-profit hospitals, it appears to me that we now have a golden opportunity to develop an outstanding program."

A spokesman for the Little Rock VA hospital said VA hospitals already located adjacent to medical schools in Birmingham, Ala., Nashville, Tenn., Philadelphia, Pa., Gainsville, Fla., Baton Rouge, La., and New Orleans, La.

Whaley was asked if he thought a new VA hospital adjacent to the Medical Center were possible.

"Certainly it's possible," he said. "But we understand we're talking about a long-range plan."

Whaley said all long-range planning for the Medical Center "emphasizes the desirability of having the two in close proximity."

Whaley said there had been "offers of assistance from all the (Arkansas) Congressional delegation, if and when it becomes appropriate."

"And they are asking that they be kept current on what we're doing," he said.

"One of the problems is to find available land close enough to the Medical Center," Whaley said. "At the moment we do not have available land."

He said the 26-acre Medical Center site is too small for the addition of a VA hospital, which would require at least 20 to 22 additional acres. If the VA hospital could not be constructed adjacent to the Medical Center, Whaley said the total medical program "would be greatly improved if it could be built somewhere near the Medical Center."

Asked how long he thought it would be before a new VA hospital could be constructed, Whaley said: "It's my guess that as long as we have the budget tied up in the Vietnam War, it's very likely that such programs as this will not get under way."

However, he said, he hoped a new VA hospital could be completed before the end of the 1970s.

Last Nov. 17, Dr. Winston K. Shorey, dean of the University of Arkansas School of Medicine, delivered the main address at the dedication of Hipp Auditorium at the hospital of Roosevelt Road.

In the course of his talk, Shorey said: "We can look forward hopefully to the time when a new VA hospital, incorporating the missions of both this one and the one across the river, will be located in geographical proxmiity to the University of Arkansas Medical Center."

Shorey discussed the possibility of a new VA hospital in an interview.

"I think it's the only way to go," Shorey said. "First of all, it's necessary for better operations. When two institutions are working as closely together as the Med Center and the VA hospital do work, the inconvenience of distance is a factor that needs to be overcome."

Kenneth J. O'Brien, administrator of the Little Rock and North Little Rock VA hospitals, said he had recommended to the national office of the Veterans Administration that a new hospital be constructed near the Medical Center.

O'Brien said he had also recommended several alternatives in the event the VA decided a new hospital was not feasible.

One alternative for Ft. Roots would be to renovate and air-condition six to eight of the newer buildings and to construct a high-rise building in the center of the area of renovated building. The new building, which would replace several older ones, would house 400 chronic cases.

O'Brien said that some of the Roosevelt Road hospital's problems might be solved by constructing a new building for research and teaching facilities next to the present structure. The new building would be constructed with as many stories as possible, and would have the capability of having additional stories constructed later.

But, the ideal solution would be a new hospital located adjacent to the Medical Center, he said.

O'Brien said he seriously doubted that the Veterans Administration would ever consent to the construction of a 1,500-bed hospital, including 1,000 beds for psychiatric patients.

However, he said, he thought the Ft. Roots patient load could be further reduced if other accommodations could be found for patients who now come to Ft. Roots from Texas, Oklahoma, Missouri, Mississippi and Louisiana.

The VA might accept the idea of a 1,000-bed hospital with 600 psychiatric patients, he said.

Convalescing mental patients in a hospital on a smaller site near the Medical Center would not have such a large area to walk around in as they do at Ft. Roots, but recreational space would be included in any plans for a new hospital, according to the hospital officials.

Towbin said he hoped the employes who now work at Ft. Roots would "stay with us," if a new hospital should be built.

"We desperately need them," he said.

All the physicians interviewed expressed hope that a new hospital near the Medical Center would be built eventually.

Dr. Joseph H. Bates, chief of medical services, said getting the money to build a new hospital "depends almost entirely on what kind of local support we can generate to bring this about."

"The money won't come unless our representatives in Congress are firmly committed to the idea of it," Bates said.

VA HOSPITALS

(By Martin Kirby)

The Little Rock Veterans Administration Hospital is deficient in space, money and staff, yet it is demonstrably one of the best of the 125 VA general medical hospitals in terms of patient care.

The hospital now has a 185 per cent patient turnover rate, the nation's highest for this type of hospital. Also, the Little Rock hospital and the VA psychiatric hospital at Fort Roots, are able to attract exceptionally well-qualified physicians due to their close relationship with the University of Arkansas Medical School.

"We have the best VA hospital in the

United States," said Dr. Joseph H. Bates, chief of internal medicine at the Little Rock VA hospital.

Dr. Fernando Padilla, chief of hematology (the study of blood) and oncology (the study of tumors), said: "I would say we don't have to envy anybody anywhere. We're probably not the best, but we're among the best."

Several other senior staff physicians, who also hold full-time faculty appointments at the medical school, agreed that the VA hospital is, if not the best, at least very close to the best.

They also agreed that Fort Roots is one of the best VA hospitals of its kind. Fort Roots had a 34 per cent patient turnover rate during the last six months of 1969—second-highest among the 41 VA psychiatric hospitals.

Nevertheless, from the viewpoint of the senior staff, both hospitals have serious inadequacies. For the Little Rock VA hospital these inadequacies take the following forms:

Lack of money. The opening of the hospital's new surgical intensive care unit was delayed four months because there was not enough money to hire five more nurses.

Lack of space. The hospital engineer maintains a continuous remodeling program, through which, for example, the surgical intensive care unit was converted from a section of hallway.

Distance from Fort Roots and from the Medical Center. Psychiatrists needed at the Little Rock hospital for such problems as the depression of a recent amputee must spend about 45 minutes on the round trip from Fort Roots. The Medical Center is about a 15-minute drive from the Little Rock VA hospital.

Lack of staff, primarily among "paramedical" workers such as laboratory assistants, x-ray technicians, secretaries and others who assist physicians.

Lack of equipment. For example, Dr. Glenn V. Dalrymple, chief of radiology services, said his department needed about $100,000 worth of equipment.

The design of the building. The Little Rock VA hospital, which was completed in 1950, was designed according to the old theory of one doctor for each 40-patient ward, with very slow patient turnover and no teaching or research. Therefore, its design is impractical for the building's present uses.

Fort Roots was originally a U.S. Army fort, constructed in the late 19th Century. It was turned over to the Veterans Administration in 1921. The 415-acre site is one of the most beautiful in Pulaski County—a bluff high above the Arkansas River, with a wide view including much greenery and most of Little Rock.

The old physical plant, consisting largely of red brick buildings dating from the early 1900's and 1920's is the cause of most of Fort Roots' problems, according to Kenneth J. O'Brien, the director of both hospitals.

"As VA psychiatric hospitals go, this is a well-funded and well-staffed hospital," O'Brien said.

Its state of relative felicity was due to new psychiatric techniques and drugs, which have reduced the current patient load from an average of about 2,000 to between 1,100 and 1,200. At the same time, the budget for the institution has not been correspondingly reduced.

But, advances in medical science, which have enabled psychiatrists to treat more patients in the course of a working day, have had the opposite effect for the physicians who treat patients with physical problems.

Complicated diagnostic and treatment procedures have evolved fairly recently for many illnesses. Treatment of a single patient is likely to take up much more time and to involve many more physicians, nurses, technicians and other supportive workers than was true in the past.

About 7,600 patients were hospitalized at the 471-bed Little Rock VA hospital in 1969. This was a slight decline from 1968, when almost 7,800 were treated, but in the first half of the current year the hospital has already treated about 4,500 patients.

The hospital was "designed to be a little old sleepy VA hospital," according to Dr. Raymond C. Read, chief of surgery. "Apart from this, I think we have a wonderful hospital here."

On a quick tour of his domain, Read pointed out carts, empty beds, trash cans and other temporarily unused equipment standing in the halls because there was no other place to put it.

He pointed out an amphitheatre where students used to observe operations in an adjacent operating room. It was being converted into a storeroom. A kitchen had been converted into a casting room.

Read, who is British, attended Cambridge University, then transferred to the University of Minnesota at Minneapolis for the last two years of medical school. Besides his M.D. degree, Read has a Ph. D. in surgery and is a Fellow of the Royal College of Surgeons. He is a professor of surgery at the VA Medical School. He also supervises research in surgery at the VA hospital.

"The research work we do here relates to the medical problems of the veterans here," Read said. For example, he said, many veterans come to the hospital for surgery to correct hernias. So, the researchers are trying to find out why a man gets a hernia.

Read said the frugality imposed on the Veterans' Administration by the federal budget was the cause of the hospital's financial problems.

"They've put such a budget squeeze on the VA that we can't move ahead," he said.

He said his department needed $150,000 worth of equipment, including recently-developed equipment and replacements for old items. "I can't get it unless I prove it's a real emergency," Read said.

Read said that some previous administrators of the local hospital carried thrift past the boundaries of reason. "We had some administrators here that used to get brownie points by sending money back to Washington," he said.

Physicians at the Little Rock VA hospital said more space was needed for research.

In spite of the need for more research space, it could not be acquired by taking over space needed for patient care, Padilla said. "All this would be garbage if it did not benefit the patient."

Research enables the hospital to offer patients the latest in knowledge and treatment. Hospitals that engage in research also are often given new drugs by manufacturers for testing. Patients must give their permission before receiving drugs which are being tested. The hospital could not pay for such drugs "because they have no price," Padilla said.

Padilla is also the chairman of the hospital's tumor board. This committee follows the course of every patient admitted with a tumor for at least five years, even if the tumor is benign.

"Oncology is not my bag," Padilla said. "But there was a need for someone to do cancer chemotherapy."

Dr. James E. Doherty, director of the Division of Cardiology, which includes both the VA and the Medical Center, said the distance between the two institutions was a "serious deficiency," which causes him to lose much time driving back and forth.

The hospital's coronary care unit was opened last summer. Doherty said that in 1965 when such units came into general use he went to Washington at his own expense to ask for funds to establish a coronary care unit at the Little Rock VA hospital.

Doherty said he was "promised faithfully" that it would be installed within two years. It took four years.

"I think it's disgraceful that it was this late," Doherty said.

Another problem both at the Medical Center and the VA hospital is that "we're remiss in not having greater emphasis on rehabilitation," Doherty said.

Cardiac patients often should take up a new, less strenuous line of work and therefore should be retrained, he said. VA patients usually need help in obtaining retraining and in finding new jobs because they usually do not have much money.

Bates said "lack of proper funding" was one of the hospital's greatest problems. "'No other hospital in town operates for as little per day as this one," Bates said. "No other hospital gives better care. Our professional people are the very highest quality," he said.

Some of the hospital's most acute space, equipment and staff shortages are in the radiology department. Patients waiting for X-rays crowd into one side of a double hallway divided by a wall, while on the other side of the wall, physicians study X-rays on viewing boxes attached to the wall.

"The VA radiology department does about the same amount of work as the Baptist, St. Vincent and the Med Center, but in about one-fourth the space and with fewer people," said Dr. Glenn V. Dalrymple, chief of radiology services at the VA hospital and head of the division of nuclear medicine, which encompasses both the VA and the Medical Center.

Stopping at the hospital's new "angiographic room" for special X-ray procedures on a tour of the department, Dalrymple said, "This is the latest gear. Nobody has anything better than this—but this used to be my office."

Dalrymple's desk and those of the other radiologists and other department employes are crowded together in a converted hallway. The department's two secretaries work in a small space that used to be a "dish room" between a kitchen and a dining area. The kitchen has been converted into a room for storage of current files and for interpreting X-rays.

Exhibiting a large bruise on his leg, Dalrymple said everyone in the department was "'covered with bruises" from bumping into things in the crowded space.

Dalrymple said acutely ill patients take up much more of the staff's time than other patients. Very sick patients often have to be lifted and carried and often need special time-consuming X-ray procedures. This is physically hard on the staff, most of whom are middle-aged, Dalrymple said.

"I'm 35 and I'm the youngest one here," Dalrymple said. "You get to the point with abnormally heavy work loads where your people just can't take it."

Speaking of the VA's tight budgeting, Dalrymple said. "This business of continually cutting things has got to stop. We're at the breaking point now. Any further cutting and it's going to snap."

Further budget cuts might cause the younger doctors to resign, leaving the older ones with an "impossible burden," he said.

"There were tales of admitting patients with ingrown toenails in the old days," Dalrymple said. But this is no longer true, if it ever was, he added.

"These men are sick," he said. "They've given something to their country. These people deserve a good turn. I would think they could find some other way to shorten the strings than in the medical care given to the veteran."

THE JUNIOR BAR ASSOCIATION OF BALTIMORE AND PROFESSIONAL RESPONSIBILITY

Mr. MATHIAS. Mr. President, I have on several occasions spoken out concerning certain of the controversial aspects of the District of Columbia crime legis-

lation now being considered by House and Senate conferees. I have, for example, expressed grave doubt about both the probable effectiveness and constitutionality of proposals for preventive detention.

I have also remarked that the organized bar has, regrettably, seemed to abdicate its responsibility to consider legislation of this type carefully and to convey its views to the public and their representatives.

I am pleased to say that I have received an official communication from the Legislative Committee of the Junior Bar Association of Baltimore City which evaluates some of the far-reaching criminal law and juvenile procedure proposals in the District of Columbia crime legislation.

The committee's views are carefully formulated, and I commend them to the attention of the Senate.

I ask unanimous consent that a letter dated May 4, 1970, from Edward A. Tomlinson, Esq., chairman of the Junior Bar Association Legislative Committee, be printed in the RECORD.

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

MAY 4, 1970.

The Honorable CHARLES McC. MATHIAS.
Senate Office Building,
Washington, D.C.

DEAR SENATOR MATHIAS: The Junior Bar Association of Baltimore City would like to convey to you its views on H.R. 16196, commonly referred to as the District of Columbia Court Reform and Criminal Procedure Act of 1970. Both the Legislative Committee and the Executive Committee of the Association have discussed this bill at considerable length. We have also studied S. 2601, the companion bill passed by the Senate.

The Association believes it has a duty to comment on this legislation. Of course, there are many provisions in H.R. 16196 which do not concern us and on which we express no opinion. These provisions mainly deal with the reorganization of the courts and correctional system in the District of Columbia. However, H.R. 16196 also contains significant innovations in the area of criminal procedure. We feel competent to comment on these provisions because they present major constitutional and policy considerations. Many of these provisions are clearly intended to serve as models for the states to follow. Furthermore, we as Maryland lawyers, are particularly affected by these provisions because some of us practice in the District of Columbia and many of us sojourn there on personal or business matters. We also feel bound to comment because many of the provisions which trouble us in H.R. 16196 are not found in the companion Senate Bill.

First, we should like to comment on the preventive detention aspects of H.R. 16196. While a majority of our Executive Committee believe that a system of preventive detention is needed, we believe the provisions in § 23–1322 are dangerously loose and overbroad. The category of "dangerous crimes" is particularly troublesome because it permits the detention of a first offender who is charged with one of a variety of offenses, including unlawful entry of a business establishment with intent to commit an offense therein, statutory rape, and the unlawful sale or distribution of depressant or stimulant drugs. The category of "crimes of violence" is also quite broad and permits the detention on a second charge of a variety of offenses, including all forms of aggravated assaults. We believe that Congress should proceed more cautiously in inaugurating a scheme of preventive detention. The present Maryland statute, which is attached as an appendix to this letter, might serve as a starting place. That statute limits preventive detention to cases where a defendant is charged with a second serious offense while on bail for an initial serious charge. We believe that this limitation is desirable. However, we disagree with that aspect of the Maryland statute which places on the defandant the burden of establishing nondangerousness and favor imposing this burden on the government. We also believe that any federal statute authorizing a scheme of preventive detention should clearly authorize the appointment of counsel for indigent defendants and the preparation at government expense of a transcript of the hearing. Surely the Constitution compels this and perhaps the Criminal Justice Act of 1964 will be interpreted to cover this situation, but the absence of any specific provisions in H.R. 16196 is a gaping hole in the legislation.

The Association specifically disapproves the restrictive provisions in § 23–1325 on bail pending sentence and appeal. Those provisions practically abolish bail after a conviction. Sentencing and appeal are recognized parts of the criminal process and a conviction is not final until these parts of the process are completed. Bail should therefore generally be allowed at these stages of the proceeding. Furthermore, the present section (§ 3148 of Title 18) adequately handles this problem. The case of Guido Iozzi indicates that under present law bail may be denied pending appeal in those exceptional cases where such a denial is justified.

The Association also specifically disapproves § 15–717 of H.R. 16196. That section provides that in actions against police officers for allegedly wrongful arrests the defendant officer shall receive his reasonable attorney's fees from the plaintiff regardless of which party wins the case. Such a provision is shockingly unjust and should be removed from the bill. Police officers receive adequate protection under section 206, which changes the law to no longer permit a person to resist an illegal arrest by a law enforcement officer.

The Association is also troubled by the provision in § 23–591 of H.R. 16196 on "no-knock" entries. The general rule has always been that law enforcement officers entering a dwelling to make an arrest or execute a search warrant must first give notice of their authority and purpose. Existing law recognizes exceptions in emergency situations where the officers reasonably believe that compliance with the rule will endanger their lives or lead to the destruction of evidence. We believe that the present law is adequate and that the exceptions to the notice requirement in § 23–591(c) are much too loose. In particular, we find objectionable the vague, catchall provisions that the officers need not give notice when "such notice would otherwise be a useless gesture." That provision simply invites officers to dispense with the notice requirement whenever they choose to. Furthermore, § 23–591(c) permits an officer to enter without giving notice whenever such notice is "likely" to result in the destruction of evidence, to endanger the safety of the officers or other persons, or to enable the party to be arrested to escape. The Senate version requires that the officer have "probable cause" for believing that evidence would be destroyed or life endangered if notice is given. The more restrictive Senate provisions on no-knock entries should be adopted. They are more closely in accord with present law which generally requires that the officer have some specific basis for believing on the facts of the particular case that the evil sought to be avoided will occur if notice is given.

Finally, the Association is troubled by H.R. 16196's repressive approach to juvenile offenders. We realize, however, that many of these provisions are intended to meet the peculiar problems of the juvenile courts and detention facilities in the District of Columbia. The Congress should nevertheless reconsider the desirability of these harsh provisions. At least one of them is clearly unconstitutional. The Supreme Court recently held that the standard of proof beyond a reasonable doubt applies at the adjudicative stage of juvenile proceedings. In re Winship, March 30, 1970, § 16–2317(c) of H.R. 16196 is thus unconstitutional when it only requires that the juvenile court find the child a delinquent on the basis of the preponderance of the evidence.

Another specific provision on juveniles which troubles us is § 16–2301(3)(A). That provision seemingly operates to permit the prosecutor to treat a child sixteen years of age or older as an adult by simply charging him with a crime of violence. Previously the juvenile court held a hearing to determine whether it should waive jurisdiction to the adult courts when someone in the 16 to 18 age bracket is charged with such an offense. While problems of backlog and personnel in the juvenile courts may be the motivating factor behind this change, we nevertheless believe that it is undesirable as a matter of principle to dispense with the waiver hearings and to give such uncontrolled discretion to the prosecutor. This is particularly true in this case because H.R. 16196 seemingly provides that once a child sixteen years or older is charged as an adult he never again is treated as a juvenile even though he may be acquitted on the adult charge.

We hope that these views are of interest to you.

Very truly yours,
EDWARD T. TOMLINSON,
Chairman, Legislative Committee.

INSPECTION VISITS TO VIETNAM AND CAMBODIA

Mr. FULBRIGHT. Mr. President, yesterday morning's New York Times carries a story by Mr. Henry Kamm concerning the visit to Fire Support Base Shakey in Cambodia by members of President Nixon's factfinding group. The story related that the men manning the muddy base shaved their beards, cut their hair, were given new fatigues, and were, in general, put in more presentable order for the visiting dignitaries. In addition to the laying on of a clean, well-groomed company, the Army thoughtfully provided layer cake and fresh baked oatmeal cookies, and topped the show off with a spectacular air strike against a neighboring hillside for the visiting dignitaries. The soldiers, Mr. Kamm wrote, "said they had not seen one that near before and did not know why the hillside was being attacked."

By coincidence I received information within the last week of Secretary of Defense Laird which tends to bear out the deception that is inherent in a superficial undertaking of this nature.

The source of this information is a former Navy officer who was serving aboard the U.S.S. *Colleton*, a unit of the Riverine Force in the Mekong Delta area of South Vietnam at the time of Secretary Melvin Laird's March 1969 inspection tour.

According to this officer, a combined "air and water mobile assault" operation was planned for the day Secretary Laird was to visit the area. It was, "several orders of magnitude larger," the officer said in a sworn statement, "than

any operations which any of us had seen before." Some of the units involved in the operation, he said, were "the 4–47 and 3–60 Battalions of the 2d Brigade, River Assault Squadrons 9, 11, and 13 of Rivflot 1 and several units of Hilo gunships and troop carriers." In all some 5,000 American men were involved, he estimated.

The original landing site was changed the day before the Secretary's visit "because," the officer said, "one of our units had encountered enemy action in the original area and it had been chosen to avoid enemy contact. There were several jokes which flew around the ship concerning the undesirability of having the Secretary of Defense see what it was really like in that area."

Secretary Laird reportedly observed the operation from the air and the preparations for his visit aboard the U.S.S. *Colleton*, the temporary flagship for the unit commander, went for naught. These preparations, the officer said, "included extensive cleaning of the ship, inspection of the troops for haircuts and uniforms and preparation of special menus for the day should the VIP decide to each board the ship."

The officer, in commenting on this matter said:

There is no way a VIP can get a look at the war in Vietnam.

I have asked Secretary Laird to look into the facts presented to me concerning this incident and furnish me with a report of his findings.

This apparent staging of an operation for Secretary Laird—though greater in scope—does not appear to be a unique incident. In a book on a Vietnam province, entitled "Vinh Long," author Harvey Meyerson presented a somewhat similar description of VIP treatment. I ask unanimous consent that excerpts from his book be printed in the RECORD.

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

VINH LONG

(By Harvey Meyerson)

III. COMMUNICATING "PROGRESS"

HAMLET. Do you see yonder cloud that's almost in shape of a camel?

POLONIUS. By the mass, and 'tis like a camel, indeed.

HAMLET. Methinks it is like a weasel.

POLONIUS. It is backed like a weasel.

HAMLET. Or like a whale?

POLONIUS. Very like a whale.

Americans in Vietnam are engaged in a split-level exercise in communication—with Vietnamese and with other Americans. Communication between levels is complicated inasmuch as Vietnamese share certain values outside our experience. With regard to pacification, the difficulty is compounded by the psychological nature of the American goal. We want to win a people's hearts and minds. For success, we must penetrate the Vietnamese psyche; we must understand exactly what it is the people desire.

The means we have selected for reaching our goal is "progress," a nebulous concept in the Vietnamese setting. Progress is communicated across cultures and up the chain of command by means of a number of rituals, the most highly developed of them being the briefing.

During my stay in Vinah Long, Ap Bay hamlet—the "showcase" Mang Thit *Ap Doi Moi*—received a seemingly endless stream of American dignitaries: generals, congressmen, cabinet officials, foreign aid officials. They came by helicopter over what was known locally as the "VIP run": Saigon-AP Bay (nonstop fifty-five minutes) or, more frequently, Saigon-Can Tho-Ap Bay. In the latter instance, the visitors would travel to Brigadier General Desorbry's IV Corps headquarters in Can Tho, take in a briefing on how well the war was going . . . drinks, lunch, and a trip into the "field." The theme was, "But don't take our word for it. Look for yourselves. Why we've got a project under way in a Viet Cong heartland and you'd be amazed . . ."

Let us reflect for a moment on the dress and manners of the Can Tho visitor as General Desobry leads him to the awaiting helicopter for the trip to Ap Bay hamlet. Quite possibly he is a man of subcabinet rank—an Assistant Secretary of State or Defense—though you wouldn't know it to look at him. For if he is like most visitors he will have followed the advice of his hosts and donned army fatigues. This stripping of civilian garb is the first act in an experience that bears cumulative effect on the visitor's powers of judgment. He begins to feel that others—they call him "sir," but, he can sense it, they consider him a softie—are measuring him.

Now an accompanying officer suggests he take an inside seat in the helicopter. ("It's safer.") A young door gunner sees him fumbling, and helps latch his safety belt. The pilots twist dials, they are laughing (at what?), their voices are lost in the roar. The machine lifts, banks, accelerates . . . The visitor rubs his damp palms on his fatigues and looks out over the jungle and the rice paddies. The Washington conference rooms where he confidently presided—they seem so far away . . .

Now the helicopter approaches Ap Bay hamlet.

Up there in the sky, strapped in, turning, descending, the door gunners pointing .30-caliber machine guns at that distant tree line . . . enemy territory . . . the helicopter doorway wide open . . . naked . . . the little knot of men in the clearing beneath . . . the helicopter dropping faster . . . the jungle rushing up . . .

And suddenly you are there, the helicopter is gone, and you are bouncing along this dirt road in a jeep and the American officer in the front seat has just released the safety on his carbine. It takes a truly strong-willed man not to become possessed by a powerful desire to perform coolly.

All this works subtly on a visitor's confidence and therefore on his independence. Should he meet the challenge without a noticeable slip, there will follow a rush of relief which can become inflated like this:

To himself: "*I* passed the test!"

To others: "*We've* got the VC on the run!"

If, however, the visitor gets by the shift in environment with his critical faculties intact, he will then find the road to reality blocked by a much more formidable hurdle—the briefing itself.

On July 15, 1967, a member of the White House staff was outfitted in fatigues and helicoptered to the Mang Thit campaign headquarters. There he was seated on a bench before the Province Chief and a battery of multicolored charts. The Province Chief reported 12 classrooms built, 4 classrooms repaired, 86 small bridges built, 12,000 meters of secondary road repaired, 1200 meters of main road surfaced with crushed rock, 2 hamlet officers built, 1 market 70 percent completed. While the building was going on, ARVN killed 395 Viet Cong, the Province Chief said, and captured 15 Viet Cong, 2 heavy machine guns, 2 light machine guns, 5 BARs, 7 submachine guns, 2 B–40 rocket launchers, 4 M–1 rifles, 106 grenades, 100 steel saw blades, 1 generator, 2 communications systems, 1 PRC10 radio, 8 claymore mines; and ARVN destroyed 1 grenade factory, 10 Viet Cong information houses, and 190 grenade traps. Meanwhile, GVN had won the hearts and minds of 13,084 of the 30,760 peasants living along the banks of the Mang Thit, plus 777 others who had migrated to the Mang Thit from Viet Cong areas further inland.

Next came the "walk-through." The theme was, "But don't take my word for it. Walk through the hamlet. See for yourself." Maternity-dispensary? Brand new, right here. Pigpens? You see them. Freshly stocked fishponds? Vegetable demonstration plots? Hamlet self-defense force? New road? New bridges? They are all there.

Indeed, by American standards the *Ap Doi Moi* hamlet of Ap Bay underwent steady improvement between February 1967 when a pacification cadre team arrived, and late July 1967 when the cadre team left. We find it hard to believe that a hamlet with a *new* road, *new* bridges, *new* dispensary, *new* classrooms, *new* fishpond, *new* pigpens, has *not* progressed. But what about the hamlet dwellers? The briefing is structured on the assumption that they too were impressed.

GVN officials, who knew better, found it in their interest to keep quiet. They knew that the bulk of the peasantry acceded to government by day and Viet Cong by night. They had learned to live with that stalemate. It was not uncomfortable. In order to ensure its continued existence, however, they were obliged to convince the Americans that the stalemate was not a stalemate at all but a progessive shift in GVN's favor. Fortunately, the Americans had a weakness for measuring progress. GVN exploited this weakness by embracing it. They adopted American values and American tools of measurement and applied them to their own purposes.

Witness the walk-through. On briefing day a representative of the Province Chief made sure that cadre were distributed through the hamlet so the visitor would encounter them at every turn, purposefully going about their appointed tasks. The so-called hamlet self-defense force (a paper organization in Ap Bay) was rounded up and put to work on its training patch near the new hamlet road. Others were ordered to man the new pigpens. If the visitor was of special importance, school kids were lined up along the road and told to wave and smile and sing at the visitors. It's true. I watched the preparations more than once. The picture Ap Bay presented to visitors was about as close to reality as a stage play prepared by a propaganda ministry.

The adopted procedure thus made it virtually impossible for visitors to judge at first hand the highest priority pacification project in the Delta. Between the visitors and reality stood the props and language of the briefing.

The real situation was something else. According to that July 1967 briefing, the Ap Bay cadre team—on the scene almost six months—had completed 90 percent of its eleven "criteria" and ninety-seven "points," thus rendering the hamlet "secure" from Viet Cong. What the briefing did not report was that the cadre who at this point were supposed to be living among the people were actually spending their nights huddled in a fortified outpost. They reported the hamlet secure, but they sure didn't act like it was secure. They had reason. Viet Cong penetrated the hamlet at will. On July 17, two days after the briefing described above, Viet Cong blew up a wall and part of the roof of Ap Bay's new maternity-dispensary and kidnapped two masons hired to build it. The building was of course feverishly repaired in time for the next walk-through.

IV. AP TAN THANG AND AP TAN QUI

The fact is that when the cadre pulled out in late July and an archway was posted over the new hamlet road with an inscription pronouncing Ap Bay a secure *Ap Doi Moi* hamlet, the hamlet was no more secure than it had been before the cadre arrived. The

people were loyal to the government during the day; they were loyal to the Viet Cong at night.[1] On August 26, 1966, "Rural Reconstruction" cadre teams were sent to Ap Tan Thang and Ap Tan Qui, adjoining hamlets on the Mang Thit, and two RF Companies were brought in for security—an impressive total GVN force of almost three hundred men, or one-fifth the combined population in the two hamlets. Physical achievement was immediate and immediately recorded on the progress charts. But the Vinh Long hamlet program was then running behind schedule, so, less than a month later, on September 23, an ARVN 9th Division inspection team declared the two hamlets pacified. On the morning of September 25, cadre and RF were withdrawn. * * *

Mr. FULBRIGHT. Mr. President, staged VIP tours are much like the staged Defense Department films of Vietnam being supplied the networks and are but part of a pattern of propaganda designed to sell a point of view by giving the visitor or viewer the impression of firsthand information.

Rather than clarifying the issue, such happenings cloud it. It is against this background that we must judge the "findings" of the President's latest on-the-spot observers.

In conclusion, I emphasize that these remarks do not reflect on the Members of this body who have gone to Indochina. They are, I am sure, aware of the dangers of what one Cabinet member described as "brainwashing." Awareness of the incident I have described, however, may serve as an additional caveat.

I ask unanimous consent to have printed in the RECORD the article by Mr. Kamm from the New York Times of June 8, and two statements submitted to me by the aforementioned naval officer.

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

FIRE BASE SPRUCED UP FOR A VISIT

(By Henry Kamm)

FIRE SUPPORT BASE SHAKEY, CAMBODIA, June 7.—The men of Company A, Fifth Battalion of the 60th Infantry, who are manning this muddy base high on a mountaintop northeast of the Fishhook, wore their hair short and had their faces shaven clean today. Some got new fatigues to replace those that they were wearing 38 days ago when they left the Mekong Delta to go on what they were told would be a three-day mission.

The last hammer blows were still being struck to complete a new enclosed latrine as seven helicopters bringing President Nixon's fact-finding mission of governors and legislators set down on the pad next to the base, which gets its name from the nickname of a soldier who was killed nearby.

Layer cake and oatmeal cookies, freshly baked, awaited the guests. The soldiers said they hoped that some would be left over because they have been living on C rations almost all the time.

They were unhappy about losing their beards and long hair, but those who got new fatigues were pleased to get into them and throw away the mudcaked and torn ones they had been wearing.

They found some distraction from their dull routine also in a spectacular air strike against a neighboring hillside that began shortly after the visitors arrived. They said they had not seen one that near before and did not know why the hillside was being attacked.

A colonel of the First Cavalry Division (Airmobile) said it was undoubtedly "reconnaissance by fire," although air strikes are usually made only against specific targets.

Whatever the reason, it was spectacular. A twin fuselage Bronco observation plane first made several passes firing marker rockets, then F-100's swept in low, dropping bombs and napalm on the jungled mountainside.

Finally, the planes made several strafing passes. "If Charlie was in there," a sergeant said, "he's got a headache now."

A major then called on a field telephone for the jet fighter-bombers to make a pass over this base, presumably to salute the visitors. They did, twice, so low that they unnerved at least some of the guests.

While the neighboring hillside was being attacked, the Senators, Representatives and Governors were inspecting the manmade caves in the jungle on the slopes of this mountain in which the North Vietnamese Army had stored large quantities of arms, ammunition and other supplies, which are still being removed from here.

Senator George Murphy, Republican of California, at first demurred from climbing down a ladder into the cave, saying, "I swore off the last time I went down a coal mine," but he, too, went to view the stacks of crates of Chinese and Russian grenades and mortar shells.

The visitors saw large quantities of captured weapons here and in visits to the headquarters of the First Brigade of the 25th Infantry Division at Katum in Vietnam and in a storage depot at Dian base camp north of Saigon, where a spacious warehouse has been filled until it resembles a discount store for captured weapons.

They also received a number of briefings that confirmed their general belief that the American intervention in Cambodia had been useful and justified by the results.

The only member of the group not to share this view—Senator Thomas J. McIntyre, Democrat of New Hampshire—decided not to make the trip but to spend the day studying the progress of pacification.

In the places they visited, officers presented to each visitor members of his constituency. The soldiers tended to keep to themselves their frequently negative views about the war in Vietnam in general and the incursion into Cambodia in particular.

"You wanna know where I'm going if I tell 'em" a private first class said. "To L.B.J. or back out in the fields."

L.B.J. is the nickname for the Longbinh stockade.

At this base, chosen soldiers from each visitor's state were lined up behind stakes bearing the name of the state to facilitate contact between elected officials and the soldier.

The visitors will leave for Hawaii tomorrow to be briefed at the headquarters of the Commander in Chief of the United States Forces in the Pacific, Adm. John S. McCain, Jr. They are being escorted by Bryce N. Harlow and Herbert G. Klein of the White House staff. The other members of the group are:

Senators Howard M. Cannon, Democrat of Nevada, and John G. Tower, Republican of Texas; Representatives William G. Bray, Republican of Indiana; Melvin Price, Democrat of Illinois; O. C. Fisher, Democrat of Texas, and G. William Whitehurst, Republican of Virginia, and Govs. John A. Love of Colorado, Republican; Raymond P. Shafer of Pennsylvania, Republican, and Robert E. McNair of South Carolina, Democrat.

STATEMENT BY FORMER NAVAL OFFICER

In early March, 1969, . . . the *USS Colleton* . . . was serving temporarily as flagship for the unit commander because the normal flagship was in Sasebo, Japan for repairs. The chains of command which are relevant to this matter were as follows:

Army: Commander of the Second Brigade of the 9th Infantry—Col. Rainville; Commander of the 4th Battalion of the 47th—Lt. Col. Snyder.

Navy: Commander River Flotilla One—RADM Flannagan; Chief of Staff COMRIVPLOT ONE—Captain Booker; Commanding Officer *USS Colleton*—SCDR George Wehner.

During the first week of March, as I recall, word was promulgated that there would be a VIP visiting the area and the normal procedures were initiated to prepare for his arrival. These included extensive cleaning of the ship, inspection of the troops for haircuts and uniforms and preparation for special menus for the day should the VIP decide to eat aboard the ship. Arrangements were made to have the ceremonial guard standing by to receive the visitor. The specific identity of the visitor was not given out but anyone who was reading papers and other press from home knew that the Secretary of Defense was planning a junket to Vietnam and later, unofficial confirmation of the identity of the VIP was made by senior officers of the staff.

In addition to these normal preparations, plans were being made for a combat operation scheduled for the day of SECDEF visit. This operation was several orders of magnitude larger than any operations which any of us had seen before. It also involved more elements of the forces in the Mekong Delta than any of us had ever seen coordinated in one operation before. The operation was to be combined air and water mobile assault. Some of the units which were involved were: the 4-47 and 3-60 Battalions of the Second Brigade, River Assault Squadrons 9, 11 and 13 of RIVFLOT ONE and several units of Helo gunships and troop carriers. The area for the operation had been chosen and all the logistical planning had been made in preparation for the operation. The day before the scheduled visit and operation, a new site was selected and plans were altered because one of our units had encountered enemy contact. There were several jokes which flew around the ship concerning the undesirability of having the Secretary of Defense see what it was really like in that area.

The information in this statement is somewhat vague and this is due partially to the passage of time since the events occurred and partially to a conscious effort on my part since leaving Vietnam and being separated from the service to forget the months in Vietnam and to avoid thinking about aspects of Vietnam which I cannot forget.

FURTHER DETAILS SUPPLIED BY A PERSONAL FRIEND WHO WAS AN ASSISTANT COMPANY COMMANDER

According to the recollection of my friend, the original area for the operation was to be in the vicinity of Can Tho, RVN. Elements of the 3-60 were in the original area the day before the planned operation and they encountered some enemy activity there so the operation was moved to an area about 10 miles from the South China Sea. The area was south-west of Dong Tam which is where

[1] It is often said that popular loyalty to the Viet Cong is forced. Perhaps. But GVN's pursuit of loyalty seems even more open to question. An example:

RD funds were set aside to pay men from Ap Bay for helping on the construction of three new outposts near the hamlet. This was a sensible way of involving the local population in a GVN project. Private inquiries in Ap Bay and at the construction sites revealed, however, that the workers were not being paid. It seems that the cadre were working both sides of the street. First, they diverted the funds for salaries to their own pockets. Then they came around to each inhabitant and said: Pay us 1000 piastres or we will be obliged to conscript you for outpost construction. The men working on the outposts were those who couldn't afford the bribe.

There was quite a bit of this sort of thing.

we were at the time. He recalls that there was an 8 hour boat ride to and from the operation for the troops who were inserted by boat. The troops were landed and operated for about 4 hours and then were withdrawn. During this 4 hour period, the Secretary of Defense observed the operation from the air.

Some of the specific details which he recalls are that the wind was extremely bad off the South China Sea making the landing very difficult and necessitating crossing several hundred yards of tidal flats before reaching cover. Had there been enemy activity there, the troops would have been badly exposed but crossing the tidal flats made for very good viewing from the air. The pick-up of the troops by the boats had to be moved to a different area because the wind was so bad, the troops could not get into the boats at the original landing zone.

DISTRICT OF COLUMBIA CRIME

Mr. MATHIAS. Mr. President, I wish to remind Congress of our responsibility in facing and dealing with the serious crime problem in the District of Columbia, since Congress has chosen to retain virtually the exclusive governmental authority within the District.

To this end, I ask unanimous consent to have printed in the RECORD a list of crime committed within the District yesterday as reported by the Washington Post. Whether the list grows longer or shorter depends on Congress.

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

D.C. WOMAN, 24, RAPED IN DUPONT CIRCLE HOME

A 24-year-old employee of a downtown department store was raped yesterday about 1 a.m. when she was surprised by a man as she was about to enter her apartment in the Dupont Circle area.

The woman was returning home from visiting a friend. Her assailant placed a knife at her throat, shoved her into the apartment and forced her to disrobe.

She was treated at D.C. General Hospital.

Other serious crimes reported by area police up to 6 p.m. yesterday included:

ROBBED

Mary L. Ross, of Washington, was robbed while standing in the 6700 block of 14th Street NW about 11:15 p.m. Sunday. A man snatched her purple straw handbag containing a checkbook, wallet and her Walter Reed Exchange card.

Richard Gray, of Adelphi, was robbed by two men, one of whom displayed a knife and told him not to yell. The incident took place at 9th Street and New York Ave. NW. around 1:45 a.m.

Lloyd P. Salyer Jr., of Washington, was robbed and beaten by two men about 4 a.m. at 34th and N streets NW.

Michael C. Moore, of Vernon, N.Y., was robbed by three men while walking in the 3300 block of P Street NW. The assailants took Moore's wrist watch and wallet.

William A. Holland, of Washington, was robbed shortly after midnight Sunday by four men who approached him as he sat in his car at 14th and C Streets NE. The men pulled him from the car and struck him on the head and shoulders before taking his wallet, which contained no money.

Brenda Sue Robinson, of Washington, was robbed of money and personal papers around 4 a.m. Monday while walking south in the 1700 block of 14th Street NW. She was approached by a man who grabbed her purse, emptied it, and escaped on a D.C. Transit bus.

Richard M. Krajovic, of Washington, was robbed at gunpoint at 6 a.m. by three men who approached him in the 1900 block of Calvert Street NW.

Walter I. Johnson, assistant manager of the Safeway store at 716 Kennedy St. NW, was robbed by a gunman who approached him in the parking lot of the store at 12:30 p.m., and demanded his money.

ASSAULTED

Mary Lee Russell, of Washington, was struck in the right eye with a bottle around 6:30 p.m. Monday during an altercation at 12th and C Streets NE. She was treated for lacerations to the right eye at Rogers Memorial Hospital and released.

Corbin S. Shields, of Washington, was struck on the head with an unknown object around 9:30 p.m. Sunday while walking in the 1400 block of Park Road NW. Three unknown assailants approached her from behind and hit her.

Alfred F. Huff, of Washington, was in critical condition at D.C. General Hospital after being shot three times in the stomach around 1:30 a.m. Monday. The incident took place in the 1200 block of Half Street SW.

ADDRESS BY G. WILLIAM MILLER, PRESIDENT, TEXTRON, INC.

Mr. PELL. Mr. President, stability and peace, on both the international scene and within our country, are vitally important to the American business community as well as other sectors of our society.

Problems and conditions that threaten world peace and disrupt our own society therefore are, and should be, of grave concern to American businessmen.

One of our Nation's outstanding business executives, G. William Miller, president of Textron, Inc., of Providence, in a recent address focused attention on the world problems of peace, population growth, and economic development. In his keynote address to the 55th Annual International Purchasing Conference in Boston, Mr. Miller suggested that the United States take the leadership in proposing an ambitious 30-year international program with a goal of permanent peace and economic well-being for the coming century.

Mr. Miller has offered thought-provoking, responsible proposals that deserve serious consideration. I ask unanimous consent that the text of his address be printed in the RECORD.

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

CHALLENGE AND RESPONSE: A 30-YEAR TASK

(By G. William Miller)

During the past few weeks I have had a growing sense of discomfort about my task this morning. As both the rhetoric and the level of discord have risen it has seemed increasingly difficult, if not impossible, to put in context the business problems and opportunities you will be considering at this conference.

It would be easy to slip into a mood of pessimism and gloom. The business indicators are negative: declining industrial production, rising costs, falling sales, escalating unemployment, unchecked inflation, sinking stock prices. The national climate is disturbing and confusing: disagreement over war policy, alienation of youth, confrontation on campuses, turmoil in streets, chaos in corporate meetings, deferral of domestic priorities. To many our society appears to be on the threshold of disintegration.

But I reject the path of pessimism. I refuse to accept the view that America is chronically sick and unsound.

Instead I believe American society has the vitality and the purpose and the courage to resolve this time of troubles, and out of adversity to forge a stronger Nation more responsive to the needs and aspirations of people everywhere.

And I believe the American corporation has an important role to play in this endeavor.

So let me talk to you this morning about the times in which we live and work, about the forces of change that are shaping our future, and about the constructive responses that can and will be made by America and by American enterprise.

THE FORCES OF CHANGE

This is the Age of Change.

For thousands of years the separate units of human society were held together by customs and traditions which changed only slowly. Over the centuries the cadence of change has steadily quickened until today the pace seems to rise in a geometric progression which threatens to outstrip human capacity to adjust.

In modern history the fires of change have been fueled by the industrial revolution and more recently by the technological revolution. From these have flowed tremendous migrations and dislocations. American society has moved rapidly from an agrarian to an industrial to a scientific base. Fifty years ago most Americans lived on farms; today we are concentrated in great urban areas. This experience is recurring throughout the world.

The stresses brought about by the unprecedented rate of change during the past twenty-five years would try the patience of Job.

Now, every day we see and feel the results of those stresses. And we are concerned.

EVOLUTION OF THE CORPORATION

In the Age of Change, the American corporation has shown itself to have considerable flexibility. It has proved to be a living institution capable of adapting successfully to new conditions.

The corporation is, of course, but an idea; it is a fiction. The concept had its origin in the Age of Discovery, when new techniques were needed to finance trade with the East Indies, China and the New World. The great charters for private corporations evolved at that time. They provided the advantage of pooling capital and spreading the risk for each venture. Usually these were very limited and restricted undertakings.

In the 19th and 20th Centuries, the corporation concept has undergone considerable development. It took on new scope in response to needs brought about by the industrial revolution. The corporation then provided the means for coordinating human resources, marshalling capital and assuring continuity of the enterprise. More recently, with the advent of the technological revolution, the corporation has gone through further evolution. We have seen the rise of the multimarket corporation as a means of offsetting obsolescence in a rapidly changing world, of participating in new markets, and of deploying capital into areas of greater need. This trend is continuing in new emphasis on multinational corporations as a result of the worldwide growth in trade and competition.

ROLE OF THE CONTEMPORARY CORPORATION

Most of all, the modern corporation is now demonstrating that it has a conscience. Activities that once were considered beyond the legal authority of a corporation now receive active support and participation: education, civil rights, equal employment opportunity, training hardcore unemployed, urban affairs.

The corporation has an important and legitimate role in society generally. Corpo-

rate managers have the right, indeed the responsibility, to help shape the social and economic climate in which they operate. American businessmen are on safe grounds when they endeavor to help manage change rather than simply be the helpless victims of it.

Each of you plays a key part in developing a business strategy for your company. In doing this you first examine the external environment. It is necessary for you to know and understand the economic, political, social and market conditions, as well as the personnel, labor and management circumstances, with which you will have to deal. In the light of your assessment, you establish a corporate objective and plans for implementation.

THE IDEAL VS. THE EXISTING ENVIRONMENT

I'm sure we could all agree on the ideal environment for business. It would include world peace, political stability, economic stability and social stability, together with growing and orderly markets.

But what do we find? We find conflicts and instability. In America, with the highest standard of living and greatest technology, we find uncertainty and confusion. We find distrust in an atmosphere of rising tensions.

How strange that the 20th Century should turn out to be so tragic. Never have the possibilities been more promising to improve the lot of man. What blessings to have the magic of electricity, telephonic communications, wireless, television, aeroflight, nuclear power, space exploration; to have within grasp the resources to wipe out hunger and disease and poverty.

Yet the 20th Century has been marked by violence, world wars, massive displacement of peoples, and a continuing and growing gap between the haves and the have nots.

No wonder America's conscience is troubled.

Somehow, with all its blessings, society has not yet found the mechanism nor developed the institutions which can translate the world's incipient wealth into a secure and peaceful life and a decent standard of living for mankind.

THE STANDARD OF LIVING GAP

Freedom from war and freedom from want. The two are inevitably linked. It is in closing the standard of living gap that we in American business can make the greatest contribution.

The task to close the gap is enormous. It will require the total energy and dedication of America and of the world. Today with 6% of the world population the United States has one-third of the production. To bring the rest of the world up to the U.S. standard—still inadequate for many Americans—would require an increase of $13 trillion in annual production of goods and services—more than four times the present world total!

And with the world population expected to double by the end of this century—only 30 years away—it would take a world economy of $35 trillion in constant dollars to provide at that time a standard of living equal to America's today.

Let me repeat. The standard of living gap today is $13 trillion. Unless we act promptly to overcome this deficit, by the year 2000 the gap could be more than twice that amount. Imagine what this means in pent-up demands for food and shelter and care, for doctors and teachers and engineers and managers. Imagine what this means in terms of steel and copper and lumber and fiber and energy.

TIME RUNS OUT

How clear it is that time is running out. Even modest progress in closing the standard of living gap will overtax the world's resources. If we now have difficulty even in seeking to control and reverse present pollution, imagine the problem which lies ahead.

The Earth is a finite sphere. It cannot long endure unlimited consumption of its bounty. From now on it is essential that we keep human population within reasonable bounds and that we exercise the most judicious use of the Earth's stores.

In an era of scientific miracles Americans have become accustomed to quick results. Perhaps that is why we show such impatience with complex world problems. Perhaps that is why attention is so focused on short term frustrations that we may miss the greater implications of what we face in an exploding world.

In this century America has been called upon to meet many unwanted challenges. It has been pulled reluctantly into the mainstream of man's destiny. At times America has responded brilliantly, demonstrating the highest qualities of humanity: self sacrifice, mercy, generosity, selflessness. At other times, confused by the blinding pace of events and baited by a gnawing sense of injustice, America has flailed out carelessly or thoughtlessly.

AMERICA'S RESPONSE

Now is the time for American greatness. Bold and dramatic steps are needed to uncoil the present dismaying spiral of violence and disorder. This critical moment calls for creative and decisive action.

America has a unique opportunity to demonstrate its inherent greatness by providing the bold vision and leadership needed to meet the challenge.

A THIRTY YEAR PLAN

The United States could now provide this leadership by proposing a Thirty Year Plan aimed at ushering in the 21st Century with a worldwide system of permanent peace and economic well being for every living person. Such a Thirty Year Plan could be carried out through a strengthened United Nations with new action agencies. These would include:

First, A Peace Commission, which would establish subsidiary Security Commissions in each area where there are wars or threats of wars, including Southeast Asia, the Near East and Europe. Each Regional Commission would work to bring about an immediate cease fire where conflicts now exist. Then it would develop specific plans to be effective by the end of this decade to assure permanent peace and security in every area of the world. Disarmament plans would be drawn and carried out progressively with worldwide disarmament complete by the end of the 1980's.

Of course, we must recognize that this will require tremendous financial support and willingness to accept international security forces as a substitute for national armies.

To help in such peace efforts, by building bridges to all nations, the United States should move to recognize the government of Mainland China. China should be invited into the United Nations.

Second, An Economic Development Commission, whose principal task would be to close the standard of living gap by planning and coordinating the allocation of world resources. Every nation should provide capital for the Commission's work. The contribution of each country would be in proportion to its gross national product, with full participation from the richest to the poorest.

And the capital investment must be in keeping with the enormous size of the standard of living gap.

In this program American free enterprise could play a major role. All that is needed is to unleash the private sector, and the results would be remarkable.

Third, A Population Commission, to provide population planning as an essential counterpart to plans for assuring peace and prosperity. The task is impossible with an exploding population. The Commission would need to move quickly in areas of greatest imbalance, and then work long-term toward a population growth factor of 1½ percent or less.

And finally, perhaps A Central Council to coordinate plans of the three primary commissions.

This Thirty Year Plan must not be a paper exercise. It must have real support—in money, in talented people, in moral leadership and in awakened world opinion. The initial financial contributions should be 1 percent of gross national product, providing a $27 to $28 billion initial annual budget.

And the Thirty Year Plan should be undertaken without neglecting or lessening our action on America's domestic priorities.

ARE WE UP TO THE CHALLENGE?

Is it too bold to undertake such a plan? Is it too demanding to expect the involvement of a complete generation for thirty years in seeking a permanent peace and the eradication of poverty? Is it too much to ask of America and of youth everywhere who would bear the burden? I think not.

And particularly I think not when I consider the alternatives. We cannot much longer afford the luxury of disagreement and disunity, while inattentive to forces that challenge human existence.

But if the challenge we face is enormous, then our response must be equal.

You who attend this conference are important opinion leaders. You help set the tone and the attitude that will guide American corporations in their reaction to the demands of the day. American business has responded magnificently in the past when called upon to help provide for the security of America and of the world.

Today the American business community can do much more. It can stand in the vanguard to raise the cry for that unity and sense of purpose which is vital if Man is to make his difficult crossing through the troubled 20th Century into a New Era.

The road is difficult, success unsure. But surely the quest is worthy of our commitment.

HEARTMOBILE PROGRAM: A BETTER WAY TO DEAL WITH HEART DISEASE

Mr. MATHIAS. Mr. President, on Tuesday, May 19, it was my pleasure to meet with those primarily responsible for administering the Heartmobile program in Montgomery County, Md. President Nixon has brought the increasing problems we face in providing quality health care to the attention of all Americans. The Heartmobile program is a quantum jump forward in the care and rehabilitation of the victims of heart trouble.

Under the umbrella of HEW, the program is administered by Dr. Barton J. Gershen, Dr. Louis Gillespie, Dr. John Stapleton, Dr. Stephen N. Jones, and Dr. Arthur E. Wentz. These men and others deserve our thanks. Twelve days after my visit, Stuart Auerbach in the Washington Post of May 31, 1970, in an article entitled "Lifesaving Heartmobile Speeds Care to Victims," reported an incident in which this program was essential in saving the life of a victim of congestive heart failure.

I ask unanimous consent that Mr. Auerbach's article be printed in the RECORD. The story reflects credit on all those involved in the program and clearly indicates the benefits derived from modern technology when applied to the problems we face in providing good medical care.

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

LIFESAVING HEARTMOBILE SPEEDS CARE TO VICTIMS

(By Stuart Auerbach)

Abraham Katz had not been feeling well all week. He thought he had the flu, and was taking antibiotics and orange juice.

Suddenly he started gasping for breath. It was about 6:30 p.m.

His wife did not know it, but Katz, 75, was suffering an attack of congestive heart failure. His heart was unable to pump out all the blood that was flowing into it. As a result, his lungs became so filled with fluid he was unable to breathe.

As his breathing became more labored, Mrs. Katz called a Montgomery County rescue squad. An ambulance arrived at the Katz apartment, 1220 East-West Highway, within 2 minutes.

At the same time, buzzers sounded in the emergency room and cardiac care unit at Holy Cross Hospital, a few miles from the Katz apartment.

The buzzer sent into action the heartmobile—a 21-foot-long van completely equipped to give sophisticated, on-the-spot-care to heart attack victims. Five days a week, 16 hours a day, the van responds to all calls that sound like heart attacks within a four-mile radius of Holy Cross—an area that includes half a million people.

Nurse Mary Beth Lagoey and cardiovascular technician John A. White ran down seven flights of stairs from the hospital's cardiac care unit—they find it faster than the elevator—while driver Dan Hutchinson raced from the emergency room and started the van. Technician Al Fagles was already aboard.

The van arrived at the Katz apartment less than minutes after the rescue squad was called, bringing with it everything modern medicine offers to save heart attack victims.

Mrs. Lagoey grabbed a black bag filled with drugs, syringes, intravenous fluids and other medical equipment.

Fagles picked up the most sophisticated piece of portable equipment on board—an electronic box that records the patient's heart rhythm so the heartmobile crew can see it while at the same time transmit it by radio to a machine in a doctor's home or office so he can diagnose the problem.

SHOCK MACHINE

The same battery-powered machine also can be used to apply a severe shock to the patient's chest in case he goes into fibrillation—wild, uncontrolled heart beats that fail to produce pumping power and lead to death.

The heartmobile team's performance in the Katz apartment was swift, sure and practiced.

Mrs. Lagoey quickly asked Mrs. Katz what had happened and tried to calm her. Fagles and Hutchinson attended Katz, who was gasping for breath on his bed.

The rescue squad attendants already had clamped an oxygen mask over Katz' face to help him breathe. One held the paddles on his chest to provide the electrocardiogram. Recognizing the symptoms of congestive heart failure, Fagles began putting tourniquets on Katz' arms and legs to cut the flow of blood to the heart and reduce the amount of work it had to do.

Mrs. Lagoey, relying on standing signed orders from doctors in charge of the program, began giving drugs to stop some of the heart's premature contractions.

HEAR MONITOR

In the van, White spoke by radio to the doctor on call, who was watching the electrocardiogram sent from Katz' bedroom the same way doctors in Houston monitor astronauts' heart action during space flights.

Katz was clearly in pain. His breathing, despite the oxygen and the drugs, became increasingly labored. He fought the oxygen mask on his face.

"Okay, Mr. Katz. You're going to breathe easier now." said Mrs. Lagoey. "Don't move. This will make you breathe easier. You're going to be all right."

Within 20 minutes of his wife's call to the rescue squad, Katz was breathing easier and looking better. By 7:14 p.m., he had been carried down to the van where he was given other drugs. By the time the van reached Holy Cross Hospital, he looked like a new man and was talking to the attendants.

Katz had been treated by one of the newest and most sophisticated weapons of medicine.

RECENT WEAPON

Mobile coronary care units, relying on space-age technology, were first used in Belfast, Northern Ireland, two years ago. The first one in the United States was put into service last year in New York.

Montgomery County's heartmobile, put in service March 16, is only the fifth in the nation. It already has answered about 140 calls.

The Montgomery County unit is unique in that no doctors ride on it. It relies, instead, on the intensive training of nurses and technicians and the close radio communication with one of six cardiologists who always are on call.

Saving heart attack victims, doctors agree, demands quick action—the use of drugs and sophisticated equipment as soon as the heart stops or begins to beat wildly.

Heart attack deaths have been cut in half since hospitals opened special cardiac care units, with their constant monitoring of patients and ready response to crises. But 65 per cent of all heart attack deaths occur outside a hospital. These are the people mobile coronary care units are designed to help.

DEATH REDUCTION

Dr. William J. Grace of St. Vincent's Hospital in New York, who ran the nation's first unit, estimated heart attack deaths could be halved by a network of mobile units.

The problem is they are expensive, and the highly trained staff they demand are in short supply.

The Montgomery County unit cost $145,000 to build, equip and run for a year.

It was financed by a $100,000 grant from the Regional Medical Program to the Montgomery County Heart Association, a $35,000 donation from American Optical Co. for the electronic equipment and $10,000 from the fraternal Order of Eagles.

A shortage of trained staff members means that the heartmobile now operates on the limited 16-hour, five-day schedule.

COMPLEX EQUIPMENT

The equipment on board is so complex the technician has to be a combination master electrician and doctor's assistant to run it. As on spaceships, everything has a backup unit. Besides the portable electrocardiogram machine, there is one attached to the van. The van has its own defibrilator.

If the patient stops breathing, there is a portable resuscitator that massages the heart and pumps air into the lungs.

And if a doctor should need it, there is even a demand pacemaker on the van.

Despite the cost, Katz' son Julius has no doubt about the value of the mobile coronary unit.

"My father would be dead now if it wasn't for that heartmobile," he said. "I think it's a wonderful thing. There should be more of them."

FIRST ANNUAL IDAHO TRAVEL SEMINAR

Mr. JORDAN of Idaho. Mr. President, on the first of this month in Sun Valley, Idaho, along with my colleague from the House of Representatives, Representative ORVAL HANSEN, I was privileged to take part in the first annual Idaho travel seminar. Sun Valley seemed a natural site for such a meeting, drawing as it does countless tourists each year to its many scenic attractions.

The various representatives of the travel industry in our State were delighted with the first official Idaho appearance of C. Langhorne Washburn, Director of the U.S. Travel Service. Mr. Washburn delivered a timely and thoughtful address. Since his remarks are applicable to all tourist areas of the United States, I wish to share his speech with Members of Congress and the many readers of the CONGRESSIONAL RECORD.

I ask unanimous consent that the address be printed in the RECORD.

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

ADDRESS BY C. LANGHORNE WASHBURN

It is a great pleasure for me to participate in this seminar.

I certainly want to thank you, Senator Jordan, and you, Congressman Hansen, for your kind invitation.

I also want to offer my congratulations, Senator, on the high honor conferred on you yesterday by the University of Idaho. Your achievements and standing in the United States Senate make it an honor richly deserved and warmly applauded.

Congressman Hansen, I'm sure, will not have long to wait for similar honors. Not only is he a distinguished legislator, but he also happens to be the second man in the history of the University to graduate with a straight four-point average. I hope you'll direct a lot of your questions to the Congressman this morning: the right answers obviously come naturally to him.

Let me begin by saying that I can imagine no better setting for a travel seminar than right here in Sun Valley. What we're here to talk about selling is right out there, all around us. If that won't stimulate and inspire us, nothing will.

To me, all of Idaho is a travel salesman's dream. This is America the *most* beautiful. It's magnificent, unspoiled—and yet accessible.

You have grandeur here, in the literal sense of the word. Majesty, as only nature knows it. This is the land where the hyperbole of travel brochures is everywhere surpassed by what your eyes can see.

What a product you have to sell—overseas or anywhere! But especially overseas.

That, of course, is what I'm here to talk about and discuss with you: How the U.S. Travel Service can help you to sell "Destination, Idaho" to foreign tourists.

First, let me assure you that I'm not talking about any sideline, small-potatoes business. I'm talking about a business the size of an *Idaho* potato!

Incidentally, talking about size—my passion is fishing, and I've been enjoying dipping into some of your wonderful streams on this visit. Anyway, my wife presented me with a baby girl some months back, and one of my friends asked me recently how much she weighed.

"About the same as a good-sized blue," I told him.

My wife says I've got fishing on the brain—and she hopes it stays there!

Now about the size of this travel business. International tourism receipts account for the largest single item in world trade. They are running more than $17 billion annually and are increasing at around 11 percent every year.

Moreover, the United States leads every other nation in the world in this giant indus-

try. Last year, we earned about $1.93 billion from international tourists. About 1.8 million visitors came from overseas and 14 million from Mexico and Canada. This year we expect more than 2 million from overseas, each of whom will spend around $400 in this country.

These expenditures flow into the economic bloodstream of the whole nation. Some 30 percent go into the hospitality sector—hotels, restaurants, and the like. The remaining 70 percent go into the general economy, benefitting everybody—the butcher, the baker and the candlestick maker.

Moreover, there are the benefits from what we call the multiplier effect. The tourist dollar doesn't stop when its spent, but continues to be spent by those it is spent with. We estimate that the purchasing power of a single dollar is multiplied more than five times as it flows into supporting businesses, in addition to those directly engaged in tourism.

Next, let me explain briefly just where the U.S. Travel Service fits into the picture.

Our agency is organized specifically to market the United States as a prime travel destination. We tell people overseas "Visit the USA—where else can you see the United States of America?"

There are two principal reasons for our agency's existence. First, as I've just described, tourist expenditures are a vital element in economic development. They mean jobs for our growing work force and profits for business to finance expansion of facilities and to engage in the research and development which maintain our technological lead and provide us with the world's highest standard of living.

Second, increased tourist dollars from abroad help solve our balance of payments problem. We must bring our international accounts into better balance in order to maintain confidence in the dollar as the world's principal reserve currency. Americans traveling abroad spend some $2 billion more annually than foreign visitors to the U.S. spend here. We need to close that $2 billion gap, and attracting more visitors here is the way to do it.

So our job is to work with the travel industry abroad to motivate and encourage people to come here in ever increasing numbers.

The product we are selling is divided into exactly 50 sections—with some of the most beautiful names and scenery on earth. None, of course, surpasses the Gem State—and that *gem* of a state—Idaho!

For several years, we have been telling potential visitors in forty countries about Sun Valley, Craters of the Moon, and Snake River.

We also have promoted Idaho's President's Cup Races, The all-Indian Ceremonial and The Old Time Fiddler's Contest.

We have encouraged business travel to Idaho, too. In our booklet, *Plant Tours for Foreign Visitors to the United States,* we list 40 different businesses in this state which offer guided tours for visitors from abroad.

In addition to promoting Idaho's attractions in our own literature, we also distribute brochures and booklets produced by The Idaho State Department of Commerce. We supply foreign visitors with copies of *Incredible Idaho* and *Discover Yourself, Explore Idaho.*

But the big job—and the really big profits—lie ahead. A recent projection by our Office of Research and Analysis indicates that overseas visitor traffic in 1974 will reach 5.1 million and traffic from Canada and Mexico will hit 17 million.

That's a total foreign visitor count of 22 million—and these travelers will probably spend close to $3.5 billion.

Idaho can and must get its fair share of that bonanza.

A sizeable chunk of this gold is coming from a country that lies to the west, on *your* side of the USA. I'm referring to Japan, whose booming growth has vaulted her to second place in the Free World economy.

Our office estimates that in Japan alone seven million persons today have the means for intercontinental travel. We're not going to get them all over here, of course. But I'm a dreamer, and I like to dream about multiplying those seven million by the $400 that each overseas visitor spends here. And I get a total of $2.8 billion. Then I calculate the multiplier effect, the way those dollars spread throughout the economy. And I come up with $14 billion.

If that's not worth going after, I don't know what is. So we're going after it. And we're going after the same potential that exists in Europe.

We're going after more business travel to the U.S. More visitors in tour or charter groups. And, of special interest to you Idahoans, more travelers from Canada.

Canada is by far our richest potential market. Its proximity, its high per capita income, the close and friendly relations between our countries—all combine to make Canada our No. 1 sales target.

The fact that Idaho is contiguous to Canada means that you will be among the top states to benefit from this program. So we want to work with you in joint promotions and other programs that will lure increasing numbers of our friends to the north down this way.

To carry out such cooperative efforts with your state and others, we have asked Congress to create a special matching fund program.

We know that the United States is a large, diverse tourist product. Ideally, the way to merchandise it is to offer it in packages to the foreign tourist.

Each of our states and many of our cities have much to offer the foreign visitor. They know their attractions and features. By encouraging them to join together, and in cooperation with our agency, we can produce a travel package with far greater appeal to the tourist. Such packaged tours covering separate regions of the Nation would put us in the same marketing position as Europe, with its ability to market individual national tourist attractions.

We are hoping that Congress will provide $500,000 for this program the first year. Congress is considering two different ratios for matching state or city funds—one on a 50–50 basis, the other 80 percent Federal funds, and 20 percent state or city money.

Besides promoting tour destinations, the money could be used to improve receptive services and host facilities. To produce multilingual literature to bridge the language barrier for foreign visitors. And to provide other services to make the visitor's stay more pleasant and enjoyable.

Your proximity to Canada also offers another highly interesting possibility: joint Canadian-U.S. Travel promotions in Europe and Japan. Maybe we could work up a tour package that would include Idaho, one or two other states, British Columbia and Alberta. Offer the best regions of both countries.

We also could join with Canada in travel trade briefings and cooperative film evenings in Europe and Latin America. We could arrange joint travel missions overseas and joint familiarization tours for retail travel agents and travel writers.

In other words, develop a whole series of equal partner promotional ventures.

This whole region has an incomparable asset in its history, traditions, beauty, and diversity. You have alpine lakes and craters of the moon. You have ghost towns, rock cities, ice caves, float trips, vast forests, spectacular falls, magnificent rivers, and ski slopes that are unmatched anywhere in the world. You operate a playground with almost every sport. Your attractions, in short, are the envy of almost every State in the Union; none has more, and few, if any, can equal them.

Today, the jumbo jet is creating a flying bridge to Europe and across the Pacific. Millions and millions of people will be crossing that bridge in this direction.

Your job—and my job—is to put a travel sticker on their luggage which reads "Destination, Idaho."

And that's just what we're going to do.

PRISONERS NOT BEING IGNORED

Mr. GRIFFIN. Mr. President, a headline in the June issue of Navy, the Magazine of Sea Power, read: "Ill Treated POW's Ignored at Home." With all good intentions, the article seemed to accuse the American people—and, by inference, Congress—of insensitivity to the plight of our men in the hands of Hanoi.

Let me assure you and the American people this is far from the case. The tragic plight of the prisoners being held by the North Vietnamese and that of their families here at home is not being ignored.

The situation involves an extremely delicate balance. A blunder on the part of the American Government could make the plight of the prisoners of war much worse.

The Communists have already demonstrated that they consider prisoners to be hostages of war. While civilized countries the world over abandoned this idea generations ago, the Communists cling to it.

While civilized countries the world over have for generations believed war prisoners must receive humane treatment, the Communists have deliberately determined on a course of brutality as their normal and day-to-day treatment of prisoners.

I would suggest that while the Communists themselves have no regard for human life, they recognize that the rest of the world does not share this attitude.

The Communists of North Vietnam obviously wish to have the good will and the support of the so-called neutral world, countries such as India and Pakistan, and the African nations.

These countries hold life much more dear than do the Communists. And the Communists of North Vietnam know this.

So, Mr. President, our approach to the problem might well be best by indirection rather than through direct contact or direct action. It might be well for the United States to work through some of these neutral countries to get them to use their good offices in behalf of American prisoners.

But to get this kind of action from a neutral country it will require solid support from that nation's citizens. This can be helped through person-to-person contact with the citizens of the country involved.

In this, the American people as a whole can be of enormous assistance.

Many Americans have personal friends and relatives living in many nations of the world.

These friends and relatives should, I believe, be contacted by Americans and told the full story of what is happening to the prisoners and their families.

This will be a slow process, Mr. President, but it holds some hope of success.

The process could, perhaps, be speeded by our own actions. We personally have contacts in many foreign lands. Many of our contacts are influential people in their home countries. I think we should use those contacts and through them tell the governments of neutral nations about the plight of these American prisoners.

Thus the weight of world opinion could be brought to bear on the Communist regime in North Vietnam.

It is obvious that this regime does not concern itself much with what Americans think or say.

It is equally obvious that they do concern themselves very greatly with what other countries think and say about them.

This may well be the right avenue to use.

I therefore commend it to the Senate and to Americans as a whole.

DEATH OF GEORGE J. REILLY, PROVIDENCE, R.I.

Mr. PELL. Mr. President, during the past weekend, I was saddened to learn of the death of George J. Reilly, a man whose instinctive kindness and love of animals endeared him to the residents of my State.

George Reilly served for 30 years as general agent of the Rhode Island Society for the Prevention of Cruelty to Animals. During those 30 years, there was no more effective spokesman for humane treatment of animals than George Reilly, no one worked more diligently and affectionately for the care of lost and injured animals and to prevent mistreatment of animals.

In April of this year the American Humane Society, in recognition of his outstanding work, presented to George Reilly its honor award.

I am personally saddened by his death and extend to his family and friends my deepest sympathy. I ask unanimous consent that a report of his career from the Providence Sunday Journal be printed at this point in the RECORD.

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

GEORGE J. REILLY, 78, DIES; SPCA AGENT FOR 30 YEARS

George J. Reilly, 78, whose lifelong interest in horses led to a 30-year career with the Rhode Island Society for the Prevention of Cruelty to Animals, died last night at the Jane Brown Hospital after a brief illness.

He had been general agent for the Rhode Island SPCA since 1940.

On April 19 at the celebration of the 100th anniversary of the association, he received the honor award of the American Humane Association. Also on that day a parade of animals, conceived by Mr. Reilly, trooped through the streets of Providence. The parade recalled for thousands who viewed it the methods of transportation for man before the days of the automobile.

Mr. Reilly, who lived at 370 Fountain St., was the husband of Marian (Davis) Reilly.

He was born in Pawtucket May 8, 1892, son of the late James D. and Mary E. (Keating) Reilly. His father owned large stables in Providence near the present site of the Cathedral of SS. Peter and Paul and Mr. Reilly spent much of his young life at the stables. From that early experience he developed a love and knowledge of horses that lasted throughout his life.

After attending Providence schools, he entered his father's business, the James D. Reilly and Son Funeral Home. At the outset of World War I he enlisted in the Army.

After discharge he entered the automobile business and served for 20 years as a representative of the Providence Packard Motor Car Co.

In 1940 he was named the SPCA's general agent here. In the years following he directed the SPCA's work, sheltering lost and injured animals, inspecting livestock and horses and investigating complaints of mistreatment of animals. The work was centered at the society's headquarters at 372 Fountain St.

He became known throughout the state and the region for his interest in the welfare of animals. The American Humane Association awarded him its 25-year award in 1945. The annual Christmas appeal of the state SPCA was highlighted by the Santa Claus in a sleigh atop the Biltmore Hotel, a display conceived by Mr. Reilly.

He was an expert on and collector of fine carriages and a member of the Carriage Association of America.

He was past president of the New England Humane Conference and belonged to the following organizations: the American Humane Association, the New England Livestock Association, of which he was a director, the New England Chiefs of Police Association, the Rhode Island Police Chiefs Association, Providence Lodge 3 of the Fraternal Order of Police.

Besides his wife he leaves two brothers, James A. Reilly and Robert K. Reilly, both of Providence.

Funeral arrangements are incomplete.

IESC, THE "PAUNCH CORPS"

Mr. MATHIAS. Mr. President, I am afraid that with the the news medias emphasis on youth activities we tend to forget the idealism and fervor displayed by the "older generation."

An editorial published in the Hagerstown, Md., Morning Herald of May 18, 1970 stated:

Everyone has heard of the Peace Corps. Not so well known is what is sometimes affectionately referred to as the "Paunch Corps."

This is the International Executive Service Corps. In 1964, David Rockfeller, chairman of the board of Chase Manhattan Bank, formed the group. Since that date, the executives have assisted some 2,000 enterprises in 35 countries. In each case, their goal has been to foster economic growth and strengthen private industry in the developing country.

The IESC is composed of retired as well as active business executives. In the case of an executive in the midst of his career, his company grants a leave of absence. Over 200 major U.S. companies have also supported the project directly through financial sponsorship. In addition, funding comes from the U.S. Agency for International Development and each foreign firm involved in a project.

In the hope that more Senators may be made aware of the fine work of this volunteer organization, 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:

PAUNCH CORPS

Everyone has heard of the Peace Corps, which has been essentially, though not entirely, a channel through which the energy and idealism of thousands of young Americans have been mobilized to help the peoples of the underdeveloped world better their lives.

Not so well-known is what is sometimes affectionately referred to as the "Paunch Corps," an organization of "old" people motivated by the same kind of idealism.

This is the International Executive Service Corps, formed in 1964 by a group of American businessmen headed by David Rockefeller of the Chase Manhattan Bank with the goal of fostering economic growth and strengthening private enterprise in developing countries.

The idea was to recruit experienced executives to serve on short-term assignments overseas, working with local businesses which requested their particular expertise or managerial skill. Since beginning operations in January, 1965, the IESC has answered requests for assistance from some 2,000 enterprises in 45 countries in Latin America, the Middle East, Africa and South and East Asia.

Volunteer executives have helped improve food production and health standards, textile and apparel manufacture, investment and banking practices, construction methods, transportation systems, communications, natural resource development, government and education services.

With many developing nations bidding strongly for foreign visitors, IESC experts have undertaken about 70 hotel and tourist promotion programs in 13 countries. One recent assignment was the development of a park, recreation area and marine-life showplace by the Republic of Singapore with the assistance of the director of Chicago's Shedd Aquarium. In a similar project, a top zoologist, the director of the Milwaukee County Zoo, was recruited to advise the city of Cali, Colombia, on plans for a new zoo.

Nine of the volunteer executives have been women, including a magazine food editor who was sent to Iran, a hospital administrator to Greece, a trade exhibit adviser to Honduras, and a shoe pattern and fitting specialist in her 70s who advised a shoe manufacturer in Panama.

Most of the executives are recently retired, though some are still in active careers and are given leaves of absence by their companies. Except for travel and living expenses, they serve without compensation.

While supported in part by the U.S. Agency for International Development, the IESC also receives financial sponsorship from over 200 major U.S. corporations. Each foreign firm contributes toward the costs of its project.

The IESC, with headquarters in New York, is managed independently by private businessmen. President is Frank Pace Jr., former secretary of the Army and chief executive of General Dynamics Corp.

Youth has the vision and the energy to change the world. Age has the experience and judgment and practical know-how. The qualities of enthusiasm and wisdom have been combined to a remarkable degree in the International Executive Service Corps.

More power to the "Paunch Corps."

MICHIGAN MARINE AWARDED NAVY CROSS

Mr. GRIFFIN. Mr. President, I have learned with great pride that a young man from Michigan, Marine L. Cpl. Freddie L. Moore, of 45 High Street, Benton Harbor, has been awarded the Navy Cross for extraordinary heroism in Vietnam.

I ask unanimous consent that the award citation be printed in the RECORD.

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

MARINE CORPS CITATION

The President of the United States takes pleasure in presenting the Navy Cross to Lance Corporal Freddie L. Moore, United States Marine Corps, for service as set forth in the following citation:

For extraordinary heroism on the early morning of 12 August 1969 as a squad leader with Company B, First Battalion, Seventh Marines, First Marine Division during operations against an armed enemy in the Republic of Vietnam. When several members of his platoon were pinned down by intense hostile fire following the initiation of an ambush against a large enemy force, Lance Corporal Moore, as leader of the remainder of the platoon members, deployed forward of the company position in an effort to reach the pinned-down platoon members. When his own unit was confronted with a heavy volume of hostile fire emanating from a tree line and throughout a rice paddy, Lance Corporal Moore observed two of his companions fall wounded in a position dangerously exposed to enemy fire. Quick to act, he rushed across the fire-swept area, carried his wounded companions to a place of relative safety, and administered medical aid until a corpsman arrived. Lance Corporal Moore then decided to initiate an aggressive assault against the entrenched enemy unit and, shouting instructions and encouragement to his men, succeeded in forcing the enemy troops to withdraw sufficiently to enable the remainder of the platoon to reach their trapped comrades. When the platoon sergeant was wounded, Lance Corporal Moore took charge of the platoon and continued to press the attack until the enemy force was in full retreat. By his courage, aggressive leadership, and inspiring devotion to duty, he contributed significantly to the defeat of the enemy and upheld the highest traditions of the Marine Corps and of the United States Naval Service.

EULOGIES OF MR. AND MRS. WALTER P. REUTHER

Mr. BAYH. Mr. President, on May 15, with great sadness, I journeyed to Detroit, Mich., to attend the funeral services for the late Mr. and Mrs. Walter P. Reuther. The tragic, totally unexpected loss a few days earlier of these two outstanding citizens, whose dedication throughout their lives to worthy causes had earned them a lasting place in our memory, had shocked the Nation.

It is difficult to describe adequately the many attributes and contributions of May and Walter Reuther. He was a great and innovative labor leader, a strenuous and relentless advocate of social and economic justice, and an eloquent and fervent spokesman for world peace. Mrs. Reuther was, in the words of one of the eulogists, her husband's "beautiful and gracious lady, his beloved companion in shared interests, aspirations and ideals." In short, they were as John Gardner said, "the kind of Americans we would all like to be."

Our colleague, the distinguished senior Senator from Michigan (Mr. HART), noted in his tribute that "you were part of Walter Reuther's constituency if you were poor, powerless, a consumer, an outdoorsman; if you were old, if you were weak, and if you were just." The truth of this statement was clearly demonstrated by the diverse backgrounds and roles of the 11 individuals who joined in delivering eulogies at the service: those who spoke included, in addition to those associated with him in his own field, representatives from Government, education, religion, the black community, youth groups, and other national organizations. Likewise, those who gathered to pay their last respects came from all walks of life, all professions, and various levels of economic status; all were united in their common sorrow at the untimely loss of these fine persons.

Mr. President, as a small final tribute to Mr. and Mrs. Reuther, I ask unanimous consent that the eulogies delivered at the services on May 15 be printed in the RECORD.

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

EULOGIES DELIVERED AT FUNERAL SERVICE FOR MR. AND MRS. WALTER PHILIP REUTHER

DAVE MILLER, CHAIRMAN OF THE NATIONAL UAW RETIRED WORKERS ADVISORY COUNCIL

As the day is with all of us, today my heart is overloaded with grief. So if I should falter a little in paying this tribute to this great brother, I'm sure you will forgive me.

Today the world mourns the loss of a great and good man. The old, the underprivileged, the oppressed and the poor have lost their champion. Our union mourns the loss of a great leader and we must face the months and years ahead without his vision and his spirit to guide us. But I and hundreds of other veterans of our union like myself have lost a great, warm and personal friend. For we knew him and worked with him before his name became a household word in America. He was our comrade in arms and with him we shared hardship and hope, joy and despair, tears and laughter. Yes, and even disagreements.

There is so many memories. I remember the day three of us stood on a windy corner in this city in 1935 and he told us he had found a room that could be rented for $10—$10 a month for a headquarters for the organizing drive on the west side of Detroit.

And between the three of us we didn't have $10.

I remember the day I went with him to his home to ask May to give him $9 from their meager household budget to buy a tank of gas for his car so that he could call on some workers and talk to them about a union. And she gave it to him although it was sorely needed for other things. May was a generous and loving woman—a fitting helpmate who not only understood his aspirations and his goals but who shared them as well.

I remember all the years that came after: the strikes and the picket lines, the many rounds of negotiations when we either hit the bricks or waited on the sidelines for him to work his magic at the bargaining table.

I remember the inch-by-inch progress upwards: the escalator clause; the too-old-to-work, too-young-to-die slogan; SUB benefits; group insurance; vacation pay and paid holidays and much, much more. It came slowly and painfully but when we put it all together it meant a new life and a new world for the workers in the plants.

And in 1966 there were nearly 200,000 of us who had retired on pensions. And I remember the day he called a small group of us into his office and said that he was going to propose a new organization to the next convention: an organization of retired members within our union.

He knew us so well. He knew that making a pension possible was only giving us half a loaf. He recognized our need to stay in the mainstream of life and not to be shunted to one side because we were no longer a part of the working force. He gave us dignity and status and we shall be eternally grateful to him for it.

And lastly, I remember last month in Atlantic City when I swore him in as president of this great union. In the years between the 1930s and the 70s, his name became known throughout the world. He walked with kings and Presidents and he numbered world leaders amongst his personal friends.

But the man I administered the oath of office to last month and the young man I talked with on the windy corner so long ago remained the one and the same. His dreams and his desires never changed. He dreamed of a world where children were never hungry, a world where all men walked together in freedom and brotherhood and men of all races and creeds lived together in mutual esteem. And above all, a world of peace amongst nations.

His last public statement called for the end to the horrible war we are now engaged in. He did not live to see the kind of world he visualized. Perhaps none of us will, but in his years upon this earth he touched the lives of millions of people and made them better. From the faceless, nameless auto workers of the 30s to the struggling grape pickers of the 60s, men responded to his call to unite in the battle for human dignity and justice.

Men listened to him, loved him, followed him and, above all, trusted him. He gave them the greatest gift of all—a knowledge of their individual worth as human beings. No individual or group of individuals were ever too small or too weak to claim his attention. And no individual or group of individuals too large or too powerful to escape his wrath. His voice was the call to the conscience of man and now that voice is stilled forever. And it is almost more than we can bear.

Walter was a religious man and his creed a simple one. He believed, and I heard him say this, that before man can serve God he must prove himself worthy by serving mankind.

I quote from the address to the last convention of the CIO in 1955 when he said (and I quote): There is no greater calling than to serve your brother, there is no greater contribution than to help the weak, there is no greater satisfaction than to have done it well."

In farewell, Walter, let me say that you have done it well. Very well indeed. And from the bottom of our grateful hearts we thank you and may I say to Victor, to the entire family, our love and our deep condolences go out to you from the group particularly that I represent: the veterans of this great union.

U.S. SENATOR PHILIP A. HART

We meet here today, not so much to discuss Walter Reuther's life, but to read his will, to examine his legacy.

When I say his will I mean that unwritten document that he spent a lifetime composing. And everyone in this auditorium today is an heir.

He enriched the lives of thousands of people who might not even be able to recognize his name and he never required that those he helped be able to recognize his name. Dave Milller eloquently has described the merits of the great union he built, but you didn't have to carry a UAW card to be one of Walter Reuther's constituents. He never asked much in the way of credentials.

You were a part of Walter Reuther's constituency if you were poor, powerless, a consumer, an outdoorman; if you were old, if you were sick, if you were weak and if you are just. History will treat him kindly, not because he had a large constituency but because he served it so well; not because he was in the position to make many decisions but because so many of his decisions were right.

History will never forget that he was one of the first in the nation to begin talking about what is now such a popular thing: national priorities. When nearly everyone

else was still complacent about a national priority system that had stopped making sense years ago, Walter Reuther was wondering how often we should pick up rocks from the moon when our cities couldn't pick up garbage. And if opponents of that senseless war in Indochina ever master the political muscle to shut it down, Walter Reuther's name will be in the books as one of the movers and they'll write this down about him: he was not a selfish man, that's why we have so much to inherit.

He's left noble structures; but on each he was the carpenter, not the foundation.

Too often leaders measure their own greatness by gauging their own indispensability. Walter Reuther knew better than that. Indispensable men leave no legacy, no monument apart from their gravestone. He was as much a teacher as a leader—content, even pleased to see his ideas pressed to fruition by others whose enthusiasms he kindled.

He's left us great organizations but he's left us more. He's left a superb philosophy of trade unionism. He's left a legacy of selfless morality. His is a heritage of energy, dedication and enlightened liberalism and no one, not one of us, discharges his obligation to Walter Reuther by coming to his funeral.

His estate must not be wasted. It must not be dissipated by cynicism or squandered in petty struggle. His estate must be husbanded. It must be conserved and it must be carefully spent toward a compassionate, concerned and courageous society. That was his life and goal. That must be our goal.

DR. J. WILLIAM RIOUX, PRESIDENT OF THE MERRILL-PALMER INSTITUTE, DETROIT, MICH.

I have come to speak of Mrs. Walter Reuther.

There were several things which were quickly learned in a personal relationship with Mrs. Reuther. First of all, she was careful and deliberate about activities which involved time outside her home. This was not the result of unwillingness to give of her time but rather a measure of her spirit and her generosity because once she was convinced that an organization had goals, commitments and programs which were in the range of her interests and in the spirit of her broad philosophy about people, she devoted extensive amounts of time to learning about the organization and she shared her thinking and her suggestions willingly.

She was without pretense, an open, approachable, gentle spirit with a commanding intellect who quickly absorbed ideas and information.

She was an endless searcher and a learner who displayed an intense interest in an understanding of the major problems facing large urban areas.

She sought out additional information on critical issues, made it a point to know student's points of view and, in the process, influenced others to be more thoughtful and open in their outlooks.

It was important to her that young people—be they four years of age or 20 years of age—be dealt with as carriers of potential to be developed and that they be taught and responded to in open, honest and encouraging ways.

She had firm convictions about people and the need for each of us to have greater faith in, and place greater reliance on, the talent and potential of people to control their own destinies and plan their own affairs.

Although a national figure who knew many of the prominent persons of our time, who lived through periods of danger for the safety of her family, who persevered in the difficult, early phases of the labor movement, her sensitive feelings for people and their welfare was never blunted.

Behind the soft voice, the slow but easy smile and the genuinely shy manner, there was an enormous wealth of conviction, experience and clear thinking in areas which ranged from civil rights to concern for the growth of children and the new ways in which domestic and international peace might be achieved.

Those who were privileged to know her, to work with her, to profit from her ideas and suggestions, thereby had a small insight into how she could be a strong source of support and council to a courageous and vigorous progressive man.

Mrs. Reuther was unafraid of change and on a number of occasions she spoke of how change would be forced on individuals and organizations in abrupt fashion if they were not wise enough to recognize the signs and plan for change from their own motivation. Although she was unconcerned about controversy, she placed great stress on the responsibilities which people and organizations have to seize upon the opportunities to be facilitators in difficult and emotionally charged situations. In carrying out her responsibilities as a member of the managing board of a private institution, she revealed her convictions through her actions.

In our efforts to create new research and training programs geared to the 1970s, focused on young children and families in urban situations, she quietly but firmly and enthusiastically supported aspects which focused on involving members of the community in planning and implementation of those programs. And she gave strong encouragement to our increased efforts to recruit minority students through our campus.

She was respected by the young, admired by those who were older. And for all, she served as a vivid reminder that there is hope that we can solve even our most complicated and difficult problems if we press ourselves to all of our talents and our energy.

She was, by extraordinary measures, a significant and impressive human being. We shall miss her repeatedly in the time ahead.

WHITNEY YOUNG, EXECUTIVE DIRECTOR OF THE NATIONAL URBAN LEAGUE

We mourn today the loss of Walter Reuther and his lovely wife.

We mourn the tragic and untimely passing of noble souls of dear friends and of principle fighters for social justice.

Walter Reuther was my friend. He was the best kind of friend—a man you could call in the middle of the night when you had a problem, a man who had the capacity to give of himself, a man who was always there when you needed him, always with the right word, the right advice, the right attitude of concern and involvement.

I spoke at a recent UAW convention, I saw how his members loved him and how they respected his judgment and revered him greatness. I saw the value he placed on his leadership and I saw how he influenced a huge union to support those in our society who are less fortunate than they.

They have lost their leader. I have lost a dear friend. And all Americans, most especially the black, the poor, the underprivileged, have lost a champion.

Whenever the going was tough, Walter Reuther was with us. He was at the 1963 March on Washington. He was in Selma Alabama. He was on the Meredith march in Mississippi. He was with us on Solidarity Day. He was in Memphis. He was one of the first to help Cesar Chavez and the striking grapeworkers in California. Wherever and whenever the poor and the oppressed needed him, Walter Reuther was there.

He knew that the gains of well paid union men were endangered so long as there were other workers who were jobless, whose children were hungry and who were denied their basic rights because of discrimination. Walter Reuther was a labor leader who never forgot that the American working man had to fight for what he has. He never forgot the sit-ins, the seized buildings and the attacks by goon squads.

He would have been shocked and shamed at the recent action of some of New York's construction workers who desecrated the flag under which they marched and who damaged the patriotic ideals they professed when they attacked students who asked for peace and domestic reform.

Walter Reuther remembered that the parents of those same workers were also beaten when they demonstrated for what they believed in.

He was a great constructive force in the labor movement. He battled bigotry whenever it reared its ugly head and his combination of militant unionism and fair play for all did much to lower union barriers to black workers. He worked increasingly to bring the light of fairness to his fellow unionists, whether through his battles to counter the influence of Wallace support in the plants or through his efforts to persuade other union leaders to take a stand on racism and the crucial issues of social justice.

He was one leader who never had to be convinced of the justice of the claims black people were making on society and he was one leader who never needed detailed interpretation of what was happening in the ghetto. He knew. He was there. He was a believer. He was a man.

We served together on four Presidential commissions. Always it was the same. He and I talked the same language and together we had to spur on the businessmen and government officials who served with us to make them realize the crisis that our country was in, to make them open their minds and their hearts and to right wrongs. I saw how, through sheer logic, commitment and unswerving loyalty to humanitarian ideals, Walter convinced these men to support our positions and to back measures that would make life better for millions of the poor and the black.

He was a symbol in his own time, a symbol of justice and righteousness. For black people, he was a symbol of the decency that still exists in America, a symbol of the concern and dedication of the important portions in some white America that still remain.

We thought of Walter the way he wanted to be thought of: as a brother, both in soul and in spirit, in word and in deed. A brother.

Like all great men he will have monuments to his memory but monuments should not be of concrete and stone. True monuments are living ones. For us, his friends, his monuments will be our memory of his dynamic personality and his continuing devotion and our continuing devotion to his principle.

For the American labor movement whose best and most enduring features he helped to create, there can be no greater monument to his memory than a rededication to his ideals of social change and justice.

Let his tragic death be the spark that once again unites and ignites the labor movement to assume unquestionable leadership of those forces in our nation that are trying to build an open society dedicated to social justice and equality.

Let it once more be the loudest voice of the voiceless, the greatest hope of the hopeless. Let his memory stand as a beacon for progress. Let his tragic loss inspire new effort and dedication to his ideals. That is a monument that Walter would have wanted.

We grieve his loss—the loss of our brother—but we pray that the ideals that gave his life meaning will live on.

JOHN W. GARDNER, CHAIRMAN OF THE NATIONAL URBAN COALITION

What I say this morning will be very brief and I must say that it will be highly personal, but I believe it reflects, surely, the experience of tens of millions of Americans

whose lives have been affected by the lives of May and Walter Reuther.

None of us can speak of May and Walter without emotion and without the deepest gratitude. A friend of mine once said that the purpose of a free society is to produce great individuals and in producing May and Walter Reuther, this society justified itself many times over.

When we speak of them as typical Americans, we flatter ourselves. They were the kind of Americans we would all like to be. They were the good, vital, generous, loving people that many of us strive to be and never quite are.

They strengthened us, they renewed our faith, they thought better of us than we thought of ourselves and by thinking so, made us better people.

It's a bitter thing to lose them now when we need them so much, but we can serve their memory best by being the kind of people that they wanted us to be. Thank you.

MRS. MARTIN LUTHER KING, JR.

I come to extend my personal sympathy and that of my family to the families of May and Walter Reuther, to their friends, associates and members of the UAW.

Walter Reuther was to black people no mere remote headline personality. For blacks, he was preeminently the most widely known and respected white labor leader in the nation.

The secret of his success with blacks was that he was there in person when the storm clouds were thick. We remember him in Montgomery. He was in Birmingham. He marched with us in Selma and Jackson, Miss., and Washington. And he was in Memphis.

Only yesterday, there he was once more in Charleston, South Carolina, the leader of a million and a half workers giving personal support to a strike of only 400 black women.

Black America needs more than it gets from the American labor movement. But it knows that the national labor leader who set an example for all of his colleagues was Walter Reuther. He was a big man so, of course, he had enemies and detractors. He had the courage to be with the minority when it was right. He was counted among the opponents of the war in Vietnam in the lonely days.

In 1963 (it is now almost forgotten) the civil rights March on Washington could not get major official labor support. That historic demonstration, now universally respected, was then considered to be dangerous. But Walter Reuther and UAW were there, not with token representation but in ranks of tens of thousands and led by Walter Reuther, personally.

He was a simple man in his personal life—a rare quality in these flamboyant times. Surely the greatest credit must be given to his wife who shared his rejection of conspicuous consumption. But if his ways were simple his ideas were grand. Without trying to be more than a dedicated labor leader, he became a national and international leader.

He aroused the imagination of millions, surpassing in respect and affection corporate executives, generals of armies and politicians in high places.

We shall all miss him because we are all better off—black and white—as beneficiaries of his creative life.

Walter Reuther did not have to strain to identify with issues that concerned black people. They were the issues of his life's work: decent annual wages, pensions, unemployment insurance, universal health insurance, political representation and, above all, equality and dignity for working people and a peaceful world.

Only a few weeks ago—speaking to the UAW convention—I talked about the social leadership and broader vision of social justice Walter Reuther and the UAW brought to the labor movement. I said our nation was in desperate need of a pioneering spirit for radical reform. Black people, I felt, were eager to join in a crusade to achieve a society of human decency and one of the great levers of power was in the hands of the UAW. I warned that divided, neither black nor white working people could win. Deluded by myths and prejudices, we could fail. But united we could put this nation together, restore social sanity, inspire hope and achieve the interracial harmony my husband always believed to be possible.

At that time I asked that such a crusade be a memorial to Martin Luther King. Today, plunged into more sorrow, I ask that you build a memorial of social justice in our daily lives for your own Walter Reuther as well as Martin Luther King, Jr.

A GM executive bargaining with Walter Reuther once asked him scornfully: "Is the UAW fighting the fight of the whole world?" I think this is not a bad epitaph for a man. He spent his life fighting the fight of the whole world.

DR. DURWARD B. VARNER, CHANCELLOR OF THE UNIVERSITY OF NEBRASKA

All the civilized world knew Walter Reuther as one of the most powerful figures in the history of organized labor.

I knew May and Walter Reuther as devoted, loyal and proud parents of their two daughters, Linda and Lisa.

Those who make the laws of these United States knew Walter Reuther as an eloquent and effective spokesman for ever more humane and adequate legislation in the broad area of human welfare.

I knew May and Walter Reuther as staunch and consistent friends of Oakland University, dedicated to helping build this young institution into a major university for the benefit of education in general, but for their community in particular.

The power structure of the nation knew Walter Reuther as a leading and vigorous champion of programs to improve the quality of the environment in which we all live and work.

I knew May and Walter Reuther as the organizers of a community campaign to clean up picturesque Paint Creek, which encircled their simple home, so the neighborhood could enjoy today and tomorrow the natural beauty of that little stream.

The political establishment knew Walter Reuther as an articulate, dynamic and persuasive political force whose influence could affect in a major way the outcome of national elections. I knew May and Walter Reuther as effective members of the Rochester Parent Teachers Association, working for better schools for their children and their neighbor's children.

The concerned leaders of the nation, and of the world, viewed Walter Reuther as the leader of a persistent and determined battle for basic human rights, with the goal of achieving a minimum level of dignity for all mankind.

I knew May and Walter Reuther as early and unwavering colleagues in the establishment of the Meadowbrook Music Festival and the Meadowbrook Theater so their people, too, could share in the riches and the beauty and the dignity of the arts.

The leaders of industry knew Walter Reuther in the heat of the bargaining room where he labored with dramatic effectiveness to better the conditions of existence for all those whom he represented.

I knew May and Walter Reuther in the warm glow of their gaily decorated home at the Christmas season where we exchanged simple gifts: Texas pecans from our family, Grandmother Reuther's homemade wine from theirs.

I, too, knew Walter Reuther as a leader of enormous power and influence and impact on the world. But much more importantly, I had the rich privilege of knowing May and Walther Reuther as parents, as neighbors and as people.

I have lost personal friends; so, too, have the poor and the disadvantaged all over the world.

I have been enriched because of their existence; so, too, has the human race. I shall miss them sorely; so, too, shall all of mankind.

SAM BROWN, NATIONAL YOUTH LEADER

Many here, no doubt, had their first contact with Walther Reuther in his struggle for justice for workers in America.

Many, no doubt, walked picket lines with him in strikes through the years.

But for many in my generation, our most direct contact with him was in the struggle for social justice. And I first walked the picket line with him in August of 1963 in the civil rights march which he was so instrumental in forming and shaping and making a success.

I came to know him not in bargaining sessions, or as the recipient of the consequences of those bargaining sessions, but in the struggle for peace in Vietnam, at a time when students and workers were preparing to fight in the streets of New York. The strong, clear voice of Walter Reuther provided another voice and another vision, a vision of peace and justice. But his life was much more than these visions of a just world at peace: they had substance and I saw that the substance of those dreams of Walter Reuther's in the UAW Center for Continuing Education at Black Lake, Mich. I was privileged to attend an executive board meeting there and after meeting late with the executive board one night—long into the night—discussing the UAW workers endorsement of the October 15 moratorium.

Walter Reuther was up early in the morning and we walked together through the center. As he walked out of the breakfast room, his step lightened and his eyes brightened and he began to tell me of his dream for the center. We walked by the lake and he talked about paths where families could walk among the trees. As he came to the first set of buildings, he showed me the child care centers which would make is possible for a man and his wife to spend time together with no worries about their children. As we came to the next set of buildings, he pointed out rooms where classes would meet and the best of America could come to share their talents and skills and ideas with others.

And then we walked through the woods and he showed me trees he personally had marked to be saved and which would be cleared so that the sunlight could reach those who walked on the paths below. And as we walked through the woods, I thought of those many who would follow in those footsteps.

It was only then that the scope of Walter Reuther's dream was clear. He envisioned not simply a world where racial justice, human justice and economic justice are true in the abstract, but a world in which he knew that economic justice was only the first step in making life livable.

He also dreamed of a world where men could walk in peace with themselves and with nature, a world in which young people and old people, black and white, students and workers, could share a world of peace and justice because men were at peace with themselves—as he was.

At this critical time in American history, we will all miss that voice and that vision. We need men to speak for America who believe as Walter Reuther did, that it is possible to work together to make peace.

We need men to speak for America who believe as Walter Reuther did, that it is possible for men of different ages, classes, colors, economic backgrounds, to live together in harmony.

We need men to help pull our wounded and divided country back together again, and we will miss Walter Reuther in that struggle.

But he has left for us footsteps that lead

in that direction. While we cannot match his stride or pace, we can follow the direction which he has set toward that nation of justice and peace of which he dreamed and insofar as we have the courage and the strength to follow those steps, we will create the nation of which he dreamed. And we create the legacy which he would have wanted.

It is the prayer of my generation and of others that we may have that strength and that courage to follow those footsteps.

RABBI JACOB J. WEINSTEIN

When the dire and dreadful news came to me the words of Chaim Nachman Bialik, the poet of the Hebrew renaissance flashed before my mind's eye: "There was a man and, behold, he is no more!"

Before his time, he was taken away and the song of his life was interrupted. And now we are engaged in launching his tradition. In a sense, this memorial service is the birthday of his immortality. We, his mourners, began today to build upon the tradition on which his life's work was so firmly founded and thus we may convert a part of the leaden stuff of grief—which weighs upon our hearts—into the gold of memory and transmute our common sorrow into the ideals and acts which gave purpose and direction to his life and placed him among the dozen men of our generation who engraved the seal of their convictions and their character on the pattern of our national, yea, and of our international life.

Walter was a prophetic environmentalist. Forty-five years ago, his quick and ardent spirit spotted the areas of pollution in our industrial, political and social order. He saw that the working man had become a hand, often a poorly paid hand. He saw the machine and its owner extract the pound energy of that hand and ignore the mind and heart that made it human.

Walter Reuther insisted that the magnets in industry recognize the human factors in that abstract cost item which they and their computers designated as labor costs. His travels in Europe and Russia, when still a young man, convinced him that the assembly line was irreversible: man could no longer return to hand plow and the horse and buggy. The task before us, he often reminded us, was to humanize the machine, make it our servant and not our master.

Tenacious, even dogmatic in his ultimate goals he was supple and flexible enough to follow the changing patterns of the interplay of man and machines, of ownership and management. As corporations proliferated and pyramided, he brooded over the evermore subtle and complicated interplay of management and labor, of government and consumer. He was among the first to recognize that moment when automation made quantitative, speeded evolution into revolution and, therefore, demanded an entirely new orientation in determining the just due of management and labor in the division of the industrial profit.

In this agonizing reappraisal, Walter Reuther gave the world of labor and the consumer unfailing and perceptive leadership. When one adds to his many brilliant expositions of the good society which might be possible, he dreamed through the viable interaction of a free enterprise economy in a social welfare state. When I say one adds to these glorious, visionary messages such creative innovations as supplementary unemployment benefits, the guaranteed annual wage, retirement and sickness insurance, yes, and the Public Review Board (which I am honored to serve) because he was so sure and so completely at home with the conviction that labor was innately democratic and right and just that he was willing to put the decisions of his executive board under the scrutiny of an independent board—I say when one adds these innovative techniques to the glorious contours of his vision, one can see the entire lineament of a society where men can be unto their fellowmen: friends.

In my tradition, dear friends, we are bidden to take toll of death by seeking instruction from it. We ask ourselves what were the sources of his incredible energy, his unyielding will, his dauntless courage, his passionate loyalty to his ideals? There was his father, Valentine, Mother Reuther whose protestant socialism and evangelical humanism early informed the hearts and minds of all the Reuther children and served as a spiritual springboard from which they plunged into so many of the crucial issues involving the betterment of man and his society.

There was the constant support and warmhearted partnership of May, who comforted and counseled him through the myriad crisis of their public life and who added a note of benign and beautiful grace to all our family union gatherings. Her descent from the Deborahs' and Esthers' of the Bible gave her a profound understanding of the agonies and the ecstasies of the prophetic vocation. They were together in life and, now, are together in death.

Our hearts go out to Linda and Lisa. They have shared their parents with all the dispossessed children of our land. Would that we could share their grief as generously as they have shared their parents' love for us.

There were moments, I am sure, in the past several years—when violence became the general mood of our times, when our government became more deeply mired in a futile and immoral war, when the power and potentates of America showed themselves to be men who think a little bit cheaply, when friends and colleagues in the labor world sometimes could not hear the still small voice of conscience for the rolling of that distant drum—when Walter turned more and more to the thoughts of his Camelot, his Gan-Aden, his Garden of Eden—the beautiful city he was building on Black Lake where the UAW family might escape the harsh pressures of our city and in a congenial and beautiful setting find a Sabbath for their souls, take counsel with one another, sit at the feet of the wise and learned men, renew their spirits that they might return with clearer vision and steadfast strength to the workaday world and rebuild it closer to the hearts desire.

As Moses brought the people of Israel to the Promised Land and was himself denied entrance to it—though he glimpsed it from afar—so Walter Reuther was denied by an act of fate the personal enjoyment of this most precious dream. He enters instead that luminous land which, is the radiance of his memory in all our hearts, grateful for all he meant to us, loyal to the values that were bone to his bone and flesh of his flesh.

We shall be his surrogates in the warm valley of life and by assuming the burdens he so gallantly bore, fighting for the causes he so bravely led, assure his immortality and bind him in the cluster of eternal life.

IVAR NOREN, GENERAL SECRETARY OF THE INTERNATIONAL METALWORKERS FEDERATION

The international labor movement is also mourning a great leader. IMF—the International Metalworkers Federation—is a section of that movement, including over 10 million trade union members around the world. It is on their behalf and together with some other IMF representatives that I have come here to pay tribute to Walter Reuther and what he stood for and to say a last "goodbye."

Walter was a builder in the field of human values. He led the building of one of the finest and most powerful democratic trade unions in the whole world. His effective and well prepared collective bargaining leadership laid the basis for striking progress and gains in wages and working conditions for the UAW members and this, in its turn, paved the way for similar progress for organized labor in other industries, both outside and inside the United States.

In addition (as the IMF president, Walter Brenner of the IMF Metalworkers Union, has emphasized in a message of condolence to the UAW) Walter Reuther clearly realized that in modern society the trade unions must take a stand—both nationally and internationally—on the great problems of social policy of our times and throw all their powers into the support of a democratic transformation of society.

Walter made great contributions to the building in this country of a society with more social justice, equal civil rights and better income security and, in particular, in full recognition of the needs of those people left behind in the course of general progress.

As to his role in the international labor movement, he was one of the founders of the International Confederation of Free Trade Unions and he brought the UAW into the movement as one of its first American affiliates. He was the president of the Automotive Department of the IMF and he always wholeheartedly gave his support to the various IMF programs of international solidarity, not the least of those designed to help the workers in developing countries to build tribunals through which they can, themselves, improve their own situation.

He shared our belief that organized labor has an important role to play in our efforts to build a better world for all people; a world of brotherhood and peace.

Our struggle for this goes on and Walter's imaginative and dynamic idealism will, in this struggle, continue to be a source of inspiration to auto workers, to other metal workers and to all trade unionists throughout the world. Some of us, coming from abroad, had the privilege of meeting with Walter and May, his life companion, many times and under such circumstances that there existed between us bonds of permanent friendship.

We shall remember Walter and May as fine, warm personalities and, I know that this friendship made our lives richer.

IRVING BLUESTONE, ADMINISTRATIVE ASSISTANT TO WALTER PHILIP REUTHER

In this indescribably painful hour, I am deeply honored to have been selected, in behalf of the UAW, its officers and its members, to speak this last farewell to May and Walter.

Side by side, hand clasped in hand, Walter and May each found fulfillment in the other and their love flowered in an indivisible unity. They lived and loved together, not for self alone, not for family alone, but that others might also live and love and share the happiness of the good life.

May was always Walter's beautiful and gracious lady, his beloved companion in shared interests, aspirations and ideals; Walter was always May's beloved champion of a new and better tomorrow for people whose today is only the faint shadow of a cherished dream. Their identities fused into a wholeness, a completeness that neither possessed alone, for they dreamed together, planned together, acted together to help make a more perfect world.

The perfection of their union fashioned the lives of their daughters—Linda and Lisa—who reflected the affection and compassion of the parents, for Linda and Lisa have a fervent belief, too, in the future. They hope and dream, they extend their compassion to every living thing, and like the petals of lovely flowers opening slowly to the sun's greeting, they reach for life, for love, for sweet justice, for peace, for people.

Walter's life knew two worlds that fused one with the other: his family and the UAW. In these he found his way of life. To these he gave all his talents, his energies and, finally, his life. The taproot of his idealism, his love for his fellow man, his warmth and generosity sprang from his home—his father,

his mother, his older brother, Ted, and his sister, Chris, and, of course, his two younger brothers and fellow workers in labor's cause, Roy and Victor.

Walter never believed that the end purpose of the labor movement was "more." Rather, he saw the labor movement as an instrument for social justice, for human progress, for the perfection of the democratic heritage, a means by which workers and their families not only advance their own welfare but by which, in cooperation with men and women in all walks of life, and throughout the world, they make their contribution to improving the quality of the whole society.

His aim and purpose were economic and social justice. But to him the ideals of social justice, economic security, peace and freedom, human dignity and human brotherhood were not matters merely for philosophic discourse but practical goals to be achieved, dreams to be made real.

He dared to dream, yet he was no mere dreamer but a man of action. He had unlimited faith in the ability of free men in a free society to build a brave new world—but he knew that a better future for mankind has to be made; it will not just happen.

For him there was no unattainable goal; no quest whose goal was out of reach.

He was a leader of men who could "reminisce" about the future, even as he brought the future nearer. Countless millions walked with the dignity of free men because Walter, together with his team of UAW colleagues, have touched their lives.

Walter's deeds mark him a giant among men but, above all, he was of and for the people; not alone the deprived, the depressed, the discriminated against, but all the people. Because he was of them, they always called him "Walter"—never "Mr. Reuther." Because he was of them, they loved him, and that is his greatest glory.

An infant lies crying with hunger: Walter sought to feed him and give him the strength to live.

A child is deprived of his right to learn to the full extent of his capability: Walter fought to provide the schooling to make him a whole man.

An anguished man seeks vainly to provide for his family in a society that has forgotten its aim is the fulfillment of people: Walter worked to make real the right of every man willing and able to work, to have the opportunity for a decent job at a decent wage.

A man lies ill and incapacitated: Walter's voice rang out to make him sound and provide for his well-being as a matter of right with dignity and self respect.

A man suffers the sting of bigotry and hatred: Walter was in the vanguard of the struggle to win for him equal opportunity and a secure, respected place in society.

A man grows old and tired at the end of his labors: Walter was there to lead the way to security and dignity and comfortable retirement.

Society desecrates its living environment, drenching it in its own wastes, fouling the sweet air, poisoning the clear water, spawning its slums and ghettoes: Walter was there to help restore the natural beauty and wonder of earth and to build a human environment worthy of free men.

Others spew forth hatred in the violence of war and the escalation of armaments: Walter joined with those who would point the way to peace in brotherhood and in the common humanity of man.

Where shall we find such men who can lead us, as did Walter with boundless energy, to a new and brighter day? Who can dream for humanity and realize their dreams? Who can aspire for people and fulfill their aspirations? We shall find them among the countless men and women of good will and deep commitment who live and hope and work in all corners of the earth, whose voices will respond exultantly to the challenges of a new day, whose actions are guided by a vision of love, peace, brotherhood and justice.

Walter had faith that these voices will prevail. He never wavered, never faltered in this faith, nor can we waver nor must we falter if we are to be true to his memory.

Walter was our friend, our colleague—a generous human being. He was our mentor, our leader, an architect of ideas, a master-builder—but always in teamwork and cooperation with his colleagues and fellow workers.

He was our warm personal friend and, above all, our beloved brother.

Walter and May have not died. They live on in the hearts and minds of those of us who, like them, look not to yesterday but to the bright tomorrow.

ELECTIONS AND THE PRESIDENT'S DECISION

Mr. GRIFFIN. Mr. President, last night's Washington Evening Star contains an excellent analysis of current political thinking in the United States, written by Paul Hope. I ask unanimous consent that that column be printed in the RECORD.

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

ELECTIONS SHOW SUPPORT FOR NIXON

(By Paul Hope)

Speculations that President Nixon's excursion into Cambodia would do in his supporters at the polls hasn't been borne out to date in primary elections around the country.

In fact, a case can be made that his supporters generally have been faring well and that those who have tried to make elections a referendum on his war policies have done rather poorly.

While no clear-cut national trend was discernible, last week's elections could hardly be interpreted as a repudiation of the President. And there was more than a little evidence that the students who were going to smother the war at the ballot box have overestimated their political muscle.

One of the most striking examples of student failure was in New Jersey's 15th congressional district. They poured onto the streets several thousand strong for Lewis B. Kaden, a 27-year-old lawyer who made opposition to Nixon's Southeast Asia policies the key issue in his campaign to upset Rep. Edward J. Patten in the Democratic primary.

The Princeton Movement, one of the most sophisticated political operations to grow out of recent Cambodia protests, was heavily involved. Patten swamped Kaden by a 2-to-1 margin.

In California, Rep. George E. Brown, Jr. called his campaign for the Democratic nomination to the Senate a referendum on Nixon's war policies. It was estimated that 8,000 or more students hit the bricks for Brown. He lost by a substantial margin to Rep. John V. Tunney.

Tunney's win wasn't a victory for Nixon, for he, too, opposes the President's Southeast Asia policies. But the significant fact was that Democratic voters rejected the shrill opposition of Brown in favor of the more moderate voice of Tunney.

In an earlier primary in Texas, Democratic Sen. Ralph W. Yarborough, an outspoken opponent of Nixon's handling of the war, was defeated for renomination by Lloyd Bentson, a Democrat who supported the President. That election was held two days after Nixon announced that American troops were moving into Cambodia.

A week later, an opponent who criticized West Virginia Sen. Robert C. Byrd's support for U.S. involvement in Southeast Asia got only 11 percent of the vote in the Senate Democratic primary.

On May 19 in Pennsylvania, Norval D. Reece, who made opposition to the war his principal campaign issue, was defeated in a Democratic primary for the Senate. That election came at the height of student demonstrations against the Cambodia operation and hundreds of students from out of the state came in to work for Reece. He got less than 30 percent of the vote.

A week later, a peace candidate in the race for the Democratic nomination for governor in Oregon got only 12 percent of the vote, only 5 percent higher than the vote polled by a night club entertainer who advocated lower liquor prices.

At the same time in Oregon, a peace candidate, Professor John F. Callahan, polled only 19 percent of the vote in a Democratic primary against veteran Rep. Edith Green.

Perhaps more important, reaction against student demonstrations resulted in resounding defeat in Oregon for a change in state law that would have lowered the voting age from 21 to 19.

Aside from the war issue, there are indications in many elections this year that the conservative mood that helped Nixon win the presidency in 1968 is still abroad in the land and may be getting stronger.

Yarborough's defeat was an indication. So was the thumping defeat of liberal Republican David F. Cargo by conservative Anderson Carter in a contest last Tuesday for the GOP nomination for the Senate in New Mexico.

An attempt to turn Alabama in a more moderate political direction failed when George C. Wallace turned out to be the overwhelming favorite of white voters in the gubernatorial primary. If his opponent, Albert P. Brewer, hadn't received solid support from some 200,000 black voters, the race wouldn't have been close.

The election of Wallace is grim evidence that Sen. Margaret Chase Smith, R-Maine, wasn't off base when she warned last week that the violence and defiance of the law by the radical left could produce a mood in the electorate that could lead to repression from the right.

A PROPOSAL TO MATCH RHETORIC WITH REALITY IN MINORITY ECONOMIC PARTICIPATION

Mr. BAYH. Mr. President, on July 14, 1969, I introduced three bills whose purpose is to broaden the participation of minority contractors in the Nation's construction industry. I was at that time and still am of the opinion that endlessly repeating the pat phrases and rhetoric of so called black capitalism is a cruel hoax, without offering concrete proposals to achieve economic viability for minority citizens across this country.

The first bill, S. 2609, has three main parts. First, it amends title IV of the Small Business Act of 1958 to allow the Small Business Administration to enter into commitments to guarantee any surety against 90 percent of the loss up to $500,000 resulting from default on a small business principal on bid, payment or performance bonds for construction. Second, it amends paragraph (7) of section 8(b) of the Small Business Act to extend the present authority for issuance of certificates of competency to federally funded construction projects. Also, it provides a mechanism for further evaluation of the capacity of the contractor if he is unable to obtain from private sources the bonding required for such contracts up to $500,000. Third, it amends section 8 of the Small Business Act to

provide for the establishment of a National Construction Task Force to give technical assistance to small contractors. It provides further for office facilities, materials, and staff as may be necessary or appropriate for it to carry out its functions.

The second bill, S. 2610, was adopted as an amendment to the 1968 Housing and Urban Development Act. It requires maximum feasible utilization of individuals and business concerns located in or owned by persons who reside in areas of certain federally assisted projects. These include housing; urban planning, development, redevelopment, or renewal; public or community facilities; and new community development. It is my hope that Secretary Romney will soon complete the guidelines for these provisions so that this portion of the act can be implemented.

The third bill would amend the Miller Act of 1935 which now requires that all Federal contracts in excess of $2,000 must be bonded for labor and material. This exemption would be increased to $20,000.

No single program or piece of legislation will work magic but I feel certain we can and should pursue legislative remedies for a variety of problems that have consistently impeded the development or minority enterprise in various sectors of our economy.

The construction industry, as one of these sectors, has traditionally served as a vehicle of upward mobility for a steady parade of Americans of varying backgrounds. It continues to provide millions of jobs and business opportunities, but unfortunately has not generally welcomed the participation of nonwhite workers and contractors. However, this industry has great potential as a vehicle for more rapid improvement in the economic posture of nonwhite Americans.

The Small Business Administration estimates that by the late 1970's, new construction will total $180 billion. This represents an 80 percent increase in dollars spent for construction in 1969. The national goal to build or rehabilitate 26 million units, and 6 million subsidized units for low- and moderate-income families by 1978 will contribute greatly to the growth of the industry. Much of this activity will take place within the limits of our sprawling urban centers, heavily populated by nonwhites who want and are entitled to a piece of the economic action.

My bills were offered as a step in that direction. I have been encouraged by the many letters received from organizations and individuals that reflect widespread support of the substance of my proposals. Particular interest has been expressed in S. 2609, which speaks most directly to the problems of the estimated 8,000 minority construction contractors in the country. A portion of that bill providing for surety bond guarantees was offered recently by the Small Business Administration as section 301 of S. 3699, an administration omnibus small business bill introduced on March 24, 1970, by the junior Senator from New Hampshire (Mr. McINTYRE), chairman of the Subcommittee on Small Business of the Senate Committee on Banking and Currency.

The administration is to be commended for its interest in the needs of minority enterprise as reflected by the various sections of the omnibus bill. I look forward to testifying on behalf of its merits during the hearings scheduled by the Small Business Subcommittee for June 15, 16, and 17.

Mr. President, I ask unanimous consent that a sampling of the letters I have received in support of my proposals be printed in the RECORD.

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

U. S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C., April 8, 1970.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: I enclose a copy of a report from the Small Business Administration on your bill, S. 2609.

By direction of the Chairman.

Sincerely,

DUDLEY L. O'NEAL, Jr.

U.S. GOVERNMENT SMALL BUSINESS ADMINISTRATION,
Washington, D.C., April 2, 1970.

Hon. JOHN SPARKMAN,
Chairman, Committee on Banking and Currency, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of July 29, 1969, requesting the views of the Small Business Administration on S. 2609, a bill "To increase the participation of small business concerns in the construction industry by providing for a Federal guarantee of certain construction bonds and authorizing the acceptance of certifications of competency in lieu of bonding in connection with certain Federal projects, and for other purposes."

Because of their slender financial resources and their limited managerial experience and knowledge, small construction firms commonly encounter difficulty in obtaining the bonds (bid, payment and performance) normally required of concerns seeking construction work. This is particularly true of blacks, and of members of other minority groups trying to establish themselves in the industry. Existing bonding requirements represent a high barrier to the progress of these minority concerns.

S. 2609 contains a remedial proposal extending to all construction activity, whether conducted by the Government or private industry. SBA would be authorized, under certain conditions, to guarantee sureties against losses resulting from the breaching of bid bonds, payment bonds or performance bonds by small construction firms. Such a guarantee could cover up to 90 percent of the amount of the loss.

We are in strong general agreement with this proposal. Indeed, a bill which we recently submitted to the Congress, calling for a number of measures to expand and intensify Government assistance to small business, contains a similar proposal. A copy of the bill is enclosed herewith. We are hopeful that such guarantee legislation will be promptly enacted.

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

Sincerely,

HILARY SANDOVAL, Jr.,
Administrator.

PHILADELPHIA, PA.,
August 7, 1959.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: Thank you for the materials containing proposed legislation relative to minority participation in the construction industry.

This type of legislation represents a vital element which is too often lacking on the part of our government. In this connection, I refer to aggressive leadership to assure equal participation in the benefits of programs. I cite, as a case in point, the Plans for Progress in which instance government is pressing industry for non-discriminatory hiring. A casual survey of the Civil Service System will demonstrate a vicious pattern of discriminatory hiring and upgrading. Your legislation moves to put government in its proper leadership role. I do hope for passage and will act to encourage our Pennsylvania legislators to support it.

May I be so presumptuous as to suggest yet another proposal to add to this meritorious bill? In a recent hearing conducted by local representatives of the Department of Labor, I suggested that there be a set aside program in the construction industry. This follows the precedent set by the Department of Defense under which a certain percentage of procurement is held out for bidding by recognized small businesses. It would appear that this approach, or some creative variation, would add to your legislation.

Thus, there will be bonding, other assurances of the bonding approach, counseling but most vital work, an assurance of work available to these minority contractors.

I believe that this approach, assisting in the creation of minority entrepreneurs, is the only way we can assist the minorities to parity in the society. I speak of the balance of payments approach where we begin to turn those areas which are essentially tax burdens into tax bases as the domestic approach to a balance of payments. Be advised, however, that this only has meaning when we create business and industry controlled by minorities. Otherwise, through jobs, they remain conduits for money with income flowing to non-resident purveyors of goods and services. This does not provide for the recycling of monies within their communities as per the economists multiplier syndrome.

Thank you again. Your legislation is a step towards economic development of our underdeveloped inner city areas.

Sincerely,

THOMAS H. BURGESS, III,
President.

CHARLOTTE, N.C.,
August 9, 1969.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SIR: I am in receipt of your letter of 4 August 1969, in which you indicated some steps you had taken toward trying to bring about "some sense of credibility to the rhetoric of minority economic development."

I certainly feel that the course which you are now pursuing is a very helpful one, and I am especially concerned because, in the state of North Carolina, e.g., not a single Negro contractor is bonded for regular federal government contracts under the programs you referred to.

In general, Negroes are excluded from such bonding, which is, of course, a highly discriminatory measure, and, therefore, we welcome such acts as yours which are designed to counteract discrimination.

I congratulate you on this step, and I certainly hope that it will have a successful conclusion. You have my full support in this

endeavor, and, if you feel that I could be of any assistance in trying to help push for passage of these three bills, please let me know.

Very truly yours,

REGINALD A. HAWKINS,
Chairman, Mecklenburg County Organization on Political Affairs.

INTERRACIAL COUNCIL FOR BUSINESS OPPORTUNITY,
New York, N.Y., August 12, 1969.

Senator BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: I appreciate your forwarding copies of your three bills designed to give substance to the rising demands for minority economic development.

Recently I testified before the House Select Committee on Small Business and I am taking the liberty of enclosing a copy of that testimony, as well as some materials on ICBO.

During the Samuels' administration of SBA, I served as National Co-Chairman of the Task Force on the problems of minority contractors. The Task Force recommended many of the points included in your three bills and additionally urged the development of a national revolving bonding and working capital pool which would help resolve the critical cash needs for minority general and sub-contractors. I am in full accord with you that the federal government can, indeed, and must provide leadership by taking the concrete steps which you recommend.

The development of a new national task force, with both staff and funds to carry out the steps you specified in your legislation is critically important to the accomplishment of the first two objectives. I am sure that you would find many members of the Samuels' Task Force willing and ready to lend you all the support necessary to enact your proposed legislation.

Again, may I express my appreciation for your kindness in sharing the substance of your bills with me and assure you of our complete support.

Very truly yours,

DARWIN W. BOLDEN,
National Executive Director.

VAUGHN'S BOOK STORE,
Detroit, Mich., August 16, 1969.

Senator BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: I received the information concerning your introduction of bills to broaden Minority participation in the Construction industry. Before I comment on the bills let me first congratulate you for having such insight into the awful plight of small and/or Minority Construction firms. Their needs are evident as your careful research shows.

It appears that all three bills are adequate and cover a majority of the real issues faced by these small companies. Certainly they need to get a better share of building contracts which you cover in the first bill through a federal guarantee of certain construction bonds. Thereby, they will have a better chance at government contracts through certification of competency in lieu of bonding. Also, the task force is necessary because smaller companies find it difficult to obtain needed financial assistance. Bill two expands section three of the Housing and Urban Development Act of 1968. This means increased employment in depressed areas and more contracts for smaller firms. Bill three, which amends the Miller Act of 1935, offers smaller companies a better chance since bonding procedures are liberalize.

Sir, all three bills seem to cover most of the sore spots plagueing Minority Construction companies. I wonder though should something be done about the building trade union problem. Most Black Construction workers find it extremely difficult to get into many areas of the building trades.

We solved some of the problems here by establishing our own all trades union. I served on the Board of Directors of ACCORD, An inner City housing Corporation that is rehabilitating old apartment buildings. Have you had any complaints about the union problem?

There are three top Black owned Construction Companies here that I'm sure would benefit by your bills. You may contact them if you wish. They are:

Satisfactory Construction Company, 7304 W. Warren, Detroit, Mich. 48210.

G. E. Wash Construction Company, 2432 Van Dyke, Detroit, Michigan 48207.

Beatty Brothers Construction Company, 6072 14th St., Detroit, Michigan 48208.

Hope your bill gets through Congress successfully.

Sincerely yours,

EDWARD VAUGHAN.

HARLEM COMMONWEALTH COUNCIL, INC.,
New York, N.Y., August 15, 1969.

Hon. BIRCH BAYH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Thank you for your recent letter informing me of the three bills you introduced related to Minority Economic Development.

After analysing these bills, I will be happy to give you the benefit of my opinion because as a member of the Advisory Council of Black Economic Development, I am very concerned about much of the confusion between what constitutes Black Economic Development on one hand, and Minority Entrepreneurship on the other.

We have developed, and are in the process of developing a comprehensive plan and model for Black Economic Development and for your information, I am enclosing a copy of the recent article in the *Amsterdam News* about our Project Black Dollar, and an article of the August 9th *Businessweek* entitled, "Harlem Gets Down to Business."

Thank you for your letter and I will be in touch with you soon.

Sincerely,

DONALD M. SIMMONS,
Executive Director.

NEW YORK, N.Y.,
August 18, 1969.

Senator BIRCH BAYH,
Senate Office Building,
Washington, D.C.

DEAR BIRCH: Thank you for calling to my attention the bills which you introduced concerning minority contractors in the construction industry. As an advocate of and campaigner for minority entrepreneurship, I am especially interested in legislative efforts to facilitate these business ventures. I feel that along with the efforts of business itself must come concrete measures from government which will bridge the gap between theory and fact.

The only suggestion that I would add concerns the role of the SBA in these efforts to aid minority contractors. Obviously there is much to be done in the SBA in terms of its general direction, funding and leadership. I would urge that the SBA be adequately staffed, so that in the process of issuing competency certificates and realistically judging the capabilities of each contractor the contractor himself does not suffer from the endless delay typical of this government agency with its inadequate organization and personnel. It is imperative that these contractors enter the mainstream of the industry as smoothly and quickly as possible.

I was also particularly pleased to read of your amendment to the Miller Act of 1935 which raises the minimum price needed for bonding to $20,000, rather than the previous level of $2,000. I feel confident that this measure, along with the other provisions in the bills, will help considerably to build real bridges to economic participation for minority businessmen.

I hope the rest of your summer is enjoyable and I look forward to seeing you when I'm in Washington.

Very truly yours,

EARL GRAVES.

HARLEM COMMONWEALTH COUNCIL, INC.,
August 26, 1969.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: In reference to my letter # DMS–148/9, I indicated that further comments would be forthcoming concerning the three bills introduced by you to facilitate the participation of small contractors, especially small minority contractors in the mainstream of the production industry.

Our economic staff under the direction of Senior Economist, Mr. Nabe, and myself have analysed these bills and it is my hope that our comments will be useful to you.

Legislation analysis: Senate Bill # S2609 (90% Federal guarantee against loss to private surety companies) has the possibility of being a big step forward in helping minority firms in the contract construction industry who possess all the required technical capability in their business but not the needed bonding capacity. The effect of this bill could be reflected not only quantitatively but also in terms of dollars volume. Quantitatively more minority firms will be able to get bonds and consequently be able to bid for contracts and so increase their dollars receipts.

However, we are a little concerned about the real impact of this bill and how far it can go in correcting the exclusion of minority contractors because of the clause in Bill # 2610 that authorizes the SBA to issue certifications of competency in lieu of bonding. The clause referred to is the one that states that the SBA will issue certificates of competency once it determines the contractor possesses qualifications considered normally sufficient by the surety industry.

If the criteria for issuing certificates to minority contractors are going to be laid down by or based on those presently applied by the surety industry, I am afraid that the traditional alliance between white established contractual firms and the surety industry will make the issuing of certificates restricted to a very limited number of minority contractors.

The SBA has demonstrated by its present and past record that it cannot adequately do the job of certifying the competency of minority contractors. It is also our opinion that the bill should have provisions for the issuance of certificates and other technical assistance to new community-owned construction companies which may not be presently in existence but which are contemplated to be incorporated in the near future.

Unless new imaginative criteria are developed, criteria that are not only acceptable to the surety industry but more important, that are geared towards answering the problems of minority contractors within the present construction business, the effect of the 90% guarantee by the Federal government against loss to private surety companies will have little result because of the

fact that very few certificates will be issued to minority contractors.

In this regard, advice should be sought directly from minority contractors and economic development groups such as the Harlem Commonwealth Council as to what should be the qualifications for issuing certificates of competency.

The third Bill, No. S2611, will be meaningful only if the Senate Bill No. 2610 (issuing of certificates of competency) is adequately implemented. If a significant number of minority contractors are able to get certificates of competency and are provided the 90% Federal guarantee against loss to private surety companies, then Senate Bill No. S2611 by lifting the bonding requirement from $2,000 to $20,000 on all Federal contracts could result in the effectuation of significant investment multipliers within the inner-city economy. This would eliminate the barriers to the "entry" level for Federal contracts.

As to the Task Force, I think its significance lies not in its functions but rather in its composition and by whom its members are appointed. The functions of the Task Force as proposed in Bill No. S2611 are purely of an advisory nature. It is not a decision-making body. For this reason, it is extremely important that the numbers of the Task Force be carefully selected and committed to correcting the imbalance and injustice within the construction enterprises.

Therefore, in order for this body to perform its duties more effectively, its membership needs to be independent of any particular executive agency and appointed by the President.

Senator Bayh, thank you for presenting us with the opportunity to analyse and voice our opinions about these bills. I sincerely hope that the above analysis will be of assistance to you.

Very truly yours,

DONALD M. SIMMONS,
Executive Director.

MCKISSICK ENTERPRISES, INC.,
New York, N.Y., September 2, 1969.

Hon. BIRCH BAYH,
Old Senate Office Building,
Washington, D.C.

DEAR MR. SENATOR: I was most happy to know of the three bills which you submitted in regard to minority contractors. As you know, exclusion from this field has been one of the more damaging effects of racism.

If there is anything we can do to assist, let us know. Your legislation may be of special significance to the construction of Soul City.

Sincerely yours,

FLOYD B. MCKISSICK,
President.

CONSTRUCTION ADVANCEMENT FOUNDATION OF NORTHWEST INDIANA,
Hammond, Ind., September 3, 1969.

Senator BIRCH E. BAYH, Jr.,
Old Senate Building,
Washington, D.C.

DEAR SENATOR: After reading in the Contractor's August 15th issue about your proposed legislation in the Senate to broaden minority participation in the construction industry, we applaud your efforts and hasten to learn more about your bill.

It is conceivable that, contrary to the first reading feeling that additional competition would be created, these minority firms might be able to do what the larger and longer established firms have not been able to do; encourage the unemployed, under-employed, and untrained to join with them in the pilot ventures.

Once this is successfully implemented, the example will do more than all the verbal promises (hollow) and bright literature (exaggerated) of the various governmental agencies.

Please supply us with additional information on your bill.

Fraternally,

LARRY SHIELDS,
Executive Director.

CITY OF CLEVELAND,
September 4, 1969.

Senator BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: Let me commend you on your introduction of these bills designed to increase minority group participation in the construction industry.

The various forms of assistance, protection and safeguards you propose are much needed.

If I can be of help in developing support of the legislation, please advise me.

Sincerely,

CARL B. STOKES.

BLACK ECONOMIC UNION,
October 4, 1969.

Mr. GORDON ALEXANDER,
Special Assistant to Senator Birch Bayh,
Senate Office Building,
Washington, D.C.

DEAR MR. ALEXANDER: Thank you for sending the copies of S.R. 2609, 2610, and 2611.

I have read these bills in detail and must admit that they cover areas of assistance so desperately needed by the minority contractors.

In my opinion the ramifications from bills of this nature would contribute a great deal toward upgrading communities, aside from creating a feeling of credibility.

The Black Economic Union is actively engaged in a very productive minority contractors program and hope that you can find time to meet with the director and myself to discuss our activities in assisting minority contractors. I remain,

Sincerely,

HUGH WRIGHT,
Administrative Assistant.

OCTOBER 9, 1969.

Hon. JEFFREY COHELAN,
Congressman from Berkeley,
Rayburn House Office Building,
Washington, D.C.

DEAR JEFF: I have been spending a fair amount of time on airplanes between Washington and California. I see by the papers that you, too, have been somewhat occupied.

The Minority Contractors Institute is about to get off the ground, and we are trying to grapple with some of the issues of importance to the Institute. In this connection, I would like to ask that you become a co-sponsor, on the House side, of the three bills which Birch Bayh has introduced on the Senate side. These bills deal specifically with problems that you and I have wrestled with over the last four years. They are not all inclusive; they will not solve all of our problems in this area, but they are a step in the right direction.

Thank you for any time that can give to this matter.

Sincerely,

JOSEPH DEBRO,
Director, Minority Contractors Institute.

THE URBAN COALITION,
Washington, D.C., October 23, 1969.

Mr. RAY DONES,
President, General and Specialty Contractors Association, Inc., Oakland, Calif.

DEAR RAY: Enclosed is a copy of the legislation introduced by Senator Birch Bayh—to broaden minority participation in the construction industry. I strongly feel that this legislation is important to the kinds of things to which we addressed ourselves at our last planning committee meeting. I urge your support, therefore, of this legislation.

May I suggest that you send your letters of support to the office of Senator Bayh; also, solicit support from your own Senator in your state. Your support of this very important legislation is greatly appreciated.

Sincerely,

JOSEPH DEBRO,
Director, Minority Contractors Institute.

Attached letter sent to:

Mr. Ray Dones, President, Gen. & Specialty Contractors, Assn., Inc., Oakland.

Mr. George Naganuma, Gen. & Specialty Contractors, Assn., Inc., Oakland.

Mr. Adolph Holmes, Assoc. Program Director, National Urban League, NYC.

Mr. Ernest Green, Project Director, Joint Apprenticeship Program, Brooklyn.

Rev. Channing Phillips, President, Housing Development Corp., Wash., D.C.

Mr. Berkeley Burrell, National Business League, Wash., D.C.

Mr. Winston A. Burnett, Burnett Construction Co., New York City.

Mr. William Cammack, Jr., NAACP, New York City.

Mr. John C. Evans, Dept. of Urban Affairs, AFL–CIO, Wash., D.C.

Mr. William Ericsson, Exec. Vice President, American Nat. Bank & Trust Co., Chicago.

Dr. Vivian Henderson, President, Clark College, Atlanta.

Mr. William C. Jameson, Executive Director, ICBO, Wash., D.C.

Professor John T. Dunlop, Cambridge University, Cambridge, Mass.

Mr. Edward Sylvester, Consultant, Wash., D.C.

Mr. Millard Robbins, Robbins Mortgage Co., Chicago.

U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., October 27, 1969.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: The Office of Minority Business Enterprise in the Department of Commerce wishes to express its interest in the bills you introduced on behalf of Minority Entrepreneurs in the construction industry. We feel that the legislation will go a long way in righting the inequities suffered by minority groups in getting their share of America's construction dollar.

The problem and constraints upon minority contractors have reached astronomical proportions. And the outlook is, indeed, bleak for the alleviation of this problem.

The minority contractor is faced with several difficult problems which he must overcome before he can competitively engage in the lucrative construction industry. Namely they are bonding, financial assistance, management and technical assistance, and market development.

The inability of minority contractors to obtain bid, performance and payment bonds is one of the most crucial of his problems. Surety companies require the minority contractor to have a capital liquidity of 30–100%, whereas his white counterpart is only required to produce 10–20%. The annals of history are filled with the cases of inequities on the part of surety companies who have historically refused to bond minorities in the construction industry on a parity with whites.

Secondly, the minority contractor has not been able—because of the vicious bonding cycle—to develop a capacity to obtain liquid capital for overhead, payroll or labor costs during the initial phase of the job. Nor has he been able to obtain cash or lines of credit for materials and access to competitive discounts for material which depends upon early payment.

Thirdly, the minority contractor is severely hampered by the general lack of management and technical expertise. Because of the years of discrimination, minority contractors have not been able to develop those skills required in the industry to be a successful entrepreneur. Therefore some vehicle must be perfected which will provide

these individuals with the assistance needed to handle such concerns as proper record keeping, knowledge of building codes, estimating, purchasing, job management, accounting, etc.

Finally, the minority contractor must be given assistance in marketing his skills to both the public and private sectors. By using the statutory procedures already set up in SBA, i.e., 8(a), set asides and other procurement regulations, we are to make a start, but more innovative methods must be devised if we are to have any demonstrative impact on the problem.

As Executive Secretary to the Task Force on Construction Contracting, I would like to extend an invitation to you to address the task force at your convenience on the bills of importance to our effort.

Since I personally know of many minority contractors around the country who might want to testify on the bills when they come up for hearings, please don't hesitate to contact this office in that regard.

Sincerely,

JAMES A. H. BYRD,
Program Officer, Office of Minority Business Enterprise.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
Chicago, Ill., October 28, 1969.

Senator BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: As Chairman of the Economic Development Task Force of the National Urban Coalition, I want to offer my support to your Senate Bills 2609, 2610, and 2611.

The Task Force with which I have worked, is most concerned with the problems of minority contractors, and has recently set up a Minority Contractors Institute. The problem of bonding, in particular, represents a significant obstacle to progress in this area. We should appreciate it if you would advise us of anything we can do to be helpful.

I am writing to Senators Percy and Smith relative to this subject.

Yours very truly,

WILLIAM G. ERICSSON.

CLARK COLLEGE,
Atlanta, Ga., November 14, 1969.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: Just a note to express appreciation for the introduction of Bills (S2609, 2610, 2611) to broaden minority participation in the construction industry. This is a very important piece of legislation and I want you to know that I am writing Senators Talmadge and Russell of Georgia asking them to support this bill.

Sincerely yours,

VIVIAN W. HENDERSON.

ATLANTIC COMMUNITY HOUSING CORPORATION, INC.,
Atlantic City, N.J., November 2, 1969.

Senator BIRCH BAYH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BAYH: I am president of the Atlantic Community Housing Corporation, and of the Mobley Construction Corporation. We wholeheartedly support the legislations introduced by you on July 14th; (S-2609/S-2610/S-2611) and we wish to commend you for your action.

Through the construction industry, we feel that there is a superior opportunity for tackling racial discrimination, thus enabling an increase in the participation of small minority contractor's into the mainstream of the building industry.

It is most inspiring as well as encouraging to note the efforts that you and your staff have made relative to solving the many problems facing the small minority contractors, mainly "Bid Bonds."

Primarily, our organization is deeply concerned with the present qualifications needed in securing a bond, and it is our hope that the exemption of the Federal bonding requirement will definitely be increased to $20,000 as indicated in your bill.

We are in accordance with your proposed program 100% and fully anticipate further information, which will be in the interest of the small minority contractors.

Respectfully yours,

JOSEPH J. MOBLEY,
President.

NATIONAL BUSINESS LEAGUE,
Memphis, Tenn., November 18, 1969.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: We hope that our request for support of your bill will be of some benefit and we want to thank you for introducing a bill of this type. We feel that all minority groups will appreciate your presenting this bill and your efforts to get it passed, as we here in the Memphis Chapter National Business League are in wholehearted accord with your efforts.

Enclosed you will find a copy of the letter written to our Congressman from this district, Dan Kuykendall.

Sincerely yours,

GEORGE A. STEVENS,
President.

NOVEMBER 18, 1969.

Hon. DAN KUYKENDALL,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: I am writing you in regard to supporting Senator Birch Bayh's bill, S. 2609, S. 2610 and S. 2611—Introduction of Bills to Broaden Minority Participation in the Construction Industry—as you are well aware of the fact that we need more minority participation in the construction industry.

All of us here in the Memphis Chapter National Business League and the minority groups here in Memphis will appreciate your support in getting this bill passed.

Thank you very kindly for your support.

Sincerely yours,

GEORGE A. STEVENS,
President.

URBAN LEAGUE OF GARY, INC.
Gary, Ind., January 9, 1970.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR BAYH: We in Gary highly commend your authorship and sponsorship of Bills S. 2609, S. 2610 and S. 2611, recently presented for consideration by the Senate of the United States.

Of special interest in S. 2609 was a recommendation for establishing a National Construction Task Force; and, knowing you, I know that you will insist that included in this task force will be local-level people conversant with problems.

Should there be anything you feel we might do at this level to assure passage of these bills, I certainly hope you will so advise.

Keep up the good work for we are all in your corner.

Sincerely yours,

GEO. R. COKER,
Executive Director.

(P.S.—Watched you on TV News last night and your interview with the Governor of Mississippi. He runs Bob Hope a close second for comedy; and your humorous needling and responses did much to keep the hearing within the bounds of reason.)

TULSA URBAN LEAGUE, INC.,
Tulsa, Okla., January 12, 1970.

Senator BIRCH BAYH,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR: We are familiar with Senate Bills 2609, 2610, and 2611. We commend you for your efforts with these bills.

We are also contacting the Oklahoma senators urging support of these bills and anything that we might do to assist you, please advise.

Sincerely,

DALE F. HOGG,
Executive Director, Tulsa Urban League.

JANUARY 13, 1970.

Senator WILLIAM B. SAXBE,
New Senate Office Building,
Washington, D.C.

DEAR SIR: You may still be in the process of making a personal decision on Senate Bill 2609 which was introduced by Senator Birch Bayh of Indiana. As you know, Senate Bill 2609 is designed to broaden minority participation in the construction industry by providing for a federal grant for construction bonds.

If this Bill is passed, it will greatly help to provide a solution for problems faced by minority contractors across the country in meeting bonding requirements.

I, therefore, urge your support of this legislation, and will greatly appreciate your effort in its behalf.

Cordially yours,

RAYMOND R. BROWN.

BIRMINGHAM URBAN LEAGUE, INC.,
Birmingham, Ala., January 16, 1970.

Senator BIRCH BAYH,
House of Senate,
Washington, D.C.

MY DEAR HONORABLE BAYH: We have received a copy of Senate Bill S-2609 which was introduced by you and was designed to broaden minority participation in the construction industry by providing for a federal grant for certain construction bonds.

We here at the Birmingham Urban League certainly endorse this bill and we feel it would be of great help to minority contractors across the country.

We do hope sufficient support for this bill will be forthcoming and we are directing letters to our Alabama senators requesting their endorsement.

Yours very truly,

W. E. KEY,
Acting Executive Director.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 5, 1970.

Re: S. 2609, S. 2610 and S. 2611.

Hon. BIRCH BAYH,
Cannon House Office Building,
Washington, D.C.

DEAR SENATOR: The above bill was introduced by you in the Senate on July 14, 1969. It is a very worthwhile measure. What is the status of this bill today?

I would be happy to do anything I could to assist you in moving these bills in the House.

Very truly yours,

CHARLES W. SANDMAN, Jr.,
Member of Congress.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

AMENDMENT OF THE FOREIGN MILITARY SALES ACT

Mr. BYRD of Virginia. Mr. President, I ask unanimous consent that the unfinished business, H.R. 15628, the Foreign Military Sales Act, be laid before the Senate and made the pending business.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill—H.R. 15628—to amend the Foreign Military Sales Act.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Virginia?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Mr. President, today a debate rages over President Nixon's decision to send American troops into Cambodia. Arguments are being made by sincere men for new initiatives by the Congress to curb the President's power.

I do not question the motives of those who advocate adoption of these initiatives. I share their concern about the use of American troops in Cambodia. However, the President has stated repeatedly that he was acting as Commander in Chief of our Armed Forces to defend the security of American troops. Subsequent to his decision, President Nixon indicated he will not provide armed forces to the Lon Nol government. I concur, but the question remains whether the President will retain his authority as Commander in Chief to return to Cambodia after July 1, 1970, if he finds such action is necessary to protect American troops.

I have sought clarification from the sponsors of the Cooper-Church amendment on this point. Proponents, for the most part, refer to the constitutional power of the Congress and the President. While I can sympathize with those who are frustrated by the role relegated to Congress in the conduct of foreign policy, a close study of our constitutional history clearly demonstrates that the President, as Commander in Chief, has the authority to act independently of the Congress.

To in any way dilute this authority would be contrary to historical precedent and might, in fact, subject Americans to unnecessary danger. Because the constitutional basis for the President's actions is the most convincing argument against congressional action which would tend to dissipate the President's powers as Commander in Chief, I will address myself specifically to that point.

DIVISION OF THE WAR POWER

The draftsmen of the Constitution clearly intended to divide the war power between the President and Congress, but just as clearly, did not intend to precisely define that boundary. They rejected the traditional power of kings to commit unwilling nations to war to further the king's international political objectives. At the same time, they recognized the need for quick presidential response to rapidly developing international situations.

The accommodation of these two interests took place in the session of the constitutional convention on Friday, August 17, 1787, when the enumeration of the powers of Congress were submitted to the delegates. A discussion occurred on the draft language empowering Congress "to make war."

As reported by James Madison, Charles Pinckney urged that the warmaking power be confided to the Senate alone, while Pierce Butler urged that the power be vested in the President. James Madison and Elbridge Gerry then jointly moved to substitute the word "declare" for the word "make," "leaving to the President the power to repel sudden attacks." John Sherman expressed a preference to "make" as opposed to "declare," because the latter was too narrow a grant of power. However, he expressed the view that the grant of power to Congress to "make" war would nonetheless permit the President to repel attack, although not to commence war. Gerry and George Mason opposed the giving of the power to declare war to the President. Rufus King supported the substitution of the word "declare," urging that the word "make" might be understood to mean "conduct" war, which latter was a Presidential function.

With only New Hampshire dissenting, it was agreed that the grant to Congress should be of the power to declare war. Pinckney's motion to strike out the whole clause, and thereby presumably to leave the way open to vest the entire warmaking power in the President, was then defeated by a voice vote.

The framers of the Constitution, in making this division of authority between the executive and the legislative branches did not make a detailed allocation of authority between the two branches. But, nearly 200 years of practice has given rise to a number of precedents and usages, although it cannot be confidently said that any sharp line of demarcation exists as a result of this history.

RECOGNITION OF ARMED CONFLICT SHORT OF "WAR"

Before turning to historical practice for the light which it throws upon the proper interpretation of the President's power, let me first dispel any notion that the United States may lawfully engage in armed hostilities with a foreign power only if Congress has declared war. From the earliest days of the Republic, all three branches of the Federal Government have recognized that this is not so, and that not every armed conflict between forces of two sovereigns is "war." This fact affords no final answer to the constitutional question of the division of authority between the President and Congress in exercising the war power, but it does suggest that the effort to find an answer is not advanced by a mechanical application of labels to various fact situations.

Congress, during the so-called undeclared war with France which lasted from 1798 to 1800, authorized by statute limited use of this Nation's Armed Forces against those of France. The fifth Congress, 1 stat. 578.

In the Eliza, a case arising out of this "undeclared war," the Supreme Court described differences between war and other armed conflicts as being differences between "solemn war" and "imperfect war":

> If it be declared in form, it is called solemn, and is of the perfect kind; because one whole nation is at war with another whole nation; and all the members of the nation declaring war are authorized to commit hostilities against all the members of the other, in every place and under every circumstance. In such a war, all the members act under a general authority, and all the rights and consequences of war attach to their condition.
>
> But hostilities may subsist between two nations, more confined in its nature and extent; being limited as to places, persons and things; and this is more properly termed imperfect war; because not solemn, and because those who are authorized to commit hostilities act under special authority and can go no further than to the extent of their commission. *The Eliza*, 4 Dall. 37, 40–41.
>
> (NOTE.—In that case, a French privateer took possession of an American ship that was later recaptured by Americans who claimed entitlement to payment from the ship's owners. The questions arose in interpretation of two statutes as to what they were entitled to. To answer that question, the court had to decide whether we were at war with France.)

While the Court termed both forms of military action "war," the distinction which it drew likewise separates the declared wars of the 20th century, such as the two World Wars, and the undeclared armed conflicts such as have more recently occurred in Korea and in Southeast Asia. In both of the two World Wars, the declarations of war were viewed by the executive branch to authorize complete subjugation of the enemy, and some form of "unconditional surrender" on the part of the enemy was the announced goal of the allied nations. In Korea and Vietnam, on the other hand, the goals have been the far more limited ones of the maintenance of territorial integrity and of the right of self-determination.

As has been pointed out many times, the United States throughout its history has been involved in armed conflicts short of declared war, from the undeclared war with France in 1798–1800 to Vietnam. I will discuss the more significant of these involvements later.

THE PRESIDENT AS COMMANDER IN CHIEF

Because of the nature of the President's power as Commander in Chief and because of the fact that it is frequently exercised in foreign affairs, there are few judicial precedents dealing with the subject. Such judicial learning as there is on the subject, however, makes it reasonably clear that the designation of the President as Commander in Chief of the Armed Forces is a substantive grant of power, and not merely a commission which treats him as a supreme commander.

Chief Justice Marshall, writing for the Supreme Court in *Little* v. *Barreme*, 2 Cr. 170, concluded that the seizure

of a ship on the high seas had not been authorized by an act of Congress, in the course of the opinion, he stated:

It is by no means clear that the President of the United States, whose high duty it is to "take care that the laws be faithfully executed," and who is Commander-in-Chief of the Armies and Navies of the United States, might not, without any special authority for that purpose, in the then existing state of things, have empowered the officers commanding the armed vessels of the United States, to seize and send into port for adjudication, American vessels which were forfeited by being engaged in this illicit commerce. 2 Cranch at 177.

Justice Grier, speaking for the Supreme Court in its famous decision in the Prize cases, likewise viewed the President's designation as Commander in Chief as being a substantive source of authority on which he might rely in putting down rebellion:

Whether the President in fulfilling his duties, as Commander-in-Chief, in supressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided *by him*, and this court must be governed by the decisions and acts of the political department of the government to which this power was entrusted. He must determine what degree of force the crisis demands. 2 Black 625, 670.

More recently, Justice Jackson, concurring in Youngstown Sheet and Tube Co. against Sawyer, said:

We should not use this occasion to circumscribe, much less to contract, the lawful role of the President as Commander-in-Chief. I should indulge the widest latitude of interpretation to sustain his exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society. 343 U.S. 579, at 645.

The limits of the President's power as Commander in Chief are nowhere defined in the Constitution, except by way of negative implication from the fact that the power to declare war is committed to Congress. However, as a result of numerous occurrences in the history of the Republic, more light has been thrown on the scope of this power.

SCOPE OF POWER AS COMMANDER IN CHIEF

The questions of how far the Chief Executive may go without congressional authorization in committing American military forces to armed conflict, or in deploying them outside of the United States and in conducting armed conflict already authorized by Congress, have arisen repeatedly through the Nation's history. The President has asserted and exercised at least three different varieties of authority under the power as Commander in Chief;

First. Authority to commit military forces of the United States to armed conflict, at least in response to enemy attack or to protect the lives of American troops in the field.

I might add that this is precisely the type of authority we are talking about today, with reference to the Church-Cooper resolution.

Second. Authority to deploy U.S. troops throughout the world, both to fulfill U.S. treaty obligations and to protect American interests; and

Third. Authority to conduct or carry on armed conflict once it is instituted, by making and carrying out the necessary strategic and tactical decisions in connection with such conflict.

Congress has on some of these occasions acquiesced in the President's action without formal ratification; on others, it has ratified the President's action; and on still others, it has taken no action at all. On several occasions, individual Members of Congress have protested Presidential use of the Armed Forces. At the close of the Mexican War, the House of Representatives went so far as to pass an amendment to a pending resolution, labeling the war as unnecessary and unconstitutional. On final passage, the amendment was deleted. Although the President's actions, to which there was no opportunity for the Congress to effectively object, cannot establish a constitutional precedent in the same manner as it would be established by an authoritative judicial decision, a long continued practice on the part of the President, acquiesced in by the Congress, is itself some evidence of the existence of constitutional authority to support such a practice. *United States* v. *Midwest Oil Co.*, 236 U.S. 459. As stated by Justice Frankfurter in his concurring opinion in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 610:

The constitution is a framework for government. Therefore the way the framework has consistently operated fairly establishes that it has operated according to its true nature. Deeply embedded traditional ways of conducting government cannot supplant the constitution or legislation, but they give meaning to the words of a text or supply them.

Commitment of military forces to armed conflict without congressional authorization. President Jefferson in 1801 sent a small squadron of American naval vessels into the Mediterranean to protect U.S. commerce against threatened attack by the barbary pirates of Tripoli. In his message to Congress discussing his action, Jefferson took the view that it would require congressional authorization for this squadron to assume an offensive, rather than a defensive, stance.

In May 1845 President Polk ordered military forces to the coasts of Mexico and to the western frontier of Texas—still at that time an independent republic—in order to prevent an interference by Mexico with the proposed annexation of Texas to the United States. Following annexation, Polk ordered Gen. Zachary Taylor to march from the Nueces River, which Mexico claimed was the southern border of Texas, to the Rio Grande River, which Texas claimed was the southern boundary of Texas. While so engaged, Taylor's forces encountered Mexican troops, and hostilities between the two nations commenced on April 25, 1846. While Polk 2½ weeks later requested a declaration of war from Congress, there had been no prior authorization for Taylor's march south of the Nueces.

In 1854 President Pierce approved the action of a naval officer who bombarded Greytown, Nicaragua, in retaliation against a revolutionary government that refused to make reparations for damage and violence to U.S. citizens.

In April 1861 President Lincoln called for 75,000 volunteers to suppress the rebellion by the Southern States, and proclaimed a blockade of the Confederacy. The Supreme Court in the Prize cases, 2 Black 634 (1863), upheld the action taken by President Lincoln prior to their later ratification by Congress in July, 1861, saying:

If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. 2 Black at 668.

In 1900 President McKinley sent an expedition of 5,000 U.S. troops as a component of an international force during the Boxer Rebellion in China. While Congress recognized the existence of the conflict by providing for combat pay, 31 Stat. 903, it neither declared war nor formally ratified the President's action. A Federal court, however, reiterated the early recognition of limited or undeclared war:

In the present case, at no time was there any formal declaration of war by the political department of this Government against either the Government of China or the "boxer" element of that Government. A formal declaration of war, however, is unnecessary to constitute a condition of war. Hamilton v. McClaughry, 136 F. 445, 449 (Cir. Ct. D. Kan. 1905).

Presidents Theodore Roosevelt, Taft, and Wilson on more than one occasion committed American troops abroad to protect American interests. In November 1903, President Roosevelt ordered the U.S. Navy to guard the Panama area and prevent Colombian troops from being landed to suppress the Panamanian insurrection against Colombia. In his annual report to Congress in 1912, President Taft reported sending some 2,000 marines to Nicaragua—at the request of the President of Nicaragua—and the use of warships and troops in Cuba. He merely advised Congress of these actions without requesting any statutory authorization.

President Wilson on two separate occasions committed American Armed Forces to hostile actions in Mexican territory. In April 1914, he directed a force of sailors and marines to occupy the city of Vera Cruz during the revolution in that country. The city was seized and occupied for 7 months without congressional authorization. In 1916, Wilson ordered General Pershing and more than 10,000 troops to pursue Pancho Villa into Mexican territory following the latter's raid on Columbus, N. Mex.

The most recent example of Presidential combat use of American Armed Forces without congressional declaration of war, prior to the Vietnam conflict, was President Truman's intervention in the Korean conflict. Following invasion of South Korea by North Koreans on June 25, 1950, and a request for aid by the U.N. Security Council, President Truman ordered U.S. air and sea forces to give South Korean troops cover and support. He ordered the 7th Fleet to guard Formosa. On June 30, the President announced that he had authorized the use of U.S. ground forces in the

Korean war following the collapse of the South Korean Army. Ultimately, the number of troops engaged in the Korean conflict reached 250,000, and the conflict lasted more than 3 years. President Truman's action without congressional authorization precipitated the "great debate" in Congress which raged from January to April 1951.

While President Truman relied upon the U.N. Charter, as well as his power as Commander in Chief, his action stands as a precedent for Presidential action in committing U.S. Armed Forces to extensive hostilities without formal declaration of war by Congress.

The U.N. Charter, as a result of its ratification by the Senate, has the status of a treaty, but it does not by virtue of this fact override any provisions of the Constitution. Though treaties made in pursuance of the Constitution may under the supremacy clause override specific constitutional limitations. *Geofroy* v. *Riggs*, 133 U.S. 258; *Reid* v. *Covert*, 351 U.S. 487. If a congressional declaration of war would be required in other circumstances to commit U.S. forces to hostilities similar in extent and nature to those undertaken in Korea, the ratification of the U.N. Charter would not obviate a like requirement in the case of the Korean conflict. While the issue of Presidential power which was the subject of the great debate in Congress was never authoritatively resolved, it is clear that Congress acquiesced in President Truman's intervention in Korea. See Rees, "The Limited War"—1964; Pusey, "The Way We Go to War"—1969.

DEPLOYMENT OF U.S. TROOPS THROUGHOUT THE WORLD

In February 1917, President Wilson requested congressional authority to arm American merchant vessels. When that authority failed of passage in Congress as a result of a filibuster or extended debate, Wilson proceeded to arm them without congressional authority, stating that he was relying on his authority as Commander in Chief.

Near the close of the First World War, President Wilson announced a decision to send American troops to Siberia. The troops so sent remained for over a year, their withdrawal beginning in January 1920. There was no congressional authorization for such disposition of troops, and the United States had not declared war on Russia.

In 1941, prior to Pearl Harbor, President Roosevelt utilized his power as Commander in Chief to undertake a series of actions short of war, designed to aid the allied forces in the Second World War. On April 9, 1941, he made an agreement with the Danish minister for the occupation of Greenland by American forces. In May 1941, Roosevelt issued a proclamation declaring unlimited national emergency, and he ordered American naval craft to sink on sight foreign submarines found in the defensive waters of the United States.

In July 1941, the President announced that U.S. forces would occupy Iceland in order to relieve British forces there, and that the Navy would perform convoy duty for supplies being sent to Great Britain under lend-lease. In September 1941, Roosevelt stated that he had given orders to the U.S. Army and Navy to strike first at any German or Italian vessels of war in American "defensive waters"; the following month, he decided to carry 20,000 British troops from Halifax to the Middle East in American transports.

President Truman's decision in 1951 to send four U.S. divisions to Europe in discharge of the Nation's NATO commitment occasioned prolonged debate in Congress over his powers to take such action without congressional approval. Congress ultimately acquiesced in the President's action without actually resolving the question, and all of President Truman's successors have asserted and exercised similar authority.

Authority to conduct or carry on armed conflict once it has been lawfully instituted. It has never been doubted that the President's power as Commander in Chief authorizes him, and him alone, to conduct armed hostilities which have been lawfully instituted. Chief Justice Chase, concerning in *ex parte Milligan*, 4 Wall. 2, at 139, said:

> Congress has the power not only to raise and support and govern armies but to declare war. It has, therefore, the power to provide by law for carrying on war. This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and conduct of campaigns. That power and duty belong to the President as Commander-in-Chief.

In the First World War, it was necessary to decide whether U.S. troops in France would fight as a separate command under General Pershing, or whether U.S. divisions should be incorporated in existing groups or armies commanded by French or British generals. President Wilson and his military advisers decided that U.S. forces would fight as a separate command.

In the Second World War, not only similar military decisions on a global scale were required, but also decisions that partook as much of political strategy as they did of military strategy. Should the United States concentrate its military and materiel resources on either the Atlantic or Pacific fronts to the exclusion of the other, or should it pursue the war on both fronts simultaneously? Where should the reconquest of Allied territories in Europe and Africa which had been captured by the Axis powers begin? What should be the goal of the Allied Powers? Those who lived through the Second World War will recall without difficulty, and without the necessity of consulting works of history, that this sort of decision was reached by the Allied Commanders in Chief, and chief executive officers of the Allied Nations, without—on the part of the United States—any formal congressional participation. The series of conferences attended by President Roosevelt around the world—at Quebec, Cairo, Casablanca, Teheran, Yalta, and by President Truman at Potsdam, ultimately established the allied goals in fighting the Second World War, including the demand for unconditional surrender on the part of the Axis nations.

Similar strategic and tactical decisions were involved in the undeclared Korean war under President Truman. Questions such as whether U.S. forces should not merely defend South Korean territory, but pursue North Korean forces by invading North Korea, and as to whether American Air Force planes should pursue North Korean and Chinese Communist planes north of the Yalu River, separating Red China from North Korea, were of course made by the President as Commander in Chief without any formal congressional participation.

It is clear that the President, under his power as Commander in Chief, is authorized to commit American forces in such a way as to seriously risk hostilities, and also to actually commit them to such hostilities, without prior congressional approval. However, if the contours of the divided war power contemplated by the framers of the Constitution are to remain, constitutional practice must include Presidential resort to Congress in order to obtain its sanction for the conduct of hostilities which reach a certain scale. Constitutional practice also indicates, however, that congressional sanction need not be in the form of a declaration of war.

In the case of the Mexican War, which was brought about, if not initiated, by President Polk, he requested and obtained a declaration of war. Congress, meeting in 1861 pursuant to the call of President Lincoln, ratified all of the actions he had taken on his own initiative, and apparently refrained from declaring war on the Confederate States only because it did not wish to recognize them as a sovereign nation.

However, the Fifth Congress authorized President Adams to take certain military action against France without going so far as to declare war. More recently, in connection with President Eisenhower's landing of troops in Lebanon and with the Cuban missile crisis in 1962, Congress has given advance authorization for military action by the President without declaring war. 71 Stat. 5; 76 Stat. 697.

The notion that such advance authorization by Congress for military operations constitutes some sort of an invalid delegation of congressional war power simply will not stand analysis. A declaration of war by Congress is, in effect, a blank check to the Executive to conduct military operations to bring about subjugation of the nation against whom war has been declared. The idea that while Congress may do this, it may not delegate a lesser amount of authority to conduct military operations, as was done in the instances referred to above, is utterly illogical and unsupported by precedent. While cases such as *Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935), hold that Congress in delegating powers to deal with domestic affairs must establish standards for administrative guidance, no such principle obtains in the field of foreign affairs. The Supreme Court in *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, made this distinction clear.

What must be regarded as the high-water mark of Executive action without express congressional approval is, of course, the Korean war. Although Congress never expressly sanctioned the

President's action in committing U.S. forces by the hundreds of thousands to the Korean conflict, it repeatedly voted authorizations and appropriations to arm and equip the American troops. This is not to say that such appropriations are invariably the equivalent of express congressional approval; the decision as to whether limited hostilities, commenced by the Executive, should be sanctioned by Congress may be one quite different from the decision as to whether American troops already committed and engaged in such hostilities shall be equipped and supplied.

CONGRESSIONAL POWER TO RESTRICT THE PRESIDENT

While the President may commit Armed Forces of the United States to hostile conflict without congressional authorization under his constitutional power as Commander in Chief, his authority exercised in conformity with congressional authorization or ratification of his acts is obviously broader than if it stood alone. By the same token, Congress undoubtedly has the power in certain situations to restrict the President's power as Commander in Chief to a narrower scope than it would have had in the absence of legislation. Chief Justice Marshall strongly intimates in his opinion in *Little* v. *Barreme*, 2 Cranch. 170 (1804), that the Executive action directing the seizure of a ship on the high seas would have been valid had not Congress enacted legislation restricting the circumstances under which such a seizure was authorized. Congress, exercising its constitutional authority to "make rules concerning captures on land and water" may thus constrict the President's power to direct the manner of proceeding with such captures.

Congress has similarly sought to restrain the authority of the President in the exercise of its power to "raise and support armies." In the Selective Service and Training Act of 1940, it was provided that:

> Persons inducted into the land forces of the United States under this act shall not be employed beyond the limits of the Western Hemisphere except in the territories and possessions of the United States, including the Philippine Islands. 54 Stat. 885.

In the year following enactment of this law, President Roosevelt determined to send U.S. troops, including draftees, to Iceland in order to relieve British troops garrisoned there. He chose to strain geography, rather than the law and obtained the opinion of what was apparently a minority-view geographer that Iceland was actually in the Western Hemisphere.

On December 15, 1969 Congress adopted an amendment to the Defense appropriations bill H.R. 15090 providing that U.S. Forces shall not be dispatched to Laos or Thailand in connection with the Vietnam conflict. I supported this provision offered by the Senator from Idaho as a reasonable exercise of congressional authority.

This is not to say however that every conceivable condition or restriction which Congress may by legislation seek to impose on the use of American Military Forces would be free of Constitutional doubt. Even in the area of domestic affairs where the relationship between Congress and the President is balanced differently than it is in the field of external affairs, virtually every President since Woodrow Wilson has had occasion to object to certain conditions in authorization legislation as being violative of the separation of powers between the executive and the legislative branch. The problem would be compounded should Congress attempt by detailed instructions as to the use of American Forces already in the field to supersede the President as Commander in Chief of the Armed Forces. Surely this is the thrust of Chief Justice Chase's concurring opinion in *ex parte Milligan*, quoted earlier:

> [Congressional power] necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as inteferes with the command of the forces and conduct of campaigns. That power and duty belong to the President as commander-in-chief. 4 Wall. at 139.

THE VIETNAM CONFLICT

The duration of the Vietnam conflict and its requirements in terms of both men and materiel have long since become sufficiently large to raise the most serious sort of constitutional question, had there been no congressional sanction of that conflict. However, as is well known, the conflict in its present form began following an attack on U.S. Naval Forces in the Gulf of Tonkin in August 1964. At that time, President Johnson took direct air action against the North Vietnamese, and he also requested Congress "to join in affirming the national determination that all such attacks will be met" and asked for "a resolution expressing the support of the Congress for all necessary action to protect our Armed Forces and to assist nations covered by the SEATO treaty."

On August 10, 1964, Congress passed the so-called Gulf of Tonkin resolution. I ask unanimous consent that the text of the resolution, 78 Stat. 384 (1964), be printed at this point in the RECORD.

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

SOUTHEAST ASIA RESOLUTION [1]

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

SEC. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Mr. DOLE. Mr. President, in connection with this resolution, Congress noted that whatever the limits of the President's authority acting alone might be, whenever Congress and the President act together, "there can be no doubt" of the constitutional authority.

Since that time, Congress has repeatedly adopted legislation recognizing the situation in Southeast Asia, providing the funds to carry out U.S. commitments there, and providing special benefits for troops stationed there. By virtue of these acts, and the provision in the Gulf of Tonkin resolution as to the manner in which it may be terminated, there is long-standing congressional recognition of a continuing U.S. commitment in Southeast Asia.

While seeking a negotiated peace and furthering "Vietnamization," President Nixon has continued to maintain U.S. troops in the field in South Vietnam. The legality of the maintenance of these troops in South Vietnam, and their use to render assistance to the South Vietnamese troops in repelling aggression from the Vietcong and the North Vietnamese, would be subject to doubt only if Congressional sanction of hostilities commenced on the initiative of the President could be manifested solely by a formal declaration of war. But the numerous historical precedents previously cited militate against such reasoning.

A requirement that congressional approval of Presidential action in this field can come only through a declaration of war is not only contrary to historic constitutional usage, but as a practical matter would curtail effective congressional participation in the exercise of the shared war power. If Congress may sanction armed engagement of U.S. forces only by declaring war, the possibility of its retaining a larger degree of control through a more limited approval is foreclosed. While in terms of men and materiel the Vietnam conflict is one of large scale, the objectives for which the conflict is carried on are by no means as extensive or all-inclusive as would have resulted from a declaration of war by Congress. Conversely, however, there cannot be the slightest doubt from an examina-

[1] Text of Public Law 88-408 [H.J. Res. 1145], 78 Stat. 384, approved Aug. 10, 1964. Department of State Bulletin, Aug. 24, 1964, pp. 272-274.

tion of the language of the Gulf of Tonkin resolution that Congress expressly authorized extensive military involvement by the United States. To reason that if the caption "Declaration of War" had appeared at the top of the resolution, this involvement would be permissible, but that the identical language without such a caption does not give effective congressional sanction, would be to treat this most nebulous and ill-defined of all areas of the law as if it were a problem in common law pleading. Mr. Justice Grier, more than a century ago, in the Prize cases said.

> This greatest of civil wars was not gradually developed by popular commotion, tumultuous assemblies, or local unorganized insurrections. However long may have been its previous conception, it nevertheless sprung forth suddenly from the parent brain, a minerva in the full panoply of war. The President was bound to meet it in the shape it presented itself, without waiting for Congress to baptise it with a name; and no name given to it by him or them could change the fact.

If substance prevailed over form in establishing the right of the Federal Government to fight the Civil War in 1861, substance should equally prevail over form in recognizing congressional sanction for the Vietnam conflict by the Gulf of Tonkin resolution, even though it was not in name or by its terms a formal declaration of war.

Viewed in this context, the President's determination to authorize incursion into the Cambodian border area by U.S. forces to destroy sanctuaries utilized by the enemy is a tactical decision traditionally confided to the Commander in Chief. From the time of the drafting of the Constitution, it has been clear that the Commander in Chief has authority to take prompt action to protect American lives in situations involving hostilities. Faced with a substantial troop commitment to such hostilities made by the previous Chief Executive, and approved by successive Congresses, President Nixon has an obligation as Commander in Chief of the country's Armed Forces to take steps he deems necessary to assure their safety in the field. A decision to cross the Cambodian border to destroy sanctuaries being utilized by North Vietnamese in violation of Cambodia's neutrality, is wholly consistent with that obligation. It is a decision made during the course of an armed conflict as to how that conflict shall be conducted, rather than a determination that some new and previously unauthorized military venture shall be undertaken.

By crossing the Cambodian border to attack sanctuaries used by the enemy, the United States has in no sense gone to "war" with Cambodia. United States forces are fighting with or in support of Cambodian troops, and not against them. The Cambodian incursion has not resulted in a previously uncommitted nation joining the ranks of our enemies, but instead has enabled us to more effectively deter enemy aggression heretofore conducted from the Cambodian sanctuaries.

Only if the constitutional designation of the President as Commander in Chief conferred no substantive authority whatever could it be said that prior congressional authorization for such a tactical decision was required. Since even those authorities least inclined to a broad construction of Presidential power concede that the Commander in Chief provision does confer substantive authority over the manner in which hostilities are conducted, the President's decision to invade and destroy the border sanctuaries in Cambodia was authorized under even a narrow reading of his power as Commander in Chief.

Mr. President, as we approach the vote on the amendment of the Senator from West Virginia (Mr. BYRD), it is well to point out, as I have attempted to do, the historical fact and the historical example of other Presidents at other times who took action.

Mr. President, I would submit that time after time after time throughout our history, a President, whoever it might have been, has exercised his right, in fact, his obligation under the Constitution to protect the American forces.

As stated at the outset of my remarks, time after time the sponsors of the so-called Church-Cooper amendment have stated on the floor that they recognize the President's constitutional right, they recognize the President's constitutional power, and they recognize the President's constitutional obligation to protect the American forces.

So I say again today, as I have said time after time after time concerning the constitutional right and the constitutional power and constitutional obligation a President has, as, what harm can it do to adopt the language of the Byrd amendment and make it part of the Cooper-Church amendment.

Mr. President, I am one of those who believe that Congress has grave responsibilities. Those responsibilities are clearly defined in the Constitution—the power to appropriate money for the Armed Forces, the power to declare war. I believe that we should accept the responsibilities. I believe we should now compromise any differences that exist with reference to the Church-Cooper amendment in the same spirit the President has offered to compromise those differences.

But in the process I would say to my friends and the sponsors of the Cooper-Church amendment that if they sincerely believe that nothing in that amendment ties the hands of the President and that there is nothing in the amendment to prevent the President from protecting American forces then agreeing to the amendment of the Senator from West Virginia (Mr. BYRD) would strengthen the Cooper-Church amendment; it would be a recognition of the President's right, power, and obligation to protect American forces and a recognition by this body that the President has that right, and that we expect him to use that power and to carry out his obligation.

I would guess that every Senator would agree that if in July, or August, or September of this year, during the Vietnamization program and the withdrawal of American troops, for some reason the lives of American troops should again be threatened from Cambodia, we would expect the President to act. If he failed to act he would undoubtedly be subject to serious criticism on this floor.

So we feel that way and if this is the opinion of the great majority of Senators, it is an excellent reason for agreeing to the amendment of the Senator from West Virginia. That amendment would not vitiate the Cooper-Church amendment; it would not gut the Cooper-Church amendment, if, as the sponsors say, the President, historically has had the right to protect American forces. If that power, right, and obligation is clear, as it is, then there is little reason for opposition to the amendment of the Senator from West Virginia.

I have said repeatedly on this floor that the present President has kept his word about Vietnam. When he assumed the Presidency on January 20, 1969, the troop level was 545,000 Americans. He has not escalated the war in Southeast Asia. In fact, he is the first President to deescalate the war. Since June 8, 1969, the President has reduced the troop level in South Vietnam by 115,500 troops in three separate stages.

It appears clear to the junior Senator from Kansas, while I do not question the motives or patriotism of the sponsors, that the timing and the form of the Cooper-Church amendment is open to question. The amendment was considered rather hastily by the Committee on Foregin Relations; it was rushed to the floor of the Senate; and we have been debating it for some time. Since the debate started more than one-half the troops that were in Cambodia, American troops, have been removed. The remaining troops will be removed by June 30 or prior to that time, as stated by the President.

So what effect does the Cooper-Church amendment have if it is not enacted and signed into law as part of the Military Sales Act until after all American troops have been withdrawn? In the opinion of the junior Senator from Kansas, the primary effect, because it has a number, could be to require the President to come to Congress and obtain the approval of Congress before he could move back into Cambodia again to protect American forces; and this is the sum and substance of the need and necessity for the amendment introduced by the Senator from West Virginia (Mr. BYRD) and cosponsored by the junior Senator from Kansas and other Senators.

The President has announced troop withdrawals and he has kept those withdrawals on schedule or ahead of schedule in every instance. Recently he announced another 50,000 American troops would be withdrawn from South Vietnam by October 15 of this year and that by next spring another 100,000 troops would be withdrawn. This will mean that 80 percent of our combat troops will have been removed from South Vietnam. Removed by whom? They will have been removed by President Nixon.

Had President Nixon announced last June that he would withdraw 25,000 troops, and had he announced later he would withdraw another 50,000 troops, and then more troops, whatever totals 115,500, and if he had then reneged on his promises to the American people

and failed to carry out his promise, I would suggest that Congress and the Senate act to force the President to keep faith with the American people. But we do this President no service by suggesting to the American people that the Cooper-Church amendment may be necessary for the removal of American troops from South Vietnam—yes, by July 1, but even beyond that at some later time.

Mr. President, in closing I wish to repeat, and the record is in accord with the statement, that nearly every sponsor of the Cooper-Church amendment has stated that the Cooper-Church amendment does not abridge the President's power to protect American forces; that everyone understands he has that right, power, and obligation. If that be the case, as I believe it is, then what possible harm, what possible danger, what possible damage to the Cooper-Church amendment would come by agreeing to the amendment of the Senator from West Virginia? If those who sponsor the Cooper-Church amendment say the President has the right, power, and obligation to protect American forces, why should we not permit that langauge to be included in their amendment.

Mr. President, on Thursday at 1 p.m. the Senate will make history. We will say to the American people, the man in uniform, that we have restricted the President's right to protect you, to protect your sons, to protect your husbands without first consulting Congress, or we will say to the American people that we recognize the rights, powers, and obligations of any President—not President Nixon but any President—to protect American forces, and we believe in that power and obligation, and we underscore our belief and our commitment to this very vital principle by agreeing to the amendment of the Senator from West Virginia.

Mr. President, having served in the other body for 8 years and in this body briefly I cannot recall a more critical decision to come before Congress. This is not a question involving only this President. This is not a question involving President Nixon.

The action the Senate takes Thursday may well set precedent for decades to come. So I would hope Senators, when they reflect on the way the Cooper-Church amendment will be interpreted across the land, would consider seriously, as they will, the plight of the American man in uniform, or any American for that matter, who might at some time be in danger in a foreign country waiting for rescue and waiting for help. There are some 1,529 American prisoners of war and Americans missing in action who must believe the President, as Commander in Chief, has the right to rescue them without first consulting Congress.

I might speculate, perhaps, that if the President were faced with those circumstances a month from now, or 5 months from now, and did not act, the same critics so vocal in their criticism of the President today might then suggest that he had failed to act at a time of a great emergency to protect American forces.

But, to close in a positive way, there appears to be recognition by nearly every Member of this body that a President—any President—not only has a right, but an obligation, to protect American forces. Why not tell the American people and the world that we believe in that right and that obligation and that power by adoption of the amendment of the Senator from West Virginia? The junior Senator from Kansas can think of no more significant act the Congress could take this year, in this time of crisis in Southeast Asia, in the Mideast, and in far too many countries in the world. It would demonstrate that the greatest free country on earth was not backing away from any obligation to protect those who fight for our freedom and for the freedom of others in the world who look to us for moral leadership, who look to us as the last ray of hope in the free world.

I share the view of many that we have had enough war in Southeast Asia. We are tired of war in South Vietnam. We want to extricate U.S. forces from Southeast Asia. And the President is trying to do this, and has had some success. But as he proceeds on the course of disengagement in South Vietnam, let us not tie his hands, or, even more importantly, let us not by any act of Congress in any way endanger the lives of those who remain in Southeast Asia.

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

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

RECESS

Mr. SPONG. Mr. President, at the request of the majority leader, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

The PRESIDING OFFICER. Is there objection?

There being no objection, at 1:33 p.m. the Senate took a recess, subject to the call of the Chair.

At 2 o'clock and 3 minutes p.m., the Senate convened, when called to order by the Presiding Officer (Mr. CRANSTON).

AMENDMENT OF THE FOREIGN MILITARY SALES ACT

The Senate continued with the consideration of the bill (H.R. 15628) to amend the Foreign Military Sales Act.

THE BYRD AMENDMENT

Mr. SCOTT. Mr. President, we have been engaged in debate now for several weeks on issues which are most fundamental to our Government. We have been discussing, both from a policy and constitutional point of view, questions concerning the allocation of warmaking authority between the President and the Congress. We have addressed ourselves to the question whether the President's action in ordering incursions into Cambodia was consistent with the Constitution, and at the same time we have discussed the power of Congress to limit or terminate a war presently being fought.

I believe this debate has been a useful one, and I hope that we shall continue to air our views on these most vital questions regarding the commitment of American forces to combat abroad. Specifically, I shall address myself to the Cooper-Church amendment and to the perfecting amendment which has recently been proposed by the distinguished Senator from West Virginia.

The Cooper-Church amendment contains four sections. The first would prohibit the use of appropriated funds for the purpose of retaining U.S. forces in Cambodia after July 1, 1970, unless Congress should specifically so authorize in the future. At present, subsection (1) contains no qualifications and it would purport to place a limit on the President's actions even where he believes it is necessary to station American troops in Cambodia in order to protect our men in South Vietnam.

I may add, parenthetically, it is my personal conviction he has no intention whatsoever of doing so.

Subsections (2), (3), and (4) contain broad prohibitions against the use of either U.S. personnel or hired volunteers either to provide military instruction in Cambodia or to engage in combat activities in support of Cambodian forces. Air combat activity in support of Cambodian forces is specifically prohibited. While I generally agree that Congress should have a say as to whether we commit American soldiers in support of the Cambodians, I would note that the prohibitions in subsections (2) and (3) are so broad as to prohibit even the furnishing of military instruction to the Cambodian forces.

This, I believe, to be inconsistent with the President's doctrine announced at Guam last year, when he stated that while America would no longer be willing to carry the burden of war for nations in Southeast Asia, it would attempt to cooperate and assist those nations in helping themselves.

The main thrust of my remarks, however, is not addressed to the breadth of subsections (2) through (4). I shall address myself instead to subsection (1) and to Senator BYRD's perfecting amendment which would make it clear that the President is not precluded from taking such action as he deems necessary to either protect the lives of our forces or to facilitate their withdrawal. I support this perfecting language. Indeed, it is difficult for me to understand the reason for opposing it.

Those opposing the perfecting amendment apparently do so on the theory that the United States should not become embroiled in a new war, unless Congress has so authorized. I would agree that we should not become involved in a new war which would sap our human, financial, and moral resources, unless Congress determines that such a commitment is in the national interest. Congress does have a constitutional role to play in the decision as to whether com-

bat should be initiated with foreign nations. That, however, is not the issue here.

Cambodia does not raise the question of initiating a new war with a new enemy. This is vitally important to recognize, and I believe that it is this point which is at the very heart of the dispute between those who support the Cooper-Church amendment as now constituted and those who, like myself, believe that Senator BYRD's perfecting amendment is absolutely necessary. The fighting in Cambodia is not a new war. Cambodia is but an extension of the South Vietnamese battlefield. I believe that the President, as Commander in Chief of the Armed Forces, has the sole authority to direct military operations on the field of battle. If the Constitution's designation of the President as Commander in Chief means anything, it must mean that he, and he alone, is responsible for the strategic and tactical decisions in the field.

Both judicial and historical precedents recognize the President's exclusive authority to conduct military campaigns. Chief Justice Chase, concerning in Ex parte Milligan, 4 Wall, 2, at 139, said:

> Congress has the power not only to raise and support and govern armies but to declare war. It has, therefore, the power to provide by law for carrying on war. This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and conduct of campaigns. That power and duty belong to the President, as Commander in Chief.

More recently, Justice Jackson, concurring in Youngstown Sheet & Tube Co. against Sawyer, discussed the President's power in these terms:

> We should not use this occasion to circumscribe, much less to contract, the lawful role of the President as Commander-in-Chief. I should indulge the widest latitude of interpretation to sustain his *exclusive* function to command the instruments of national force, at least when turned against the outside world for the security of our society." 343 U.S. 579 at 645. (Emphasis supplied.)

The debate in the Constitutional Convention of August 17, 1787, furnishes additional evidence that the President is charged under the Constitution with the responsibility of directing military campaigns. On that date, the framers were discussing the war power to be conferred upon Congress, and the original suggestion was that Congress be given the power "to make war." A motion was made to insert the word "declare" in place of "make," and the motion was agreed to with only New Hampshire dissenting. It is interesting to note that Rufus King supported the insertion of the word "declare" because he believed that "make" might be understood to mean "conduct," which he believed to be an Executive function. When Mr. King made this remark, Mr. Ellsworth, who was representing Connecticut and who had originally voted "no" on the motion to insert "declare," changed his vote to "aye."

That Presidents have exercised the power to conduct military operations in the past is beyond question. Many examples could be cited, but only a few need be mentioned. In the first World War, for example it was necessary to decide whether U.S. troops in France would fight as a separate command under General Pershing, or whether U.S. divisions should be incorporated in existing groups or armies commanded by French or British generals. President Wilson and his military advisers decided that U.S. forces would fight as a separate command.

In the Second World War, similar military decisions on a global scale were required, and these decisions partook as much of political strategy as they did of military strategy. Questions such as whether the United States should concentrate its military and materiel resources on either the Atlantic or Pacific fronts to the exclusion of the other or whether it should pursue the war on both fronts simultaneously were resolved by the Allied commanders-in-chief without any formal congressional participation.

Other questions such as where the recapture of allied territories in Europe and Africa which had been captured by the Axis powers should begin and what the goal of the Allied powers should be were similarly resolved without formal congressional participation. It will easily be recalled that the series of conferences attended by President Roosevelt around the world ultimately established the Allied goals in fighting the Second World War, including the demand for unconditional surrender on the part of the Axis nations.

Mr. President, I will say parenthetically that at that time I do not believe there was any congressional debate as to whether the President had the power to demand unconditional surrender. Certainly I know that the Congress did not stay in session for weeks for the purpose of deciding what unconditional surrender meant or what surrender meant or as to whether the President had the power to make the decision.

Similar strategic and tactical decisions were involved in the undeclared Korean war under President Truman. Questions such as whether the U.S. forces should not merely defend South Korean territory but pursue North Korean forces by invading North Korea—which, of course, is the doctrine of hot pursuit—and as to whether American Air Force planes should pursue North Korean and Chinese Communist planes north of the Yalu River, separating Red China from North Korea were of course, made by the President as Commander in Chief without any formal congressional participation. One might note here the rather salty language which one would suspect that the President might have used had that power been questioned. In short, both judicial and historical precedents support the conclusion that the President, and only the President, has constitutional authority to designate the manner in which military campaigns will be conducted.

This duty of conducting military campaigns entails the responsibility of securing the safety of our troops in the field. It is the President who must attempt to minimize the loss of life. It is the President who must attempt to take actions which will protect the resources committed by this Nation to the conflict. In short, it is the President, not the Congress, who is responsibile for the successful prosecution of the war.

Mr. President, I have attempted to show that under our Constitution it is the President's exclusive prerogative to conduct the operations in the field as he deems fit. Many of my colleagues have remarked about the "twilight zone" in which, according to Justice Jackson concurring in Youngstown Sheet & Tube Co. against Sawyer, both the President and Congress have authority to act. If it could be said that the power to direct military operations and secure the safety of our troops in the field were in the "twilight zone," we might well reach a different conclusion. However, the authority to direct military operations in the field is not in the twilight zone—it is exclusively Presidential. Our separation of powers principle requires that Congress not invade, intrude upon, and interfere with the constitutionally recognized domain of the executive branch. When we have done this in the past, as in the case of *Myers* v. *United States*, 272 U.S. 52 (1926), where we attempted to assert authority over the President's power to remove Executive officials, the Supreme Court has held that we had acted in excess of our constitutional power. I see subsection (1) of the Copper-Church amendment as a similar improper intrusion upon the Executive's exclusive prerogatives.

It cannot be doubted that the United States is at war in Vietnam in every practical sense of that word. As I have attempted to show, the President, through his military officers, has the sole constitutional authority to determine military strategy in Vietnam. Congress is without authority either to require or prohibit the President from attacking specific locations in South Vietnam. South Vietnam is the primary battlefield, and the President alone is responsible for the direction of our military operations there.

It is said, however, that a different rule applies in regard to our military activities in Cambodia. It is said that Cambodia is not part of the battlefield on which American lives are being threatened and lost. Significance is apparently attached to the fact that the crossing of an international boundary is involved.

It is true, of course, that Cambodia and South Vietnam are different countries. However, this fact is simply not dispositive of the constitutional issue presented here. There can be no question that the Communists have long been employing Cambodia as a supply route and also as sanctuary for their attacks on American forces in South Vietnam. My colleagues have detailed the extent of Communist activities in Cambodia, and I need not repeat them. The facts are quite plain that our enemy in South Vietnam is using Cambodian territory to its benefit.

Once it is seen that Cambodia is a continuation of the Vietnamese battlefield and not the site of new, unrelated hostilities, the constitutional issue comes

into sharp focus. The Cooper-Church amendment would place Cambodia off limits to the President in his conduct of the war and efforts to protect our men in the field. In my judgment, this is plainly an unwarranted and unconstitutional restriction of the President's authority to make strategic and tactical decisions necessary to the safety of our troops in the field of battle.

I do not wish to be misunderstood. I am not saying that Congress is entirely without authority to place limitations on the President with respect to the commitment of American forces abroad. If Congress were addressing itself to an area which were not being employed for the purpose of harboring active enemy troops, a much different question would be presented. We do share the authority with the President as to whether new conflicts should be initiated, but we do not share with the President the authority to conduct battlefield operations of hostilities which have already begun.

I might add that I was discussing this matter with the President pro tempore of the Senate the other day. He reminded me that in the War Between the States, a committee on the conduct of the war was insisted upon by Congress. And he said to me, "After it had been running for about 6 weeks, the South damn near won the war." Evidently, there was some feeling that Congress is not the body equipped to conduct a war.

Senator BYRD's amendment would eliminate the unconstitutional feature of the Church-Cooper proposal. It would expressly provide that the President would not be precluded from taking the action he deems necessary to protect the lives of our forces in the field or to facilitate their withdrawal.

If the Senate defeats the proposal of the Senator from West Virginia (Mr. BYRD), it will be the first time that either House of Congress has attempted to interfere with the prosecution of an existing military operation. One of the leading students of Presidential power, E. S. Corwin, in his work "The President: Office and Powers," has observed:

> Actually Congress has never adopted any legislation that would seriously cramp the style of a President attempting to break the resistance of an enemy or seeking to assure the safety of the national forces. Corwin, *Op. cit.*, 4th Rev. Ed., p. 259.

I urge my colleagues just as strongly as I can not to break with this salutary lesson of the past. As Mr. Justice Black, dissenting in *Johnson* v. *Eisentrager*, 339 U.S. 763, at 796 (1950), has so aptly put it:

> It has always been recognized that actual warfare can be conducted successfully only if those in command are left the most ample independence in the theater of operations.

Senator BYRD's perfecting amendment is consistent with this principle, and I shall vote for it. We should recognize the President's constitutional prerogatives and responsibilities, not hamper them.

Mr. President, I conclude by saying that in considering this matter, which is a matter under international law involving action against sanctuaries as distinguished from an operation against an entire nation, it is my judgment, my opinion, and my conviction that we will not again go into Cambodia. I do not think the President should be expected to make any such statement because I do not think we should inform the enemy of any future military plans of this Nation. I am expressing a personal opinion, not by the authority of anyone else.

I do not expect us to go back into Cambodia; and I do expect if for any reason not presently foreseen by me we should, it would be for a purpose involving the entire state of Cambodia, and that might involve a declaration of war and, indeed, in my opinion should involve and should require that the President consult with Congress. That is how I feel about Cambodia, and I speak as an individual now and not as the minority leader. But I do not for one moment say we are going back into Cambodia. I believe we will be out in any event by the 1st of July and I believe by the end of this week it will become apparent that a very high percentage of American troops are out of that country.

Therefore, I will not tie the hands of the President of the United States any more than I would desire to tie the hands of other Asian nations which under subsection (3) appear to be prevented from giving aid within Cambodia.

I do not wish to see any more U.S. troops there; I do wish to see U.S. troops withdrawn from Southeast Asia as soon as feasible, and as soon as it may terminate this war and with protection to our own forces, and in keeping with our obligations and respect as a Nation.

THE PRESIDENT'S POWERS AS COMMANDER IN CHIEF

Mr. ALLOTT. Mr. President, I continue to receive many interesting and important communications from academic sources concerning the current debate over the President's powers as Commander in Chief.

Today I would like to share with other Senators, a portion of a memorandum sent to me by Prof. William R. Kintner, who is director of the Foreign Policy Research Institute at the University of Pennsylvania.

Professor Kintner is a scholar of great distinction. He has published numerous scholarly articles and books, including "The Peace Conflict," "Building the Atlantic World," "The New Frontier of War," "A Forward Strategy for America," "The Haphazard Years," and "Protracted Conflict." His memorandum on the question of the President's powers as Commander in Chief is another significant scholarly essay.

Professor Kintner is especially cogent in dealing with the record of relevant court decisions. He states:

> The underlying Constitutional issue had been dealt with by the courts several times in the past. With Supreme Court Justice Nelson presiding, the New York Circuit Court interpreted these powers of the President broadly in *Durend v. Holins*, 1860 CC N.Y. 4. Nelson stated:
>
> "Citizens abroad must look for protection of person and property, and for the faithful execution of the laws existing and intended for their protection. For this purpose, the whole Executive power of the country is placed in his hands."
>
> In *Russell Motor Car Co. v. United States*, 1923, 261 U.S. 514, 523, The United States Supreme Court held that "Executive power, in the main, must of necessity be exercised by the President through the various departments."
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> By denying certioraris in cases involving draftees ordered to be sent to Vietnam who had petitioned that the war in Vietnam was illegal (*Mora v. McNamara* 389 U.S. 934), or in cases where petitioners claimed that the United States Government was violating the 1945 Treaty of London (better known as the Nuremberg Charter) and, therefore, had no right to force them to fight in an aggressive war (*Mitchell v. United States*, 1967, 386 U.S. 92), the Supreme Court effectively barred legal challenges to the powers of the President as Commander-in-Chief to engage United States armed forces in belligerent acts.
>
> A well-known constitutional law authority, Bernard Schwarz, in his *Commentary on the Constitution of the United States* (New York: Macmillan, 1963), I: p. 196 defines those powers as follows:
>
> "Is the Presidential power to make war dependent upon the existence of a Congressional declaration of war? Much of what has been said in sections 222–230 indicates the propriety of a negative answer to this query. The President . . . possesses the organizational authority to resort to the use of force to protect American rights and interests abroad and to fulfill the commitments of the nation under international agreements. Presidential authority in this respect runs the full gamut from the dispatch of a gunboat . . . to the full-scale military intervention ordered by President Truman in Korea."
>
> The main judicial pillar of the President's powers as Commander-in-Chief and as Chief Executive in the foreign relations field remains, however, the Supreme Court decision in *United States* v. *Curtiss-Wright Corp.* 1936, 299 U.S. 304. This clearly states that in relation to acts outside of the United States i.e., international relations, "the President alone has the power to speak or listen as the representative of the nation," and that "The powers to wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the Constitution, would have vested in the Federal government as necessary concomitants of nationality."

Mr. President, so that all Senators may have the benefit of Professor Kintner's most helpful memorandum, I ask unanimous consent for it to be printed in the RECORD.

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

CONSTITUTIONAL OR POLITICAL CRISIS OVER CAMBODIA

(By Prof. William R. Kintner)

The Cooper-Church Amendment (No. 620) and the McGovern-Hatfield Amendment (No. 609) to amend the Foreign Military Sales Act (H.R. 15628) and the Military Procurement Authorization Act (H.R. 17123) have generated what some Senators and a sector of the press have referred to as a "constitutional crisis." Many of the arguments proferred in this debate, although garbed in constitutional rhetoric, are essentially political in character. The task of separating the genuine constitutional issues from those political arguments clothed in constitutional rhetoric is difficult, given the elastic nature of our very flexible Constitution. There is today a very real danger that one branch of

our government may poach upon the constitutional rights of another branch in conducting foreign affairs.

Since the Constitutional issues are far more easy to analyze than the political issues, one can perhaps best begin analyzing those issues.

The power to direct foreign policy is clearly divided by the Constitution between the legislative and executive branches. Traditionally, divisions of power between the two branches has been characterized by periods of conflict which alternate with brief periods of quiescence. Edward Corwin concludes after reviewing the Constitution's provisions with respect to the conduct of foreign policy that:

"The Constitution, considered only for its affirmative grants of power capable of affecting the issue, is an invitation to struggle for the privilege of directing American foreign policy."

The Constitution's provisions in the foreign policy field have been, of course, greatly modified by usage and tradition.

A. THE POWERS OF THE PRESIDENT VS. THE POWERS OF CONGRESS

The Constitution does indeed assign to Congress the authority to declare war.[1] However, the framers of the Constitution allowed the President the power to repel sudden attacks and conduct all military actions he deemed necessary. If in an era when it took days to travel from New York to Washington our forefathers were concerned with responding quickly to military threats, then how much more so is this true in our present nuclear era. The Constitution does not provide any criteria for distinguishing between military actions and "war." Moreover, it does not define "war" and does not describe the conditions wherein formal declarations of war are necessary. Historically, the President has decided whether or not to request the issuance of a war declaration, and Congress has decided whether or not to declare war.

Thus, a literal intepretation of the powers of Congress as stated in the Constitution by no means supplies the definitive solution to the supposed "constitutional crisis" engendered by President Nixon's actions in Cambodia. The President's powers in the conduct of foreign affairs are quite extensive, established both Constitutionally and by custom and tradition. The powers of the President as Commander-in-Chief[2] and as Chief Executive are extensive. As Commander-in-Chief, the President formulates and administers military strategy; this includes broad powers to deploy American troops abroad and commit them to military operations when the President deems such actions necessary to maintain the security and defense of the United States.[3] Moreover, numerous historical precedents have confirmed this broad view of the executive power to conduct military operations.[4] Hence, the President's authority to make war has a long history of supporting precedents; and this authority has consistently been upheld by the Supreme Court.

The underlying Constitutional issue had been dealt with by the courts several times in the past. With Supreme Court Justice Nelson presiding, the New York Circuit Court interpreted these powers of the President broadly in *Durend* v. *Holins,* 1860 CC N.Y. 4. Nelson stated:

"Citizens abroad must look for protection of person and property, and for the faithful execution of the laws existing and intended for their protection. For this purpose, the whole Executive power of the country is placed in his hands."

In *Russell Motor Car Co.* v. *United States,* 1923, 261 U.S. 514, 523, The United States Supreme Court held that "Executive power, in the main, must of necessity be exercised by the President through the various departments."

Footnotes at end of article.

By denying certioraris in cases involving draftees ordered to be sent to Vietnam who had petitioned that the war in Vietnam was illegal (*Mora* v. *McNamara* 389 U.S. 934), or in cases where petitioners claimed that the United States Government was violating the 1945 Treaty of London (better known as the Nuremberg Charter) and, therefore, had no right to force them to fight in an aggressive war (*Mitchell* v. *United Staes,* 1967, 386 U.S. 92), the Supreme Court effectively barred legal challenges to the powers of the President as Commander-in-Chief to engage United States armed forces in belligerent acts.

A well-known constitutional law authority, Bernard Schwarz, in his *Commentary on the Constitution of the United States* (New York: Macmillan, 1963), I: p. 196 defines these powers as follows:

"Is the Presidential power to make war dependent upon the existence of a Congressional declaration of war? Much of what has been said in sections 222–230 indicates the propriety of a negative answer to this query. The President . . . possesses the organizational authority to resort to the use of force to protect American rights and interests abroad and to fulfill the commitments of the nation under international agreements. Presidential authority in this respect runs the full gamut from the dispatch of a gunboat . . . to the full-scale military intervention ordered by President Truman in Korea."

The main judicial pillar of the President's powers as Commander-in-Chief and as Chief Executive in the foreign relations field remains, however, the Supreme Court decision in *United States* v. *Curtiss-Wright Corp.* 1936, 299 U.S. 304. This clearly states that in relation to acts outside of the United States i.e., international relations, "the President alone has the power to speak or listen as the representative of the nation," and that "The powers to wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the Constitution, would have vested in the Federal government as necessary concomitants of nationality."

B. THE COOPER-CHURCH AMENDMENT

Given even this brief review of Constitutional practice and customs and the precedents of the Court decisions cited above, the Cooper-Church Amendment (No. 620) clearly represents an attempt at Congressional usurpation of executive authority. This amendment states that unless there is specific legislative approval by Congress in the form of fund authorization and appropriation, the President may not retain U.S. ground and naval forces in Cambodia. This general ban, in view of the precedents of the Court and constitutional practice and custom, does constitute a direct usurpation of the President's inherent rights. Moreover, the ban can possibly create practical problems for the Presidency in the future.

While President Nixon is preparing to withdraw United States forces from Cambodia by July 1 (which is probably the earliest effective date of any such amendment as it would have to pass the House-Senate conferees as well), exigencies may arise in the future in which the President may deem it necessary to use ground and naval forces in order to protect the safety of United States forces in South Vietnam. The Cooper-Church ban might then prove an unnecessary and harmful constraint on the actions of the President.

Article 2 of the Cooper-Church Amendment impairs not only the powers of the Commander-in-Chief but also those of the Chief Executive in open contradiction of the above-cited *U.S.* v. *Curtiss Wright* decision which had clearly stated that the President is "the sole organ of the Federal Government in the field of international relations . . . The President . . . not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries and especially this is true in time of war."

However, section two not only bars compensation payment or even in direct support payments to American military advisors or instructors, but *to any person* who acts in the above capacity to Cambodian forces. This would prevent even payments or other support to Thai, South Vietnamese, Malayan, Indonesian or South Korean instructors or advisors willing to train Cambodian forces. Thus, it appears to constitute a clear and flagrant violation of the powers of the President as Chief Executive and Commander-in-Chief.

Article 3 extends the previous ban to any material to be used for the purposes of military instruction in Cambodia, or to persons ("mercenaries?") to "engage in support of Cambodian forces." The restriction, another usurpation of Executive power by Congress would render the United States Government a helpless by-stander in regard to Cambodia's struggle with the North Vietnamese invasion. The President could not even help indirectly by assisting our allies who are willing to support the Cambodians.

Article 4 forms a seeming contradiction. In it the President is permitted to bomb Cambodian territory though he is not allowed to assist Cambodia.

C. THE M'GOVERN-HATFIELD AMENDMENT

The McGovern-Hatfield Amendment which is also pending calls for:

(1) ending all appropriations in Viet Nam as of December 31, 1970 except for the purpose of (a) safe and systematic withdrawal of all U.S. military personnel; (b) termination of United States military operations; (c) expressedly approved Congressional assistance to South Viet Nam; (d) exchange of prisoners; (e) arrangement of asylum for Vietnamese endangered by U.S. withdrawal, for a period of six months, unless Congress expressly approves a further delay at the request of the President.

Such provisions constitute an unconstitutional infringement of the President's power as Commander-in-Chief and as Chief Executive for the same reasons cited above in analyzing the Cooper-Church amendment.

Other provisions of this Amendment are similar to those of Sections 2–3 of the Cooper-Church Amendment, but refer to Laos. The United States would not be able even to financially support any military operations of the Laotian or of any third governments in Laos, much less maintain any advisors or instructors. This article not only contravenes the separation of powers under the United States Constitution as elaborated in analyzing the former amendment, but also the obligations assumed by the United States Government in the 1962 Treaty of neutralizing Laos, signed by President John F. Kennedy.

Other provisions of this amendment are almost identical with sections 2–3 of the Cooper-Church Amendment, except they are more explicit about barring even selling or furnishing Cambodia with "any defense article." Thus, by implication, the amendment's supporters evidently wish to seal Cambodia's doom completely.

Even the *Washington Post* in its May 5, 1970 editorial described the course advocated by those who sponsor this as "too reckless for serious consideration."

D. OTHER CONSTITUTIONAL ARGUMENTS

The President's actions in Viet Nam can also be justified under Article VI, Section 2 of the Constitution which declares that "treaties made or which shall be made under the Authority of the U.S. shall be the supreme Law of the Land." The U.S. had agreed in the SEATO Treaty (passed in 1955 by a

Senate vote of 82–2) in Article IV, paragraph 1, that an armed attack in the treaty area would endanger the peace and safety of the United States. Under Article VI of the Constitution, the SEATO Treaty has the authority of the supreme law of the land. Under Article II of the Constitution, the Chief Executive has the responsibility to execute the laws faithfully. As Commander-in-Chief, the President must exercise his discretion in judging whether or not there has been an armed attack as described in the Treaty. If so he must then decide the proper response in accordance with the Treaty obligations and his constitutional responsibilities: "If he considers that deployment of U.S. forces to South Vietnam is required, and that military measures against the source of Communist aggression in North Vietnam are necessary, he is constitutionally empowered to take those measures." [5]

In the case of *Missouri* vs. *Holland* in 1920 (252 U.S. 416), Justice Holmes noted that while laws of the United States must be made pursuant to the Constitution, treaties need only be made under the authority of the United States, which according to Holmes, may mean nothing more than the observance of the requirement that treaties be negotiated by the President and ratified by the Senate [6] (which the SEATO Treaty was). Fourteen years later in 1934, Congress had authorized the President to restrict the sale of arms to countries involved in the Chaco wars (perhaps this is somewhat akin to the Gulf of Tonkin Resolution). The President did restrict the sale of arms and later indicted Curtiss-Wright for selling arms. The defendants contended that Congress did not have the Constitutional power to delegate this authority. In *U.S.* vs. *Curtiss-Wright* (299 U.S. 304, 316–319) the Court held the act valid and noted:

"The broad statement that the Federal Government can exercise no powers except those specifically enumerated in the Constitution and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect to our internal affairs."

Thus, those who argue that Congress could not have, in effect, delegated its war-making powers to the President via its approval of the SEATO Treaty and the Gulf of Tonkin Resolution have a shaky position at best. The *Curtiss-Wright* case also noted that when the nation acquired independence it acquired "external sovereignty" which did not depend on the Constitution. Thus, the President's power to make treaties and other international agreements (as per Article VI of the Constitution) is derived not only from the Constitution, but from the Executive's power to act under this sovereignty.

Supporters of Senate Amendments No. 620 and No. 609 have argued that the Tonkin Gulf Resolution does not constitute a declaration of war. While admitting that the language of the Resolution is indeed broad and does appear that the Executive is granted extensive powers, they contend that Congress did not intend to authorize the President to fight the war as he had done. This argument is simultaneously simplistic and dangerous. Congress has never had the right to authorize that the Executive fight a war the way it wishes; moreover this is exclusively a Presidential right under his powers as Commander-in-Chief. Once again the Constitution does not define "war" and it is not the privilege of Congress to define the conditions which require a declaration of war. By tradition, it is the President who decides whether to request a declaration of war, and for Congress to decide to grant or withhold this declaration. However, the absence of such a declaration has historically not hindered Presidents from engaging in the past in military activities abroad, usually, but by no means always, with the support of Congressional acts such as the Tonkin Gulf Resolution.

FOOTNOTES

[1] Article I, Section 8, Clause 11.

[2] Article II, paragraph 2, Clause 1.

[3] Department of State, Office of the Legal Adviser, *The Legality of United States Involvement in Vietnam*, 54 U.S. Dept. of State Bulletin, 1966 p. 484. Hereafter cited as *Memorandum*.

[4] *Memorandum* p. 484, cites that there has been at least 125 instances in which the President has ordered the armed forces to take action or maintain positions abroad without obtaining prior Congressional authorization, starting with the "undeclared war" with France in 1798.

[5] *Memorandum*, p. 485.

[6] Senate Report, No. 412, (83rd Congress, Vol. 1), p. 3.

Footnotes at end of article.

COMMUNICATIONS FROM AMERICAN SERVICEMEN

Mr. ALLOTT. Mr. President, when American young people are polled, listened to, quizzed, interviewed, and generally asked for their opinions concerning the President's drive against the Cambodian sanctuaries, there is one significant group of American young people who are unavailable for comment.

These are the young American soldiers who are busy cleaning out the sanctuaries so that they and their friends may leave Vietnam all the sooner.

Fortunately, some of these young men are making their opinions known for their families and friends and local townspeople here at home. I have recently received two communications that shed some light on the opinions of those who are doing the hard work.

From Denver comes a letter which Sp5c. Gerald W. Burson sent his parents from Vietnam. His parents, Mr. and Mrs. Elmer T. Burson of Denver, have been kind enough to send me Jerry's letter.

So that all Senators might have the pleasure of reading this fine letter, I ask unanimous consent that it be be printed in the RECORD.

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

MAY 12, 70.

DEAR MOM AND DAD: I'm doing fine. The weather over here is getting pretty warm. The rains come almost every day now. The mud gets deep but at least it's a change from the dust. Hope all are well at home.

As for the war over here, everything seems much better now. Tay Ninh is the smallest base camp, closest to Cambodia. We've probable been in the news quite a lot the last few weeks. We are surrounded almost on three sides by Cambodia, and the border is about four to seven miles away. That depends on which direction you head out. It's too bad the people (students) at home don't really realize what's happening over here. They're screaming because we've moved over the border. Before we went, we were hit every day, it seems, with rockets or mortar—a rocket can be fired from about eight miles. They (VC) would fire at us, and there was nothing that we could do but lay down and pray. We couldn't go after them. They were in a country we couldn't enter. Now we can go after them and we do. Since the drive started we have killed over 5000 NVA. We lost men also, but only 84 as of last night. That's quite a difference. I might also add that since the drive started we have not received one round in our base camp. I even had a full night's sleep last night.

As for the students in our country and the way they act. I don't think they know what's really going on. Maybe the new generation is made up partly of cowards. I'm part of the new generation, and I'm scared, but I love my country and my family. If I didn't, there's no law that says I must always stay in America. We could pull out of here, but then we have 40,000 men that have died for nothing. What happens to their families? By the way, there is a law that says you can't destroy Government property. As far as I'm concerned, close the schools, don't give them the education. They don't seem to want it. Why should we pay taxes on them?

There are a couple of sayings over here that make a lot of sense. The first goes something like this:

"There's a feeling of love and comfort the fighting man has, that the protected shall never know."

"We are the unwilling, led by the unqualified, to do the unnecessary, for the ungrateful."

This last one is not true over here, although we have all heard it. We are the unwilling only in the sense that we didn't want to come here. No one likes war. We are led by the unqualified only in the sense that those at home (students), future leaders of our country, revolt. To do the unnecessary. War is not really necessary but we must look for the answers to try and stop it. For the ungrateful. This goes back to the protestors. We are here while they are trying to get an education, but instead they'd rather cause trouble. If only they could come over here for one month and see what it's like. Most of us in the company, in fact all Vietnam, probably were against the conflict until they got here. I was the same way. I'm like everyone else here. I want to come home, but my country says I must serve so long, and as long as I am an American I'll do my best to serve it and my family. So many students say they won't fight, but put a rifle in their hands over here, and let the VC start shooting at them. They'll change their minds in a hurry. Life is short for some, long for others, yet eternal for those that have LOVE.

We support our President and wish the students would too. I wish there was something I could do to help. It's too bad I can't take a month's leave and go around and give speeches. If I could, I would.

One last thing. If a person doesn't want to carry a gun, he doesn't have to. He could still serve his country over here. We have reporters who jump from the choppers right along with the men, but instead of a five-pound rifle and forty pounds of ammo, they have a fifty-pound camera. That takes guts also.

Guess that's all for now. I'll be writing again soon. My love to all and write soon too.

Love,

JERRY.

Mr. ALLOTT. Mr. President, at the same time I ask unanimous consent that an article from the June 4 edition of the Cape Coral, Fla., Breeze be printed in the RECORD, so that Senators can examine the commonsense thinking of Pfc. Garry Snider who has been in the thick of things in Cambodia.

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

THIS COULD HAVE MESSED US UP, CAPE GI WRITES FROM CAMBODIA

SOMEWHERE IN CAMBODIA.—Pfc. Garry Snider, son of Mr. and Mrs. Duane Snider of 3010 S.E. 16th Place, Cape Coral, seated by a cache of ammunition, mines, and other war supplies captured by U.S. forces in Cambodia.

He writes, in a letter dated May 19, to his parents, "What does everybody back home think of us being in Cambodia? If they say anything against it, they don't know what

they're talking about. This is the greatest thing the U.S. could have ever done.

"You wouldn't believe all the stuff we're finding. Hundreds of tons of rice, VC training camps, weapons and everything the VC and NVA need to keep alive. But with us taking all their supplies, they are helpless. If you hear anybody saying it's wrong, you tell them you've got a son in Cambodia and he backs it up 100 per cent."

A combat veteran with several months service in Vietnam, Pfc. Snider received the Bronze Star medal for gallantry in action earlier this year.

Mr. CHURCH. Mr. President, it has now been revealed that the President supports the amendment offered by the Senator from West Virginia.

This should not come as a surprise to Senators. Of course, the President would favor it; any President would. All Presidents like blank checks, and that is just what this amendment is. No President likes to deal with Congress, as the Cooper-Church amendment requires. Unpleasant as this may be to them, however, it is an unavoidable and, I think, important requirement under our constitutional system.

Six years ago the Congress, to its sorrow, gave President Johnson a blank check. He was quick to whip out a copy of the Gulf of Tonkin resolution whenever questioned about his authority to fight an undeclared war half-way around the world. Make no mistake about it—the Byrd proposal could readily become a second Gulf of Tonkin resolution, an open invitation to the President to do what he wills in Cambodia, without the further approval of the Congress—as long as he does it in the name of protecting our forces in Vietnam.

In saying this, I do not in any way question the President's intention to get our men out of Cambodia and to keep them out. But other men, and subsequent and unforeseen events, will be constantly working to undermine the President's determination. And, with the existence of another blank check on the statute books, their voices will be more persuasive than would be the case otherwise. This administration has stated that it does not depend on the Tonkin Gulf resolution as "legal or constitutional authority for its present conduct of foreign relations, or its contengency plans." I hope that the Senate demonstrates, in voting on this amendment, that it can profit from experience and that it will not volunteer a replacement for that ill-fated resolution.

The amendment of the Senator from West Virginia states, in effect, that the President can send U.S. ground forces back into Cambodia after July 1 anytime he considers it necessary to protect the lives of American troops in South Vietnam. But the Cooper-Church amendment does not deny, as has been charged so often in the course of this debate, the President's constitutional power as Commander in Chief to protect the safety of American forces. It recognizes that the Congress cannot—by passage of a mere bill—add to or take away from the President's powers and responsibilities as Commander in Chief. Without question, the President has a responsibility to protect U.S. troops in Vietnam—and no doubt he will do so. He does not need a mandate from the Congress for this purpose. Thus, the amendment of the Senator from West Virginia is both superfluous and unnecessary.

The point that Senators should bear in mind is that the Senate has constitutional responsibilities also—both in the making of foreign policy and in deciding how public funds are to be spent. President Nixon, as a former Member of this body, knows that very well. I remind my colleagues of what he said in this Chamber last November 13 during a short visit to the Senate:

I find, looking back over this period of time, that this administration has been subjected to some sharp criticism by some Members of this body, both from the Democratic side and from the Republican side. I want the Members of this body to know that I understand it. I recognize this as being one of the strengths of our system, rather than one of its weaknesses, and I know that, in the end, out of this kind of criticism and debate will come better policies and stronger policies than would have been the case had we simply had an abject Senate—or House of Representatives, for that matter—simply approving whatever ideas came from the executive branch of the Government.

This does not mean that we do not feel very strongly about our proposals when we send them here. It does mean that I, as a former Member of this body, one who served in it and who presided over it for 8 years, recognize this great tradition of independence, and recognize it as one of the great strengths of our Republic.

We in the Congress have been derelict far too long in placing adequate restraints on the executive branch in the commitment of our men and dollars abroad. As Senators we should concern ourselves primarily with seeing that Congress carries out its responsibilities, not with the duties of the President. We should worry, not so much about preserving the President's powers which he will faithfully uphold—let there be no doubt about that—but preserving our own. This debate should be focused, not on whether this proposal ties the President's hands—it does not—but on whether it will help to untie the knots by which Congress has shackled its own powers. The Cooper-Church amendment is a step in righting the imbalance in our system. While the Senator from West Virginia's amendment would not add to the President's legal or constitutional powers, it would have the practical effect of tipping the scales of political power even further toward executive domination.

Passage of this amendment would also be a retreat from the principle established by the 80 to 9 vote of the Senate last year, which prohibited the use of American ground troops in Loas or Thailand. No Senator raised a question during the debate on the Cooper-Church amendment last December concerning the need to spell out the President's authority to protect our forces. I remind my colleagues on the other side of the aisle that the language of that amendment was worked out in consultation with, and was fully endorsed by, the White House. The issue is no different today than it was then. On the day following the Senate's action the junior Senator from Michigan said:

The intent and the plain meaning of the amendment ultimately adopted by the Senate yesterday was to reaffirm the existing role and existing policies of the United States with respect to Thailand and Laos.

And he went on to say that—

Following a meeting with the President and others at the White House this morning, I can report that the President was pleased with the amendment, and he recognizes that it is in accordance with his announced policies.

The President saw no need then for a provision concerning the protection of American troops in South Vietnam. The sanctuaries just across the border in Laos have been expanded since that amendment passed and the administration still has seen fit to follow the restriction laid down by the Congress.

I ask unanimous consent to have printed in the RECORD, following my remarks, a statement by the junior Senator from Michigan that appears in the CONGRESSIONAL RECORD, volume 115, part 29, page 39248, and a news article from the New York Times for December 17, 1969, covering that event.

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

(See exhibit 1.)

Mr. CHURCH. Mr. President, what has been the experience under this restriction? Secretary of Defense Laird told a subcommittee of the Senate Foreign Relations Committee on May 18 that—

I have been one who has been insistent all along that we live up to this particular amendment, and the rules of operation that were in existence at the time this amendment was adopted are the same rules that are being followed today . . . the rules (are) tied to the protection of the (South Vietnamese and American) forces that are engaged in those (Laos-South Vietnam) border areas with the enemy . . . this amendment has not endangered the lives of American soldiers in Vietnam . . . protective reaction which I am referring to in Laos has to do with our air interdiction campaign, the rescue of survivors, and also has to do with on-going combat operations within South Vietnam.

The Secretary went on to say that use of American ground combat troops or American advisers with South Vietnamese forces on an attack upon the territory of Laos for the purpose of destroying a sanctuary "would certainly not be in accordance with the amendment which was passed by the Congress last year."

Thus the Secretary of Defense found that the Laos-Thailand amendment, pased by the Congress and signed by the President—without restrictive language on protecting American troops—did not endanger the lives of the troops, since it does not prohibit minimal actions across the border defined by the President as "protective reaction." But, it did prohibit in Laos, without the prior consent of Congress, the type of action that was undertaken in Cambodia.

The principle that was approved so overwhelmingly by the Senate last December as applicable to Laos should also be applicable to Cambodia. There is no doubt in my mind that the prohibition concerning Laos could have been extended to Cambodia as well—if the sponsors had only thought that there was

even a remote possibility that U.S. troops might be sent into Cambodia.

On May 8, President Nixon told the American people that—

What we've also accomplished (in Cambodia) is that by buying time it means that if the enemy does come back into those sanctuaries, the next time the South Vietnamese will be strong enough and well trained enough to handle it alone.

The Senator from West Virginia's amendment would have the Senate go beyond the President's own stated intentions, by giving him our consent in advance to going back into Cambodia after all.

If the Senator's amendment were approved and the Cooper-Church amendment subsequently adopted, the Senate would have said, on the one hand that we should get out of Cambodia and stay out and, on the other hand, that we really do not mean it—that the President can go back in whenever he chooses.

Instead, Mr. President, of taking a historic step in the process of beginning to restore the Senate to the role the Constitution intended, we would have acted, not like a great forum, but like a fudge factory, and rendered the Cooper-Church amendment so largely meaningless that it would then be questionable whether we should proceed to adopt it, in its modified form, at all.

I say to the Senate in all sincerity that the adoption of the Byrd amendment would blow a hole in the Cooper-Church amendment large enough to drive a whole new war through, without the President ever having to return to Congress for authority or consent.

In summary, Mr. President, the pending amendment would repeat the errors of the past and give the President a blank check to go back into Cambodia. It would tip the political balance of power still further in favor of the executive branch. And it would fly in the face of the Senate's action on Laos only 6 months ago. I hope that it will be defeated.

EXHIBIT 1

THE BIPARTISAN AMENDMENT IN SUPPORT OF THE PRESIDENT'S POSITION ON LAOS AND THAILAND

Mr. GRIFFIN. Mr. President, particularly in the wake of Vice President's AGNEW'S criticism of some of the news media, there has been considerable discussion of, and focus upon, the objectivity of news reports. It will be recalled that some particular concern was indicated earlier with respect to the New York Times and the Washington Post.

Although I hesitate to single out these particular newspapers again, I wish to indicate my considerable displeasure with the coverage this morning in both the New York Times and the Washington Post of an action that took place yesterday on the floor of the Senate.

A headline in the Washington Post this morning reads, "Senate Acts To Curb Asia Role." The story under that headline refers to the amendment cosponsored yesterday by the Senator from Idaho (Mr. CHURCH) and the Senator from Colorado (Mr. ALLOTT) relating to policy with respect to the introduction of United States combat troops in Thailand and Laos.

The first point I should like to make is that the headline is misleading. The Senate did not take any action to "curb" an Asian role. The intent and the plain meaning of the amendment ultimately adopted by the Senate yesterday was to reaffirm the existing role and existing policies of the United States with respect to Thailand and Laos.

Moreover, I notice in both of the reports two disturbing and rather significant ommissions. First, there is no reference whatever to the fact that this particular amendment was a bipartisan amendment. The only sponsor indicated in the two reports is the distinguished Senator from Idaho (Mr. CHURCH)—who deserves and should receive full credit for the leadership role that he played in connection with the presentation and discussion of the amendment. But equally important, to the American people, is the completely ignored and unreported fact that it was a bipartisan amendment.

Indeed, the amendment was drafted—and I think most of the people on the Senate floor and those who were watching from gallery were aware of the fact that it was drafted right here in the Republican cloakroom. In fact, the principal Senators involved in its drafting, along with the Senator from Idaho (Mr. CHURCH) were the Senator from Colorado (Mr. ALLOTT) and the Senator from New York (Mr. JAVITS); and as soon as the Senator from Idaho obtained the floor and received recognition to offer the amendment, he acknowledged immediately the cosponsorship of those two Republicans.

The second significant and disturbing omission from the reports in both newspapers is the fact that the opening lines of the amendment were these: "In line with the expressed intention of the President of the United States."

The amendment was not long. In fact it was very short. It seems to me that it could have been reported in full. But omitted were those very significant introductory words, which make it clear that what was intended, was a positive statement on the part of the Senate raffirming the declared policy of the administration. The omission of these words leaves the reader of these newspapers with the opposite impression—that the Senator was taking a slap at the administration, which certainly was not the case.

This is most unfortunate. Whether or not it was intended by those who wrote the stories, that is the way it appears in print, and in my opinion, some notice of it should be taken. Following a meeting with the President and others at the White House this morning, I can report to my fellow Senators that the President is pleased with the amendment, and he recognizes that it is in accordance with his announced policies.

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

Mr. GRIFFIN. I am happy to yield.

Mr. HOLLAND. The Senator has mentioned very appropriately that the measure adopted yesterday to which he has referred was a bipartisan measure. There is no question about that. But I wish he would also take note of the fact that the measure of which it was simply a clarification was also a bipartisan measure.

Mr. GRIFFIN. That is correct.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ALLOTT. Mr. President, I ask unanimous consent that the Senator from Michigan may proceed for 5 minutes.

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

Mr. HOLLAND. It was offered by the Senator from Kentucky (Mr. COOPER), who was called away by a serious illness in his family, and by the majority leader, the Senator from Montana (Mr. MANSFIELD).

So the entire approach to this difficult question, both the original approach and the clarifying approach ultimately adopted, was bipartisan; and I am glad that the Senator has called attention to the fact that the action was completely bipartisan.

Mr. GRIFFIN. The Senator makes an excellent point.

Mr. President, I ask unanimous consent to have printed in the RECORD pertinent portions of the two newspaper articles to which I have referred.

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

"[From the Washington Post, Dec. 16, 1969]

"HILL ACTS TO CURB ASIA ROLE—SENATE VOTES $69.3 BILLION IN DEFENSE FUNDS

"(By Warren Unna and Richard Homan)

"The Senate, after almost three hours of stormy and unusual secret debate, yesterday voted 73 to 17 to bar use of new defense funds 'to finance the introduction of American ground combat troops in Laos and Thailand.

"The Senate then went on to approve a $69.3-billion appropriation for military spending during the current fiscal year. This was $637 million less than an appropriation measure already heavily cut by the House. The House has slashed Pentagon spending requests by $5.3 billion.

"The final Senate vote on the appropriations bill was 85 to 4. It came after the Senate rejected a new effort to kill the Nixon administration's safeguard anti-ballistic missile program.

"* * * * *

"The restriction voted on U.S. military activities in Laos and Thailand came after Chairman J. W. Fulbright (D-Ark.) of the Senate Foreign Relations Committee insisted that the bill's floor manager give the administration's reasons for wanting to spend $90 million for U.S. military assistance in neutral Laos. This sum was described as a 16.7 per cent increase over last year.

"The restrictive amendment, introduced by Sen. Frank Church (D-Idaho), modified an earlier motion by Senate Majority Leader Mike Mansfield (D-Mont.) and Sen. John Sherman Cooper (R-Ky.) to prevent U.S. funds from being used to provide anything but supplies and training to 'local forces' in Laos and Thailand.

" 'I voice my apprehension over continuing administration silence over policy in Laos, where our military involvement appears to be growing rather than declining,' Fulbright told the Senate in a secret-session statement he later released to reporters.

" 'As in Vietnam, the Nixon administration inherited a Laotian policy,' the Senator acknowledged.

"Fulbright's charges came in the wake of a secret series of investigations a Senate Foreign Relations subcommittee has been conducting into the extent of U.S. military involvement in Laos. Until now, the administration has insisted on such a sanitized public version of the transcript that Fulbright said his committee decided it would be only 'misleading' to publish it.

"In his televised press conference last week, President Nixon said there were 'no American combat troops in Laos.' But the President did acknowledge for the first time that the United States is engaged in interdiction of the Ho Chi Minh Trail from North to South Vietnam—'as it runs through Laos.' Previously, the United States had acknowledged 'armed reconnaissance' flights over Laos.

"Yesterday's Senate action indicated that a vast majority of the senators now believe there is either much more than that involved, or that there is about to be. Once the secret session was over and the doors were open to the public, the senators, by the tone of their debate, made it plain that they now were aware of U.S. air sorties into Laos.

"And Fulbright, in reading them a series of letters he has received from military and AID personnel, as well as from relatives of those killed and missing in Laos, apparently buttressed this Senate awareness.

"The $90 million military-aid figure had been a tightly held secret until Sen. Allen

J. Ellender (D-La.), floor-managing the defense appropriation bill for the hospitalized Richard B. Russell (D-Ga.), chairman of the Appropriations Committee, let the cat out of the bag.

"The $90 million was only the Appropriations Committee's recommendation. It was not known how much the Pentagon actually sought. Ellender cryptically referred to it as going 'for the purpose of support of the Royal Laotian Army.'

"It was then that the Senate decided to go into its closed-door executive session after overruling a suggestion from Sen. Barry Goldwater (R-Ariz.) to debate it out in the open.

"The $90 million represents only part of the money that the United States spends in Laos.

"Under this year's foreign aid bill, Laos is to get $36.3 million in military "supporting assistance," as well as $11.9 million in technical assistance. In addition, there is suspicion of an additional sum included in the secret CIA budget for the support of Laos' 'secret army.'

"From 1955, when the United States took over much of the French role in Laos, until 1961, the U.S. gave $91 million in military aid and $263.9 million in economic aid to Laos. In 1962, the Geneva accords were worked out guaranteeing Laos' neutrality and providing for the withdrawal of both North Vietnamese and U.S. troops. Further U.S. military expenditures were marked secret.

"The U.S. troops were withdrawn from Laos, as per agreement. But President Nixon emphasized in press conference last week that some 50,000 North Vietnamese troops are believed to still be in Laos.

"In Thailand, which also was included in yesterday's Senate restriction against U.S. ground troops, the United States has had a total of 48,000 Air Force and Army personnel. On Sept. 30, the White House announced it would cut this figure back by 6,000 by next July 1—with no appreciable loss in what was termed combat capacity."

[From the New York Times, Dec. 16, 1969]

"SENATE OPPOSES A GI ROLE IN LAOS—VOTES TO BAR COMBAT UNITS IN THAILAND TOO, BUT FINAL BILL MAY DROP CURB

(By John W. Finney)

"WASHINGTON.—The Senate, after a secret debate on American military involvement in the war in Laos, voted today to prohibit the commitment of American ground combat troops in either Laos or Thailand.

"The prohibition, approved by a vote of 78 to 11, was written into a $69.3-billion defense appropriations bill.

"Whether the prohibition would be retained in the compromise appropriations bill that will now be drafted by a Senate-House conference committee appeared doubted. But Senator J. W. Fulbright, Democrat of Arkansas expressed the view that, at least, he had succeeded in bringing to the attention of the Senate what he described as 'our escalating military activities in Laos.' "

"Before approving the Pentagon budget for the current fiscal year, the Senate once again refused—this time by a decisive margin—to delay deployment of the Safeguard antiballistic missile system.

"* * * * * *

"The Senate's first full-scale debate on the Laotian war was provoked by a group of critics of the Vietnam war on the Senate Foreign Relations Committee, but by Senator Fulbright, the committee chairman, and Senator Mike Mansfield of Montana, the Democratic leader.

"Asserting that the United States was escalating its military activities in Laos, the group sought to use the defense appropriations bill to force the Nixon Administration to relax its policy of secrecy on American military activities in Laos as well as to place some Congressional restraints on further military involvement in that Southeast Asian country.

"Faced with the continued opposition of the Appropriation and Armed Services committees, the group was not completely successful in its efforts.

"RARE SECRET SESSION HELD

"It did succeed in forcing the Senate into a rare secret session for a discussion of the largely secret American military role in Laos. During the discussion the Administration for the first time supplied to the Senate as a whole * * * information on American military activities in Laos, including details on how American planes were carrying out bombing strikes in northern Laos in support of the Royal Laotian Government forces.

"When it came to legislative restraints, however, the group was forced to beat a series of retreats and the Senate wound up approving a compromise limited to prohibition of ground combat troops in Laos and Thailand.

"The compromise, put together by Senator Frank Church, Democrat of Idaho, specified that none of the funds in the defense appropriations bill 'shall be used to finance the introduction of American ground combat troops into Laos or Thailand.'

"The United States has military advisers, including Army Special Forces units, stationed in Laos to assist Laotian Government forces as well as a 36,000-man private army largely supported by the Pentagon and the Central Intelligence Agency. In addition, at the request of the Royal Laotian Government, American planes are flying armed reconnaissance missions in Laos.

"TROOPS IN LAOS DENIED

"The Administration, however, has repeatedly insisted—as President Nixon did most recently at his news conference last week—that the United States has no combat troops in Laos.

"During the course of the Senate debate, however, it was emphasized by Senator Mansfield and Senator Fulbright that United States Air Force planes stationed in Thailand were carrying out bombing missions against the pro-Communist Pathet Lao and North Vietnamese troops in northern Laos in support of Laotian Government forces. At one point in the debate preceding the secret session, Senator Mansfield said the number of sorties by Air Force planes based on Thailand had 'increased considerably in recent months.'

"Much of the debate revolved around the issue of whether the Senate, through amendments in the defense appropriation bills, should attempt to restrict or prevent such air combat missions.

"The Church proposal was offered as a substitute for a broader amendment sponsored by Senator John Sherman Cooper, Republican of Kentucky. The Cooper amendment, designed to prevent an American combat involvement in Laos, specified that none of the defense appropriations 'shall be used for the support of local forces in Laos or Thailand except to provide supplies, material, equipment and facilities, including maintenance thereof, or to provide training for such local forces.'

"COOPER'S MOTHER STRICKEN

"In the absence of Senator Cooper, whose mother suffered a stroke in Kentucky, the amendment was offered by Senator Mansfield.

"During the course of the debate some differences of opinion developed over whether the Cooper amendment would prevent continuation of the air combat missions.

"Senator Fulbright—as did aides of Senator Cooper—interpreted the amendment as prohibiting such air support. But Senator Mansfield, noting that the Laos war presented a "dangerous and delicate" situation "tied closely to the war in Vietnam," said it was "a moot question" whether the amendment would prevent bombing missions that ostensibly were being conducted against North Vietnamese troops in Laos."

Mr. MCCLELLAN. Mr. Senator, will the Senator yield?

Mr. GRIFFIN. I am happy to yield to the Senator from Arkansas.

Mr. MCCLELLAN. I recall, too, that during the course of the discussion of that amendment, the question was asked and the information was given to the Senate that the President had so expressed himself, and that in fact the amendment as finally agreed to was actually in support of what the President had already announced.

Mr. GRIFFIN. That is right.

Mr. MCCLELLAN. That certainly had something to do with the vote that it received. I, for instance, have never been one who wanted to pass legislation in this field, or take action, that would be calculated to embarrass the President or hinder or hamper him in trying to find a solution to the Vietnam problem.

Mr. GRIFFIN. I thank the Senator very much. At a time when we desperately need unity, it is unfortunate that in a situation when we have unity, it is sometimes reflected in the press as disunity, or as though there were differences with the President which in reality do not exist.

I wish to mention also, Mr. President, that the distinguished Senator from Tennessee (Mr. BAKER) a Republican, and the distinguished Senator from California (Mr. CRANSTON), a Democrat, who were not mentioned earlier, were also cosponsors of the amendment.

Mr. ALLOTT. Mr. President, I would like to talk very briefly on the remarks of the Senator from Michigan. I think they very adequately describe how gaps can appear in the credibility of all Government officials in the minds of the American public when a matter has been handled as loosely as the matter was handled yesterday by the two newspapers which have been mentioned, the New York Times and Washington Post.

There is no question that, by the result of the carrying of the motion to table the Mansfield-Cooper amendment with the prestigious name of the majority leader on it—and it was not an action against him—that it would have had to have had the effect that the Senate was pretty much of a mind on what it wanted.

Mr. President, reading from page 16760 of the RECORD of yesterday, I read again the amendment;

"On page 46, between lines 8 and 9 insert a new section as follows:

" 'In line with the expressed intention of the President of the United States, none of the funds appropriated by this act shall be used to finance the introduction of American ground troops into Laos or Thailand without the prior consent of Congress.' "

Mr. President, I heard no Senator on the floor—and I was present during the entire debate on the matter yesterday—take any position contrary to that. I think that states the almost unanimous position of the Senate that we do not desire to seek ground combat troops introduced into Laos.

However, it implies that this was a strike against the administration. It is particularly annoying to me. I regard myself as a supporter of the present administration, as I was of the administrations of President Kennedy and President Johnson, in the foreign relations area, particularly.

I think it does an injustice to the President. And I think it does an injustice to the U.S. Senate.

The matter of the cosponsorship is, of course, another matter. It puts a completely different complexion on the action which the Senate took yesterday in which the Senator from Idaho (Mr. CHURCH), the junior

Senator from California (Mr. CRANSTON), the senior Senator from New York (Mr. JAVITS), the junior Senator from Tennessee (Mr. BAKER), and the senior Senator from Colorado all joined.

I think it was a very worthy effort and one which contributed and will contribute very greatly to delineating the relationship between the Chief Executive and Congress.

PRESIDENT BACKS SENATORS ON LAOS

(By John W. Finney)

WASHINGTON, Dec. 16.—The White House made known today that it had endorsed yesterday's Senate prohibition on the commitment of ground combat troops to Laos and Thailand as consistent with Administration policy in Southeast Asia.

Senator Hugh Scott, the Senate Republican leader, said after a White House meeting that President Nixon had told the Congressional Republican leaders that the prohibition, adopted yesterday by the Senate, was "definitely in line with Administration policy."

Ronald L. Ziegler, the Presidential secretary, gave added emphasis to the Administration's acceptance of the Senate move by saying the White House regarded the prohibition as an "endorsement" rather than a "curbing" of Administration policy.

The amendment to the defense appropriations bill, adopted yesterday by a 73–17 vote, states: "In line with the expressed intention of the President of the United States, none of the funds appropriated by this act shall be used to finance the introduction of American ground combat troops into Laos or Thailand."

This wording, it was disclosed today, was approved by the White House in advance of adoption.

In the wake of the Senate action, the amendment, hastily drafted during a secret session on American military involvement in Laos, was being subjected to varying interpretations as to its significance and impact.

Senator Frank Church, Democrat of Idaho, the principal author of the amendment, described it as a "reassertion of Congressional prerogatives" in foreign policy, designed to make clear that the President could not commit combat troops to Laos or Thailand without the specific consent of Congress.

Reflecting the White House attitude, Republican Congressional leaders were interpreting Senate adoption of the amendment as a show of bipartisan Congressional unity behind the President's policy in Southeast Asia.

Senator Robert P. Griffin of Michigan, the assistant Senate Republican leader, and Senator Gordon P. Allott of Colorado, chairman of the Republican Policy Committee, complained that newspaper reports, particularly by The New York Times and The Washington Post, had not emphasized the bipartisan sponsorship and support of the amendment.

"It is unfortunate that when we do have unity, it is sometimes reflected in the press that there is disunity," Senator Griffin said.

Senator Allott was a cosponsor of the Church amendment, along with Senator Jacob K. Javits, Republican of New York, and Senator Alan Cranston, Democrat of California.

During the course of the brief public debate on the Church amendment, no emphasis was placed by Republicans or Democrats on the bipartisan nature of the amendment, which was worked out in secret sessions when reporters were excluded from the galleries. Nor was it disclosed until today by Senator Allott that the wording of the resolution had been cleared with the White House.

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

Mr. CHURCH. I am happy to yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I listened with great interest to the Senator from Idaho, as I have many other times.

As I recall, the Senator from Idaho indicated that the Byrd amendment would neither add to nor detract from the rights a President has under the Constitution; is that correct?

Mr. CHURCH. Whatever powers the President holds under the Constitution cannot be affected by anything we pass in the Senate. My concern is not that the adoption of the Byrd amendment would affect any power the President may already possess under the Constitution. My concern is that it could and, in the light of past experience, might well be interpreted by the President in the future as giving our consent in advance for a return to Cambodia on a mass scale.

That is why I think it would be a grave mistake to adopt it.

Mr. DOLE. I might suggest to the Senator from Idaho that we are in a different position now than when Congress adopted the Gulf of Tonkin resolution. At that time we were in, or at least beginning, a period of escalation. The same cannot be said with respect to President Nixon's actions and record, because the facts indicate otherwise. Instead of an escalation, we have had deescalation. We have had troop levels reduced by 115,500. We have had a reduction in the bombing. There has been no expansion of the war. There has been a contraction of the war. There has been Vietnamization.

If President Nixon were escalating, the argument by the Senator from Idaho would be valid; but we are now in a period of deescalation, disengagement, and extrication from Southeast Asia.

I voted for the resolution the Senator from Idaho referred to concerning Laos and Thailand. There must have been a recognition at that time that the President had the power to protect American forces, in any event. I assume now the President has that power whether or not the Byrd amendment is adopted. I am not certain the Senator from Idaho agrees that he would have that power, but many cosponsors of the Church-Cooper resolution have stated that certainly the President has the right, and not only the right but the obligation, to protect American forces. It is inherent under the provisions of the Constitution.

If he has that power, I would ask the Senator from Idaho, what possible harm can it do to the Church-Cooper resolution to reemphasize and underscore it?

Mr. CHURCH. I would say in reply to the Senator, if I might use a question to reply to a question, what possible good will it do to the Cooper-Church amendment? I can see all kinds of possible harm.

The Senator's argument is, as I understand it, that inasmuch as President Nixon has undertaken to withdraw a portion of our forces from Vietnam, and inasmuch as he is committed to further withdrawals, he simply is not going to reverse this deescalation and take us into a wider war in Southeast Asia.

I hope that this is so. I fervently hope it is so. But I remind the Senator that, at the time Congress passed the Gulf of Tonkin resolution, there was no evidence it was then in the mind of President Johnson to send half a million American men to battle on the mainland of Asia. But within a few months, President Johnson did make that decision. He did not come to Congress for consent, because he had a Tonkin Gulf resolution worded in language so broad that he construed it as the prize bequeathment of congressional consent.

That is the experience we had only a few short years ago. In the light of that experience, I think it most unwise to tack on an amendment like that proposed by the Senator from West Virginia, in language so broad that if, 2 months from now, President Nixon should change his mind, he could shake this language in front of us and tell us that it constitutes prior congressional consent to the action he has decided upon.

In other words, there is no guarantee that the President will not change his mind, that present policy will not be reversed. We know the pressures already converging on the President to involve the United States more deeply in the Cambodian affair. I disagree with the Senator from Kansas when he says that the war is narrowing. I think it is broadening. The front has been extended. It is now Cambodia, in addition to South Vietnam. And now South Vietnamese troops are staying in Cambodia after our troops come out. Now Thai troops are going into Cambodia for the first time.

Furthermore, there are proposals that the United States should underwrite the entire defense, that we should pay for the whole operation, and there are objections to this amendment upon the grounds that, as presently constituted, it would prevent the United States from paying the mercenary troops we apparently intend to send into Cambodia to help prop up the new regime there.

So I say to the Senator, already there are forces at work that could easily change the President's mind, and therefore I think it would be a grave error to adopt this amendment, which later might be construed as constituting congressional consent to a very large American involvement in Cambodia in the future.

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

Mr. CHURCH. I yield.

Mr. DOLE. As I read the amendment of the Senator from West Virginia, it is narrow in scope. It refers to protection of U.S. forces only in South Vietnam, and also facilitating withdrawal of U.S. forces from South Vietnam. In other words, it seems tailored to the Vietnamization program—certainly not an escalation, but a deescalation.

I would pose the question again, does the Senator from Idaho believe the President has the right to protect the Armed Forces without the Byrd amendment?

Mr. CHURCH. I say to the Senator from Kansas what I have repeated to him, I think in response to this particular question, at least a score of times——

Mr. DOLE. Not quite.

Mr. CHURCH. That the President, as Commander in Chief, does have the constitutional power to protect American forces in the field. We can neither add

to nor detract from those powers by any law we pass in Congress.

Therefore, this is really a false issue. It is unnecessary to affix the Byrd proposal to this amendment. It does not confer any power upon the President that he does not already possess under the Constitution. But it could easily be construed, not only as constituting congressional approval for the current operation in Cambodia, but also as giving our consent in advance for returning American forces to Cambodia at some future date, as long as it is done in the name of protecting American forces in the field.

So again I say to the Senator, I can not see how we can improve upon the Cooper-Church amendment by adding this language, how we can possibly affect the constitutional powers of the Commander in Chief by any language; but I do see grave dangers if we adopt this amendment. It would create an exception that could become as large as the President wants to make it in the future. The Byrd proposal thus becomes an abdication of responsibility on the part of the Senate.

Mr. DOLE. The junior Senator from Kansas suggested earlier today on the Senate floor that the adoption of the amendment of the Senator from West Virginia (Mr. BYRD) might be looked upon as strengthening the Church-Cooper amendment. It would be a recognition by the Senate, and perhaps by Congress, of the shared power. It would also be a recognition of the basic constitutional right and obligation the President has to protect American forces. We would serve notice that the President has that right, which almost every cosponsor of the Church-Cooper amendment indicates he has. I construe the adoption of the amendment as strengthening the Church-Cooper amendment, certainly not vitiating it or in any way weakening it. The amendment is so narrowly drawn, applying only to South Vietnam and American forces in South Vietnam and to withdrawal of American forces from South Vietnam, it is difficult for the junior Senator from Kansas to conclude its adoption might mean an expansion of the war.

The Senator from Idaho might be suggesting that we are enacting a second Gulf of Tonkin resolution but giving it another name. Perhaps the Senator from Idaho does not mean that, but he does indicate that the Byrd amendment would give the President more power, or a blank check, and that it is another Gulf of Tonkin resolution. I feel the Gulf of Tonkin resolution should be repealed as does the Senator from Idaho.

I do not interpret the language of the Byrd amendment as an expansion of Presidential power. If the Senator from Idaho could expand on that point, it would be helpful.

Mr. CHURCH. I think, Mr. President, that the Senator from Kansas and I are going to remain in disagreement on the Byrd amendment, and that each of us will apply to it our individual interpretations. I have given mine, and he, in his very able way, has given his.

I would only ask the Senate to remember the bitter experience we had with the Tonkin Gulf resolution and to recognize that dangers of a similar character are implicit in the Byrd proposal. I would hope that we would learn from that experience and refrain from adopting the Byrd amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CHURCH. 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, what I am about to say has no personal implications for the President, for any Member of this body, or for anyone who may disagree with my remarks. I thought that the President, April 20 last, did an excellent job in quieting the doubts and fears of the American people and, at the same time, raising our hopes on the basis of his previously announced and further announced withdrawals of U.S. troops from Vietnam. Even the campuses were relatively quiet and seemed to be willing to give support to the President's phased withdrawal policy.

Since that time a number of things have happened which have caused a change in attitude, a change in climate, and have brought about a division among our people, a polarization in the Nation, and a gulf between young and old, black and white, hawks and doves.

It has not been helpful to know that the economy has steadily deteriorated. It has not been helpful to know of the stock market convulsion, even after a partial recovery which was a result, I am sure, of a meeting which President Nixon had with a sizable number of American businessmen.

Since that time, also, the President has hailed military gains in Cambodia—and rightly—but critics have feared that what he did in Cambodia will expand, enlarge, and accelerate the war rather than shorten it.

Then, of course, there are those who feel that the President, before he made this precipitate move, should have consulted with Members of Congress, not necessarily with the Democratic Members, although that is always appreciated, but primarily and specifically with his own leaders in the House and the Senate, so that there could have been some show of consultation before the move was made.

The Cambodian adventure—and that is what it is—has raised questions: What is going to happen to the South Vietnamese who remain in Cambodia after the first of next month? What will be the policy of this country insofar as bombing Cambodia is concerned after the first of next month? What will be our concepts, after the capture of huge enemy supply dumps and the like, as to what Peking and Moscow will do in the way of replenishing the material that has been captured, lost, or destroyed?

What about the questions which have been raised with regard to the official explanations? Was it a foray to punish an enemy threat as indicated by President Nixon on April 30, or was it to seize a military "opportunity," as stated by Secretary of Defense Laird on May 13, around the time, I believe he said that, when the invasion of Cambodia took place, the Vietcong and the North Vietnamese forces had already retreated 15 miles to the west?

What forces were concentrating on the Cambodian border at that time in the Cambodian sanctuaries?

What forces were actually moving out of them?

All of these developments and questions serve as a prelude to the rise of a deep feeling of concern which many of us feel. I know that the same concern is felt by those who uphold the pending business, the Byrd-Griffin amendment, as those who oppose it.

So, I want it very clearly understood that I will not be a party to divisiveness in this country. I will do nothing to bring about a polarization in this country. I will explain my views, take my stands, and assume my responsibilities. That is a part of the duty of any Senator, regardless of how we look at the situation which confronts all of us today; I repeat—regardless of our views.

Mr. President, it is not for me to question any Senator's motive with respect to the Cooper-Church amendment. Each Senator will determine his own position on this legislation. I would merely express the hope that we will be able to dispose of the entire matter in the near future. With the cooperation of the Senator from Michigan (Mr. GRIFFIN) there is now agreement to vote, Thursday, on the Byrd-Griffin modification. With his further cooperation, perhaps, some accord might soon be reached to bring the Cooper-Church question to a close.

The Senate should face up to this matter without further delay because what began as a debate has shifted to an extended discussion and for some days has verged on a filibuster. It hardly reflects credit on the Senate to obfuscate the question by prolonged resort to the indulgent procedures of the Senate rules.

The issue will not go away, no matter how long it may be debated. It will not be swept aside, whether the Cambodian adventure is held to be a military success or a failure. It will not be laid to rest in the Senate because it cannot be laid to rest in our consciences.

As long as Americans continue to die in this misbegotten involvement in Indochina, the issue will remain alive. It will be with us on June 30 and after June 30. There is no escaping it, whether 30,000 Americans remain in Cambodia, 300, three, or none. More is involved here than another military sortie into Cambodia, a military sortie which, incidentally, has already cost well over a thousand additional American casualties in this new theater of war.

Beyond military success or failure, the issue posed by Cooper-Church is fundamental. For too long, we have skated the thin ice of constitutional expediency in matters of war and peace. For too long, the Senate has shrouded its constitutional responsibilities in the skirts of Presidential authority.

To be sure, it has been easier to say: "Leave it to the Commander in Chief" or

"trust the Commander in Chief," or "blame the Commander in Chief." When all has been said, however, there is still the involvement in Vietnam. There is still the involvement in Laos. There is still the involvement in Cambodia. There is still the ever-rising level of dead and wounded young Americans in Indochina, a level which now stands at 330,000. There are still the haunting questions: "What for? Why?"

I ask these questions, now not of President Nixon or of his predecessors. Rather, I ask them of the Senate and of myself as one Senator. Since World War II, Presidents have exercised the powers of the Presidency, explicit, assumed or delegated, as they have seen fit. On entering office each has found that the executive branch is a repository of an awesome inheritance of overseas commitments. A President cannot escape these commitments or evade them because they were collected under his predecessors. He must face them. He must act on them in the best interests of the Nation as he comes to see those interests. In turn, he leaves a modified but continuing set of commitments to his successor.

I do not speak with rancor of the President's exercise of his responsibilities in this connection. Rather, I speak in all humility and with some regret of the manner in which we have perceived and acted on our responsibilities as a Senate with regard to Southeast Asia.

To be sure, the Senate's intentions have been of the best. For many years, we have seen our role in matters of war and peace largely as one of acquiescence in the acts of the executive branch. If we have had doubts, we have swallowed them. Since President Eisenhower's administration, at least, we have time and again deferred to the executive branch in international matters. The executive branch has presented us with decisions. We have gone along. We have rocked few boats.

That is the explanation of hundreds of billions of dollars of defense appropriations little debated in this body for 15 or more years. That is the sound of various Senate declarations of support of Presidential actions abroad, sometimes even before the actions were taken. We have proceeded in the name of national unity and in the language of nonpartisanship. In the presumed pursuit of security, not only politics but the exercise of the separate constitutional powers of the Senate has stopped at the water's edge.

That is the explanation of the Tonkin Gulf resolution of 1964. In that act, the Senate joined the House in deferring to the President. Then, too, the Senate gave assent to what the Executive had done, was doing, and might do in the future in the way of committing the Nation's Armed Forces in Vietnam.

Why did we do it? Why did the Senate adopt the Tonkin Gulf resolution in short order and with only two dissenting votes? Were we fearful of exercising an independent judgment? Was it because we accepted assurances that we were strengthening the hand of the President in protecting American forces already in Vietnam? Were we persuaded that a show of unity here would secure freedom in South Vietnam? Were we convinced that what was tantamount to a post-dated declaration of war would so frighten the North Vietnamese as to forestall the further spread of the war and, hence, our deepening involvement?

Such were the reasons for the Tonkin Gulf resolution that were propounded at the time. Such were the judgments of the executive branch. That was almost 6 years ago. The Senate passed the Tonkin Gulf resolution. The Senate acted, we thought, to protect American servicemen already in Vietnam. The Senate gave the green light to go further into Vietnam in order the more quickly, we thought, to withdraw from Vietnam.

The rest is history.

In August, 1964, there were less than 20,000 U.S. servicemen in Indochina. Today there are upwards of 425,000 and under the previous administration the total rose to well over 500,000. In the 11 years before the Tonkin Gulf resolution, our casualties were less than 200 Americans killed—20 a year—in retrospect, even that was far too many—in Vietnam. In the 6 years since, 50,000 have died in Indochina—almost 9,000 a year.

Six years ago the U.S. military presence was confined largely to Saigon and a few coastal Vietnamese cities. The U.S. involvement was still indirect and peripheral. Now 6 years after the Tonkin Gulf resolution, U.S. servicemen are scattered through Vietnam, Laos, Thailand, and Cambodia. The involvement is direct and, notwithstanding the so-called Vietnamization program, it is central to the entire structure of the war in Indochina.

I do not recall this history without a painful awareness of the Senate's part in its writing. Yet, it must be recalled. It must be recalled because the Senate is, again, face to face with another Tonkin Gulf resolution. I refer to the Byrd-Griffin modification which is now pending to the Cooper-Church amendment.

Once again, the Senate is asked, in effect, to accept what the executive branch has done, what it is doing, and what it may do with regard to Cambodia. That is the price the Senate is quoted if we would retain even a promise of preventing the further spread of the war under the Cooper-Church amendment. We are asked by the Byrd-Griffin modification to give legal endorsement to whatever course may be set by the executive branch in Cambodia. We are asked to subscribe not only to what is done in Cambodia in the name of the Commander in Chief under this President but, if the war persists, under his successor, whomever he may be and, perhaps, his successor's successor.

That is the nub of the Byrd-Griffin modification. It would establish for the Cambodian policies of the executive branch the same legal basis that the Tonkin Gulf resolution fashioned for the Vietnamese involvement 6 long years ago. The Byrd-Griffin modification says that Cooper-Church will not apply unless the executive branch decrees that it should apply. Under Byrd-Griffin, the statutory wall of Cooper-Church against the spread of our involvement into Cambodia stands or falls on a word from the White House.

Let the executive branch affirm that what it does in Cambodia is for the purpose of protecting our forces in Vietnam. Let the executive branch assert that what it does in Cambodia is to facilitate the withdrawal of U.S. forces from Vietnam. Let either be said by the executive branch at any time and the Cooper-Church limitations are nullified. No matter that the Senate is not consulted. No matter that the Congress is ignored. No matter how long U.S. forces remain in Cambodia, no matter how many Americans may die in Cambodia, no matter how many more billions are spent in compounding the tragedy of Vietnam, it will all be done with the legal sanction of the Senate.

I know that the authors of the Byrd-Griffin modification do not expect the modification to work in that fashion. I know that the Senator from West Virginia and the Senator from Michigan want not to prolong but to end the involvement in Cambodia. They want to protect American servicemen in Vietnam, not jeopardize others in Cambodia. That is what we all want.

Is it not what we wanted—all of us—when we passed the Tonkin Gulf resolution 6 years ago?

The Byrd-Griffin modification is a direct descendant of the Tonkin Gulf resolution. The clay carries the same imprint. The door to further involvement in Cambodia is not closed by Byrd-Griffin. Byrd-Griffin opens the door wider. It sanctions an in-and-out entanglement in Cambodia. It sanctions a direct or indirect entrapment in Cambodia. It sanctions an ad infinitum involvement in Cambodia even as the Tonkin Gulf resolution did the same for the open-ended involvement in Vietnam.

Byrd-Griffin lifts the Congressional counterweights which Cooper-Church seeks to place against the pressures for expanding involvement in Indochina. It shackles the Senate's responsibility to join its separate constitutional authority with that of the President in a common effort to confine the war and withdraw U.S. forces.

If Byrd-Griffin is adopted on Thursday next, let there be no Monday morning regrets. Let there be no shocked indignation later. Whatever our intent, we will have cleared the way for another Vietnam in Cambodia and, perhaps, for still others elsewhere. The time to face the implications of Byrd-Griffin is now. It is not next year or the year after.

Six years of tragic aftermath to the Tonkin Gulf resolution flags the warning. We cannot consign the Senate's constitutional responsibilities in matters of war and peace. We cannot transfer them to the executive branch under this President or any other. We cannot take refuge from them without doing fundamental violence to the Constitution and endanger the stability of the Republic.

The Senate can work with a President within the constitutional framework in matters of war and peace. It can work with this President or another: But the Senate cannot and must not work for any President, regardless of party considerations, in matters of war and peace. It is not a question of supporting or opposing the President. It is a question

of fulfilling our separate constitutional obligations.

I am aware that the President has expressed some sort of unofficial endorsement of the pending modification. The White House has written a letter. That is the President's right and his comments—solicited or unsolicited—deserve the most careful consideration of the Senate. Let us be clear, however, on one point. The President's constitutional responsibility in this matter does not begin at this time. His constitutional responsibility is not activated unless and until this legislation has passed, not only the Senate but also the House. Then and only then does the measure become subject to the Presdent's approval or rejection. Then and only then does it become the Constitutional business of the President.

Now it is the Senate's responsibility. Now, the disposition of the Byrd-Griffin modification is a matter for the Senate alone. We have had the President's letter. We have also had citizens' letters, by the hundreds of thousands. We have had lobbying and lectures. That is appropriate and proper. But the obligation now—the constitutional obligation—is for the Senate alone, for 100 Senators.

May I say that contrary to a great camouflage of words, the Cooper-Church amendment is not an indication of lack of confidence in the President. The mirage of current gossip, notwithstanding, Cooper-Church throws down no Senate gauntlet to the constitutional powers of the Presidency. If that were its intent, I assure the Senate that I would have no part of it. I have too much respect for the office of the Presidency, too much concern for its occupant, whomever he may be, whatever his party.

Cooper-Church is not aimed at this President or any other. Rather, Cooper-Church would strengthen the joint control of the elected representatives of this Nation—of the President and the Congress—over the far-flung activities of this Government in Southeast Asia which for too long have veered too close to the edge of irresponsibility. Cooper-Church would add the strength of the war powers of the Congress under the Constitution to the President's constitutional powers as Commander in Chief.

Cooper-Church would provide not a rebuff but a recourse for the President. It would require, henceforth, that the advice of the continuing counsellors in the executive branch shall be weighed in the scales of responsible congressional consideration before critical new commitments are undertaken in the name of this Nation.

In that sense Cooper-Church might offer an antidote to any tendencies to irresponsibility in government in all of its agencies. Hopefully, it might raise a stop-look-and-listen to discourage the launching of impetuous or precipitous adventures abroad which, in the end, affect deeply the lives of millions of people and jeopardize the welfare of the Republic.

I say "might" Mr. President, because the hour is late, very late.

We have spilled too much of the Nation's young blood in a wasting and mistaken war in Indochina. We have spent too much of the Nation's strength in alien lands for an ill-starred purpose. We have thought too much of saving face and not enough of saving lives. All the while, the troubles within our own borders have multiplied. All the while, flashes of new dangers streak across other horizons. All the while the Nation remains bound in Southeast Asia where fundamental interests are not engaged but great national resources disappear in an endless flow.

The hour is late, very late.

The Byrd-Griffin modification, in my judgment, is the critical vote of this issue. Reject it and the Senate will say that the way out of Vietnam is not by way of Cambodia. Adopt Byrd-Griffin to Cooper-Church and the Senate will still say that the way out of Vietnam is not by way of Cambodia, but only if the executive branch also says the same thing.

The constitutional message of Cooper-Church without this proposed addition is clear. The Senate acts in concert with the President's expressed determination but under its own legal responsibility in an effort to curb the further expansion of the war in Indochina. The Byrd-Griffin modification clouds that message.

In my judgment, the Senate should keep the Cooper-Church amendment free of distortion. The credibility of the Senate demands it. The urgencies of the Nation require it.

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

Mr. MANSFIELD. I am delighted to yield to the Senator from Idaho.

Mr. CHURCH. Mr. President, I wish to say to the distinguished majority leader that I think he has delivered the most moving and persuasive argument against the pending amendment offered by the Senator from West Virginia (Mr. BYRD) and the Senator from Michigan (Mr. GRIFFIN) yet made in the debate. I hope every Member of the Senate will read the Senator's statement with great care and give to it the attention it richly deserves.

I thank the Senator for yielding.

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

Mr. MANSFIELD. I yield to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, I appreciate very much the fact that the distinguished majority leader has yielded to me briefly so that I might make a brief response.

I have listened with close attention to the remarks of the majority leader. With the greatest respect for him, and he knows I have great respect for him, I must say very candidly that he has reached a long way to fashion an argument against the Byrd amendment. His characterization of the Byrd amendment is somewhat colorful but entirely inappropriate. The Byrd amendment is only a qualification or limitation of the Church-Cooper amendment. It could reach no higher in terms of authority than would be the case if there were no Church-Cooper amendment at all.

I wish to emphasize that the Byrd amendment touches only one of four subsections of the Church-Cooper amendment; so it could not be said that it goes so far as to nullify the Church-Cooper amendment. But even if one were to give the widest and most far-reaching interpretation to the Byrd modification; the most that it could possibly be said is that it would nullify the Church-Cooper amendment. Certainly to nullify the Church-Cooper amendment is not to adopt a Gulf of Tonkin resolution, which the majority leader indicated was tantamount to a declaration of war.

So I respectfully suggest that the characterization is most unfair and most unreasonable under the circumstances.

I think it is very important to look at what the Byrd amendment provides. It would add language to that one particular subsection having to do with the retention of U.S. troops in Cambodia. It states:

> Except that the foregoing provisions of this clause shall not preclude the President from taking such action as may be necessary to protect the lives of United States forces in South Vietnam or to facilitate the withdrawal of United States forces from South Vietnam.

Surely the distinguished majority leader, I know, does not object to that last clause reading "to facilitate the withdrawal of U.S. forces from South Vietnam."

It is very difficult for me, of course—and I respect our differences—to see how he could oppose recognition of the constitutional power of the Commander in Chief to protect the lives of American forces in South Vietnam.

Mr. MANSFIELD. Nobody is opposing that, may I say. That is the first time I have heard that question raised on the floor of the Senate during this debate.

Mr. GRIFFIN. I say it is very difficult for me to understand opposition to language which would recognize the authority of the Commander in Chief to protect the lives of American forces in South Vietnam. I think it is clear that is the purpose of the Byrd amendment.

Mr. MANSFIELD. Mr. President, will the Senator yield at that point?

Mr. GRIFFIN. I yield.

Mr. MANSFIELD. May I point out that this question has been raised time and time again: to safeguard American lives to further the withdrawal of U.S. troops from Vietnam. Nobody in this Chamber is against that. All 100 Members of the Senate are for it. The chief proponents of the Cooper-Church amendment have said that time and time and time again, but the question is always raised.

I am willing to take the word of a Senator—certainly the chief proponents of an amendment when asked a question and they give an answer—because who knows more about it than the proponents and who are more qualified to answer the questions?

If the Senator will yield further, I wish to point out that the President has unilateral constitutional powers as Commander in Chief to take measures to protect the lives of U.S. servicemen, not only in Vietnam, but also U.S. citizens, including servicemen, anywhere in the world. He does not need congressional sanction for that purpose because he already has that power, authority, and responsibility. But the executive branch does not have the unilateral constitutional power to commit this Nation to an

involvement which requires a continuing input of men and money in a country, even in the name of defending U.S. forces, or for some other objective in a second country. That interpretation is underscored by the national commitments resolution which the Senate enacted earlier in this Congress.

If the executive branch does make such a broad commitment on its own in Cambodia directly or indirectly it treads on highly questionable constitutional ground.

Furthermore, if it were to make such a commitment on its own, if and when Cooper-Church, as is, is enacted, the executive branch would break the law.

It would tread then on the most dangerous constitutional grounds. But if it wished to act unilaterally, should Byrd-Griffin be enacted, then the executive branch could do what it pleased in the way of a broad commitment in Cambodia—forces, aid, or whatever, without further reference to Congress. Indeed, the Senate would have given its approval in advance to whatever the executive branch did in Cambodia, whether it was wise or foolish, necessary or unnecessary, responsible or irresponsible, whether it led to a wider war or not, provided what was done was done in the name of withdrawing U.S. forces from Vietnam or protecting U.S. forces in Vietnam.

So once again I have stated what the chief coauthors of this measure, the distinguished Senator from Kentucky (Mr. COOPER) and the distinguished Senator from Idaho (Mr. CHURCH), as well as the senior Republican, the distinguished Senator from Vermont (Mr. AIKEN), another sponsor, have said many times on the floor during the course of this most interesting, and I think most intelligent, debate.

Mr. GRIFFIN. Mr. President, will the Senator yield for one further comment, and I shall not ask him to yield further?

Mr. MANSFIELD. I am delighted to yield.

Mr. GRIFFIN. Of course, the differences between the majority leader and the junior Senator from Michigan, go to what are the constitutional responsibilities of the President and what are the constitutional responsibilities of the Congress. I am one of those who believe the Senate should exercise its constitutional responsibility to the fullest. However, I am convinced that the Church-Cooper amendment goes too far, and seeks to get the Senate involved in what are essentially battlefield decisions. The proposed amendment would tie the hands of the Commander in Chief, and would play into the hands of the enemy, making it more difficult for the President to carry out his objective of getting American troops out of Vietnam and bringing them home.

This administration is not sending more and more troops to Vietnam. This President is bringing troops home. This President needs and deserves the good faith and support of the Congress, and I sincerely believe he would have a much better chance of achieving the objectives we all want if we would give him our support.

Mr. MANSFIELD. May I say, before I yield to the distinguished Senator from Kentucky, that no one is tying the President's hands, but what we would be doing, and doing very nicely, in the Byrd-Griffin modification is tying the hands of the Senate. I think we have a responsibility, too. We would like, not to act against a President, but to act in concert with a President.

What we are trying to do is to strengthen the President's hand, to give him added stamina, added muscle, to give him a place to which he can come for recourse, a body in which he served for over 8 years, among people whom he knows. We are trying to counterbalance the pressures which are on him constantly, which are on any President, to give him a chance not to act precipitately, but to think a little while before making a move, to discuss this matter with his friends in the Congress and to give recognition to the fact that under the Constitution the Congress of the United States is a coequal branch in the Government, along with the executive and the judiciary.

I think the intent of what we are trying to do is being taken in the right spirit. Despite these differences among us—and I question no one's position, no one's. I am sure that those who favor Byrd-Griffin are just as concerned and just as patriotic and have just as much integrity as those on the other side.

I would emphasize that what we are really trying to do is protect the President of the United States. For some reason or other, it is hard to get that point across. Some people are looking for cards under the table. They are trying to pull up the rug to see if they can find something which does not exist. They are afraid to take us at our word, even though we have said time and time again, privately, publicly, and in print, and in as many ways as we know how, that we want to work with the President because we think working with him in concert will help the Republic, and will be to his advantage, and not ours primarily.

I yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, truthfully, there is no reason for me to attempt to repeat what the Senator from Montana has said. I hope very much his speech will be read by all Members of the Senate before they vote and that it will be heard throughout the country.

I agree with him that on Thursday this body will have an important test of constitutional responsibility. I have thought throughout the debate that we should keep the issue of congressional responsibility and not on the questions of congressional responsibility and of personal attitude toward the President.

I have felt, of course, that our amendment would support him. I have supported his policy and efforts to withdraw from Vietnam. But, as the majority leader has said, what we are really facing up to in voting upon this amendment is whether or not the Congress of the United States—and first the Senate—will assume its constitutional responsibility.

I was very interested in reading the opinions of Mr. Stevenson, counsel in the State Department, and Mr. Renfret, in the Justice Department, on the legal aspects of the entry into Cambodia. I was interested that they discussed it in terms of the President's authority as Commander in Chief in a military operation, and that they were very careful to avoid any question of our moving into Cambodia in support of Cambodia, or engaging in a war there.

For many years Presidents have taken action under a presumed authority as Commanders in Chief to lead our country, directly or indirectly, into war. The fact that it has been done does not give to the President any more constitutional authority than he had at the beginning of that series of incidents. It cannot prevail against the Constitution, or legislation enacted, such as we seek.

We are saying simply that when the withdrawal from Cambodia is completed, if a situation arises which the President considers dangerous enough to affect the security of the United States or to affect the security of U.S. troops, he shall come to the Congress and secure its approval or disapproval. This amendment takes no option for action away from the President. It simply provides for joint responsibility for acting in a situation which might lead into a new war or an extended war; that the decision it shall be exercised by both.

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

Mr. COOPER. I yield.

Mr. MANSFIELD. May I say that if it should come to pass, if the Cooper-Church amendment were adopted and if it became the law of the land, and the President ever came to Congress, I wish to assure the Senator that there would be no partisanship as far as the Democratic majority is concerned.

We would want to help him, because we realize that the situation is in a mess, for which we in the Senate are in part responsible, which we helped to create, and which the President inherited.

But it is a mess which has to be shouldered. A way has to be found through the impasse. And finally, some way has to be found to bring this miserable war to an end, so that we can withdraw from that part of the world, which is of no vital interest to the security of this country.

I thank the Senator.

Mr. COOPER. I agree wholly that this war in Vietnam is not vital to the security of this country.

I remember very well when the Tonkin Bay resolution was before the Senate. I spoke during that debate. I did not then suppose or believe that it would be used to the limit to which it was extended; but I said in the debate that if the President desired to use the authority we gave him under the resolution, he could lead us into war. He could lead us into war in North Vietnam. We could bomb North Vietnam. We could become engaged in a large war.

I want to read the language of the first part of the Tonkin Bay resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any

armed attack against the forces of the United States and to prevent further aggression.

I, too, do not challenge the good purpose of the distinguished Senator from West Virginia (Mr. BYRD) and the distinguished Senator from Michigan (Mr. GRIFFIN) in proposing their amendment. I know they are men of patriotism, honor, and probity. But we have the example of Vietnam before us. The Tonkin Bay resolution was used to introduce into South Vietnam more than 500,000 men, and to introduce, at our insistence, forces from Korea and Thailand, and from Australia and the Philippines. For at least 6 years, we have been engaged in a war that has cost us $100 billion, and taken the lives on the field of battle of nearly 43,000 American men.

I do not believe that the President wants any language to lead into a war in Cambodia, or larger war but there are always circumstances and events which none can foresee. This body did not foresee and President Johnson did not foresee this awful war.

I do not pretend to be an authority, but because of my interest in this proposition, I have studied, as best I could, the language that has been used in similar resolutions.

I have no doubt in my mind that if the language of the Byrd-Griffin amendment is approved, it will not add anything to the power the President now has to protect our troops. But it will approve in advance any action that the President may take in the future which he considers necessary. It could deny to Congress the opportunity to be heard—to agree or disagree—if a decision as to whether we should enter a larger or new war in Southeast Asia area.

I do not think that Congress, after the lessons we have had, should give away or foreclose its responsibility. This is the first opportunity that Congress has had since the Tonkin Bay resolution to assert its responsibility. It may be the only clear-cut case we shall have to assert our joint responsibility with the President to make determinations which bear upon war or peace, the security of this country and the lives and fortunes of its young men and its people. I say thus—with no purpose of speaking personally about the President and his great office—but simply to emphasize the responsibility of the Senate.

I am very hopeful that the nonpartisan advice of the majority leader will be listened to, and I hope the Senate will accept its responsibility.

Mr. GRIFFIN. Mr. President, will the Senator from Kentucky yield to me?

Mr. COOPER. I yield.

Mr. GRIFFIN. The great Senator from Kentucky is a very fair and objective Member of this body, and a good lawyer. Surely he would agree with me that the Byrd modification, which is an exception or a limitation to the amendment cosponsored by the Senator from Kentucky, can create or generate no authority for the President that does not exist in the absence of the Church-Cooper amendment. The Byrd amendment can rise no higher. It says, "Nothing in the foregoing clause shall preclude the President."

The Byrd amendment does not confer new power; it does not declare or determine whether the President either has any power. But it does state that the Cooper-Church amendment shall not preclude him from exercising the power if he has it.

The argument has been made, in effect, that the Byrd amendment somehow creates new authority. As a matter of logic, I am sure the Senator from Kentucky will concede that is not the case.

Mr. COOPER. Perhaps I did not make my point very clearly. The Byrd amendment would not give him any authority he does not have, but what it would do, would be to approve in advance any action that he might take that he deemed necessary to protect the forces.

I am not arguing this personally toward the President, as I respect him, but I do think of Vietnam when I think of this amendment. It could be used as authority to stay in Cambodia. It could be used as authority to join in the defense of Cambodia. It could be used as authority to link with the Thai forces in defense of Cambodia. I do not know that these things will happen. There have been reports that the Thais would like such a junction of forces. I just do not think we ought to approve, in advance, any action that the President could take—I am not speaking of him as an individual, but as an Executive. I do not think we ought to approve in advance any action that the Executive may think necessary, which—without any intention to do so—could lead us into a deeper and longer war, because of unforeseen events.

Mr. GRIFFIN. If I may have a moment, I would simply like to say for the record that the Byrd amendment would not approve in advance any action that the President might take. Adoption of the amendment would not indicate approval of particular actions. It would merely declare that if the President, as Commander in Chief, does have the authority to protect the lives of our forces in South Vietnam, the Church-Cooper amendment, as it would be amended, would not take it away. That is the extent of the effect and the purpose of the amendment.

Mr. MANSFIELD. Mr. President, I yield to the Senator from Arkansas.

Mr. FULBRIGHT. Mr. President, I just wanted to congratulate the Senator from Montana for a rare and brilliant speech. I think he has outlined some of the issues very well indeed.

The reference that has been made here to the Gulf of Tonkin resolution, of course, has overlooked what I believe to be the most important points in that case, which was that the facts which purported to justify it were misrepresented to the Senate; also, the fact that President Johnson has said publicly that he did not rely upon the resolution for what he did, that he considered he had the authority to do it without the resolution.

The present President has stated, in a letter to the Committee on Foreign Relations, that he does not rely upon the resolution for doing what he is now doing.

There has developed a new theory that I was not aware of before, of the right to protect the troops, that this is a right without limit, that it can be applied without any limit that we can think of, and in this case, to justify going into Cambodia. At least there has been reached a very serious question about the limits of that right.

I think the Church-Cooper amendment is simply accepting the President's word, and trying to reestablish what I would call the conventional and traditional interpretation of the Constitution.

All it says is that if you go beyond what you now have undertaken to do, you consult Congress. It does not give in advance any approval, nor does it deny it. It merely says, I think in an indirect way, "Let's follow the Constitution." That is the way I would interpret what the Cooper-Church amendment does.

This is part of the continuing effort of the Senate to reassert what we believe to be the true constitutional relationship between the executive and the legislative.

I do not see why any Member of this body would wish to denigrate the Senate as a body. I would think that any man who goes to the trouble to be elected to this body would like to play the regular constitutional role of a Senator. If we are going to step aside and say that this is all to be left to the President, it is beyond my comprehension.

I believe that is the correct interpretation of what the Cooper-Church amendment means.

Mr. MANSFIELD. I would agree with the distinguished chairman of the Committee on Foreign Relations.

It appears to me that what the Senate is trying to do is to shove added burdens and added responsibilities on the shoulder of a man who is already overburdened with responsibilities.

This country has to come together some way. There is too much division. There is too much polarization. There is too much emotion. There is too much fanaticism. If this country is to be brought together, the President can play and must play a very important part—the President, I repeat. Why would not a good place to start be with the President and Congress acting in concert, acting with good will toward one another, acting on a common desire to get out of Southeast Asia? Not precipitatedly—it is an impossibility; but as soon as possible and as quickly as possible. Perhaps in that way we could set an example to the people of the country. Perhaps in that way we could do some good. I think that the people of this Nation are looking to this particular body in Congress. What they are doing, in effect, is petitioning us, furnishing us with a plea for the redress of grievances, and asking us to help them to preserve a degree of stability which is rapidly disappearing in this country, both on its external and internal fronts.

I can say, without divulging any confidential information whatsoever, but without qualification, that the hand of friendship and good will and understanding has been offered to the President of the United States from the Senate since he assumed office on January 20, 1969, not once, but many times.

Why? Because we wanted to help. We did not want to be partisan. We wanted to do what we could, together with the President, to try to bring about a degree of equilibrium and confidence and responsibility and civility within the Government and within the Nation.

If we do not do something along those lines, this Republic is going to continue to slide down and down and down. The price of this slide will be very high indeed.

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

Mr. MANSFIELD. I yield.

Mr. FULBRIGHT. I agree with the Senator.

I think it would be most unfortunate if the Cooper-Church amendment is either rejected or emasculated, which the Byrd amendment would do. If it is emasculated, will that not be interpreted by the people of this country much as the original expansion of the war in Vietnam was interpreted—that the war is going on and that, regardless of the intentions of the President, there is very little likelihood that it will be finished in the near future? But, if the Cooper-Church amendment as it now stands is adopted, I think it will restore some confidence on the part of the people and let them know that there is a serious effort now underway to scale down this war.

The recent and dramatic decline in our financial markets and the serious doubts being raised by our leading industrialists, bankers, and economists—all of this is due to a lack of confidence, to a belief that the war is not being wound down. This has nothing to do with the intentions of the President. It is whether or not events are moving in that direction.

I would think that the rejection or the emasculation of the Cooper-Church amendment could have very serious repercussions in our country.

Mr. MANSFIELD. I would agree. I say that in good heart and in good faith and without questioning the motives or the integrity of those who are supporting the modification of the amendment. It is a matter of a point of view. It is a matter of reaching a judgment. Who knows? The President may be right; those who are offering this amendment may be right. We may be wrong. Only history will tell. But at this time, now, we cannot afford to wait. We have to face up to our responsibilities. We have to render a decision. And then we have to live with it.

Mr. FULBRIGHT. I do not quite understand why the opponents of the Cooper-Church amendment feel that it is such a curb. I want to read part of a paragraph of a statement made by the distinguished junior Senator from Michigan last December, when he was talking about the proposal regarding the use of our ground combat troops in Laos and Thailand, which is very similar to this, at least from a constitutional point of view. He said that the clear intent, the plain meaning of that amendment—the Cooper-Mansfield amendment, I believe.

Mr. MANSFIELD. The Cooper-Mansfield-Church amendment.

Mr. FULBRIGHT. He said that the clear intent and the plain meaning of the amendment, which the Senate adopted, was to reaffirm the existing role and the existing policies of the United States with respect to Thailand and Laos.

It appears to me that that is precisely what the Cooper-Church amendment does with regard to Cambodia.

Mr. MANSFIELD. That is true, except that in Laos it was a situation already underway when the President took office; whereas, in Cambodia it is a situation which has developed in recent weeks.

Mr. FULBRIGHT. It is underway at present, but the Cooper-Church amendment is in accord with the President's own announced policy.

Mr. MANSFIELD. It is, indeed.

I yield to the Senator from Kansas.

Mr. DOLE. I appreciate the Senator from Montana yielding.

Since his characterization of the Byrd-Griffin modification as another Gulf of Tonkin resolution, I have reread the Gulf of Tonkin resolution, for which I voted as a Member of the other body. Everyone in Congress with the exception of two Members of this body, supported the Gulf of Tonkin resolution.

Section 1, says that Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

I find it impossible to characterize the so-called Byrd amendment as another Gulf of Tonkin resolution. The Byrd amendment is carefully drawn to limit the power of the President, because it does deal, as the Senator from Michigan has pointed out, only with the first provision of the Cooper-Church amendment. It is limited to South Vietnam. It is limited to protection of the lives of U.S. forces and to withdrawal. It does not deal with repelling armed attack or preventing further aggression, which was interpreted as meaning almost anything.

Perhaps those who now recognize the mistake made in 1964 can somehow atone for their sins by questioning the right of any President, particularly President Nixon, to take the action authorized in the Byrd amendment to protect American forces. The Senator from Montana has made it clear the President has that right, in any event.

As I listened to one of the principal sponsors of the Church-Cooper resolution, the distinguished Senator from Kentucky, it was my impression, however, that the Senator from Kentucky believed that if the President was to move to protect American forces, he should first have consent of Congress. Thus, I believe there is some difference of opinion on what power the President has by virtue of the Constitution and power he would have if the Byrd amendment were adopted.

It does seem we cannot, or should not, characterize the Byrd amendment as another Gulf of Tonkin resolution.

I, for one, trust the Gulf of Tonkin resolution is repealed. As I understand it, that could be the next order of business when this one is concluded—if—when it is concluded. [Laughter].

If the Senator from Montana can enlighten me on how the Byrd amendment can be characterized as another Gulf of Tonkin resolution, it would be helpful.

Mr. MANSFIELD. I shall do my best. I thought I did so in the course of my remarks. I am delighted that twice the Senator from Kansas has indicated he is in favor of repealing the Gulf of Tonkin resolution. It will be brought up expeditiously and appropriately after the pending business is out of the way.

Now, relative to the question raised, the Senator is aware of the fact that if the Byrd-Griffin modification of the Cooper-Church amendment is agreed to, the President can, in his judgment, and on the basis of his judgment only, without coming to Congress, make any kind of decision affecting Cambodia that he desires.

The Senator mentioned "particularly President Nixon." I should like to enter a disclaimer, because it is the office of the Presidency which we should consider, not the individual, because he, like us, is only a transient, passing through. In my opinion, to give any President that kind of power, which would be a resumption of what he has come out against in his announced withdrawal from Cambodia, is dangerous.

I tried to make that point during the course of my remarks. I feel that it will be another resolution or amendment that can be pulled out of the Presidential pocket and looked at and shown to everyone in the room every 10 minutes, every half hour, or every hour, as the Gulf of Tonkin resolution was. That was 6 years ago.

I hope we have learned something. I think that I have. It is not an expiation of my "sins" for having voted for the Gulf of Tonkin resolution, which I regret, but I hope that I have learned something, that I have been educated and understand the workings of the Senate and the executive branch better, so that I may live up to my responsibilities as a Senator, to try and secure and protect the prerogatives which I think belong to the elected representatives of the people, the President, and the Congress under the Constitution of the United States.

Mr. DOLE. As I recall the Gulf of Tonkin resolution, it was a signal to the world that we were beginning a period of escalation. There is no doubt about that. When Congress passed the Gulf of Tonkin resolution, President Johnson acted in concert with Congress and did escalate, as the Senator from Montana pointed out, from 20,000 men to a high of 545,000 American forces in Southeast Asia.

Mr. MANSFIELD. Under a Democratic administration.

Mr. DOLE. Yes. I am not disputing that point.

Mr. MANSFIELD. I want to bring that out.

Mr. DOLE. And I appreciate it, too, but now we are in a different situation. We now have a Democratic Congress and a Republican President, which is not particularly relevant, but President Nixon has, since January 20, 1969, started in the other direction, deescalation. There has been a reduction in our troop level of 115,500 men. There has

been a reduction in the bombing. The Senator from Montana is surely not suggesting that if we adopt the Byrd amendment we will again be signaling the world there will be more troops in Southeast Asia, or that the war will be expanded.

The President announced last week another 50,000 men, will be out by October 15, and that by next May, another 100,000. This would be a total withdrawal of about 80 percent of all American combat forces in South Vietnam.

Therefore, it appears that the present President is committed to a policy of deescalation, of disengagement, of extrication from Southeast Asia.

I have heard the Senator from Montana, as have all of us, applaud the President for this action. Some may question whether it might not be at a more rapid rate but most Americans applaud the deescalation and disengagement.

This is a different time in Southeast Asia, a time of deescalation compared to time of escalation when the Gulf of Tonkin resolution passed the Congress, in record time, with only two dissenting votes.

It seems we strengthen the position of the Senate, we strengthen the position of Congress, and we give support to the President by adoption of the Byrd amendment. Adoption of the Byrd amendment would be a recognition of the powers of Congress under the Constitution and at the same time recognition that the President has an inherent right under the Constitution to protect American forces.

Thus, the question I ask is: If the President has that power, what harm does it do the Cooper-Church resolution to adopt the language of the Byrd-Griffin modification?

Mr. MANSFIELD. I have tried to explain that. Now I shall turn it over to one of the principal cosponsors of the amendment, who will repeat what many of us have said many times.

Mr. CHURCH. I thank the majority leader.

Mr. MANSFIELD. With perhaps some additions.

Mr. CHURCH. Mr. President, I understand that the argument of the Senator from Kansas (Mr. DOLE) is, we need have no fear that the adoption of the Byrd amendment will be treated as a blank check by President Nixon to return in force to Cambodia or to enlarge the war, because he is in the process of deescalating the war, because his intentions are good, and because the situation is quite different from what it was when the Senate adopted the Tonkin Gulf resolution.

I cannot accept that reasoning. I do not believe it is accurate to say that the Tonkin Gulf resolution was passed by Congress to signal escalation of the war. Indeed, quite the opposite was the case.

The Tonkin Gulf resolution was asked for by the President as a warning to North Vietnam, just as Cambodia was supposed to be a warning to the enemy. President Johnson, at the time, argued that the resolution would help prevent us from becoming involved in a wider war in Southeast Asia. Congress, it should be remembered, debated the resolution in the aftermath of an attack upon American destroyers at sea.

We adopted the resolution in response to the attack. That is why the first part of the resolution, the part the Senator from Kansas himself has quoted, reads:

> That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States . . .

The attack, I remind the Senator, was that made upon our destroyers at sea. The Senate passed the Tonkin Gulf resolution on August 10, 1964.

What was the President saying and doing?

Two days later, August 12, 1964, this is what the President of the United States said:

> Some others are eager to enlarge the conflict. They call upon us to supply American boys to do the job that Asian boys should do. They ask us to take reckless actions which might risk the lives of millions and engulf much of Asia and certainly threaten the peace of the entire world. In any event, such action would offer no solution at all to the real problems of Vietnam.
>
> America can and America will meet any wider challenge from others but our aim in Vietnam, as in the rest of the world, is to help restore peace, to reestablish a decent order.

Thus at the very time Congress passed the Tonkin Gulf resolution, the President of the United States, conscientiously, I am sure, believed it to be a measure that would restrict our participation in a wider war. He was pledging not to send American boys into Vietnam. But, later, he changed his mind. Later he decided to send a huge American expeditionary force to the mainland of Asia, and he then reexamined the resolution, and found language in it which seemed to confer prior congressional consent for the action he had later decided to take.

Mr. President, that is our experience. I am sure that President Johnson was sincere in his intentions at the time Congress enacted the Tonkin Gulf resolution. But we were careless enough to give him a blank check which permitted him later to change his mind and commit us to a major land war in Asia without having to come back to Congress for authority.

We do not want to do that again. It is not a question of the good intentions of President Nixon, or of what he has done up to now. It is the certainty that circumstances change. Presidents are human, Presidents change their minds, Presidents change their policies.

Our job is to take the present policy, defined as the President has defined it, and to say that after the present Cambodian operation has ended, if the President later decides to return to Cambodia, he must come to Congress, present his case, and ask Congress to lift whatever limitations it has imposed.

It seems to me that the argument offered concerning the good intentions of President Nixon is not relevant to the issue or to our experience with the Tonkin Gulf resolution.

Mr. MANSFIELD. Mr. President, the Senator recalls memories. He mentions the Gulf of Tonkin and the attack upon the destroyers there. But beyond that, the initial reaction was based upon the attack by the North Vietnamese or the Vietcong—I still do not know which—on the U.S. Forces at Pleiku.

Another memory which is recalled to my mind by the debate this afternoon is related to the question of Presidential consultation with Congress, a consultation which would not bind the President, but which would indicate an act in concert and cooperation with him.

It reminds me of the fact that distinguished Senators like the President pro tempore of the Senate, the senior Senator from Georgia (Mr. RUSSELL), like the distinguished Senator from Mississippi (Mr. STENNIS), and others whom I could name, advised the President strongly—very, very strongly—against becoming involved in Vietnam. The President did not take their advice.

I think they were right. But the point is that under the Cooper-Church amendment, consultation does not mean necessarily congressional approval.

Mr. DOLE. Mr. President, I point out briefly that I do not disagree with the general statement of the Senator from Idaho, and certainly not with the statement of the Senator from Montana.

I think the Senator from Montana made it clear at the outset that no Senator questions the motives or patriotism of any other Senator, nor do we question the desire of 100 Senators to disengage our country from military activities in Southeast Asia as quickly as possible. That is the general feeling of the Senate and the general feeling throughout America.

But again underscoring the record made by the present occupant of the White House, we are not seeing a period of escalation but one of deescalation and, therefore, there cannot be any relationship between what happened in 1964 at the time of the passage of the Gulf of Tonkin resolution and what may happen this Thursday at 1 o'clock when we vote on the Byrd amendment.

Had President Nixon suggested some escalation, or had Senator BYRD of West Virginia or some other sponsor of the amendment suggested some escalation or some elbow room for escalation, then we could reasonably compare the Byrd-Griffin perfecting amendment to the 1969 Gulf of Tonkin resolution. But again I repeat that the Byrd amendment is limited. It provides only for the right the President has to protect the lives of American forces within South Vietnam and to facilitate the withdrawal of U.S. forces from South Vietnam.

Again, I would say that the later phrase suggested by the Senator from Michigan, is something that we all agree upon—facilitate the withdrawal of American forces from South Vietnam. But I can see nothing in the Byrd amendment which would in any way permit us to compare it with the Gulf of Tonkin resolution.

I thank the Senator for yielding.

Mr. MANSFIELD. Mr. President, we are poles apart in our interpretation of the modification of the amendment, if agreed to. But let me say that I join the Senator in honoring President

Nixon for the withdrawals which he has made.

I would not go so far as to say that there has been no escalation, because the air activities in Laos, for example, have increased tremendously, many, many times over. And to me, an enlargement, an extension of the war into a country like Cambodia is in itself a form of escalation.

So, with those minor provisos, I would join the Senator in saying that up until Cambodia, the President was moving in the right direction—out—but not fast enough to suit me. However, it was in the right direction of reversing the process from escalation to deescalation.

As the Senator has said, I was not at all remiss in expressing publicly and otherwise my appreciation of what President Nixon was doing in that respect. However, with me, Cambodia created an entirely different situation. And, as I recall, I believe the distinguished Senator from Kansas himself, when he got hold of the news, was somewhat discomfited and disturbed, to put it mildly. So, I make these remarks only for the RECORD.

Mr. CHURCH. Mr. President, another form of escalation has recently occurred as a result of the President's decision to enter Cambodia. It is to be found in our casualty figures.

The June 5 edition of the Philadelphia Inquirer, under the caption, "U.S. Casualties Soar With Push Into Cambodia," takes note of the fact that "new Pentagon figures show that combat deaths for the month of May in Vietnam and Cambodia totaled more than 750. The figure is higher by more than 200 any 2 months since last August."

Their breakdown for the period 1969–70 shows a sharply escalating rate in American casualties since the invasion of Cambodia.

Mr. President, I ask unanimous consent that the article to which I have referred be printed in the RECORD.

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

[From the Philadelphia (Pa.) Inquirer, June 5, 1970]

U.S. CASUALTIES SOAR WITH PUSH INTO CAMBODIA

(By James McCartney)

WASHINGTON, June 4.—President Nixon's Cambodian operations have pushed U.S. combat deaths in Southeast Asia to the highest level in nine months.

New Pentagon figures show that combat deaths for the month of May in Vietnam and Cambodia totaled more than 750.

The figure is higher by more than 200 any two months since last August, when the total was 795. It is more than double the number of combat deaths reported in four of the last nine months.

253 IN CAMBODIA

Of the 750 total, 253 deaths were attributed to operations in Cambodia. The others were in Vietnam.

The rate of U.S. combat deaths in Vietnam alone is about the same as it was before the Cambodian attacks.

The rate of combat deaths began to drop sharply in Vietnam last fall. Starting in September the total dropped below 500 a month for seven straight months.

The final, official total of combat deaths for the month of May has not been released by the Pentagon, but weekly figures issued show that the monthly total will be 750 or more.

President Nixon referred to casualty levels in Southeast Asia in his nationally televised speech Wednesday night.

OPPOSITE EFFECT

"When this operation was announced," he said, "critics charged that it would increase American casualties, widen the war, lengthen our involvement, postpone troop withdrawals.

"But the operation was taken for precisely the opposite reasons—and it has had precisely the opposite effect."

The President went on to explain that the "long range impact" of the operation would reduce "future casualties."

Some 970 U.S. troops were wounded in Cambodia in May—about a quarter of the total number of wounded in Southeast Asia.

The total number of combat deaths in Southeast Asia is now listed as 42,425—with another 8023 killed in non-combat activities, particularly accidents.

Cambodian operations have pushed the number of killed from all causes in Southeast Asia over the 50,000 mark. In addition, 279,571 have been wounded.

The total number of killed and wounded is 330,019.

All of these totals for the war date from Jan. 1, 1961.

Here are monthly U.S. combat death totals in Southeast Asia for the last year:

1969	
June	1,100
July	638
August	795
September	477
October	377
November	446
December	341
1970	
January	343
February	386
March	449
April	526
May (plus)	750

Mr. MANSFIELD. Mr. President, unfortunately these casualties are going to be a constant reminder to us of what is happening and what will happen as long as any American troops are stationed in Southeast Asia. And while I regret the loss of the more than $100 billion which has been spent in this war in relation to the needs of our people at home and the problems that must be met, I regret far more the more than 335,000 casualties in this misbegotten, tragic conflict. And of that 335,000, almost 51,000 have died—43,000 roughly through combat deaths, and 7,000 roughly in other than combat deaths.

One American life is too high a price to pay for what we have had to go through in Southeast Asia and what we will continue to go through in the weeks, months, and, I assume, the years ahead.

My heart goes out to the President, any President. I have a pretty good idea of what his responsibilities are.

I may question the President's judgment. But I do not question his integrity. And I know that as far as President Nixon is concerned, it is not his desire to escalate or to really expand or enlarge this war.

I anticipate without question that he will get all U.S. troops out of Cambodia by the end of this month, if not before. I do not question his statement about that. I do not think that he wants to go back into Cambodia.

I think that what we ought to do is to try to help him, not give him power which would add to his already enormous authority, but rather hold out the hand of friendship and cooperation and see if together in the best interests of the Republic we cannot work in concert.

Mr. MUSKIE. Mr. President, I would like to express my appreciation to the distinguished majority leader for the speech which he has made this afternoon and the discussion which it has stimulated on the floor of the Senate. I think the speech and the discussion have been very useful to us in generating understanding of what is meant, intended, and likely to be the effect of the Cooper-Church amendment, as well as the Byrd-Griffin modification of that amendment.

What disturbs us here, as the distinguished majority leader has pointed out, is not the intention of the President; nor his intention to end the war, nor his hopes for the policies he has shaped to achieve that objective. What concerns us rather is that forces are at work in Southeast Asia, and other forces have been unleashed by the Cambodian incursion which can shape our policies in ways we do not intend.

On April 20 the President announced the further withdrawal of 150,000 American troops to be implemented within the 12 months following. In his speech making that announcement the President gave us no indication that he anticipated, or that there were under consideration, additional actions that might be necessary in order to implement that goal within that 12-month period. Yet 10 days later, on April 30, the President announced to the country his Cambodian decision. I have to assume, and the President's speech of last week argued on the side of that assumption, that events developed between April 20 and April 30 requiring the Cambodian venture.

In the same way, forces beyond our control, beyond the control of the President, events unanticipated by us and the President, may modify the President's present intention about withdrawal from Cambodia before July 1 and, indeed, about the withdrawal of 50,000 troops in October or 150,000 troops, in all, by next May.

This is what I think concerns the sponsors of the Cooper-Church amendment, and it is what concerns the distinguished majority leader, as I understand his speech this afternoon with respect to the Byrd-Griffin amendment.

We are in the grip of forces beyond our control. When I say we are in the grip of forces beyond our control I speak of more than our military involvement in Southeast Asia or our hopes for disengagement. We are in the grip of forces beyond our control in terms of the impact of this war upon our own country.

There is a great deal of discussion going on, discussion in which the majority leader has participated, about the dangers involved in our present economic and financial situation.

I notice in the New York Times the other day the reporting of a speech by Mr. David Rockefeller in Brooklyn, N.Y., on the state of our economy and what should be done in order to stabilize it.

He expressed the belief that the decline in the stock market reflected a deep concern about many more things than just the economy.

He is quoted as saying:

I think there is a lack of confidence, a concern in the country on where we're going and how we're getting there, as well as some concern about the economy, too.

He continued:

I think it is a general malaise, a worry as to what's going to happen in the war, in the world.

It is this general crisis in confidence which I think was in part sparked by the unexpected decision of the President to move into Cambodia. I think what is necessary to meet that crisis is some clear-cut action by the President, hopefully an action joined in by Congress, to reassure the country that our objective is disengagement from the war in Southeast Asia, not in some indefinite future, but within a foreseeable time frame.

Cambodia has raised doubts that our policies, whatever our intentions, are likely to result in total disengagement from Southeast Asia. I think to the extent the Cooper-Church amendment, if it is enacted, reassures the country that the Congress and the President join in an effort to disengage in Southeast Asia, it will have a beneficent effect upon the climate of confidence in the country as to our policies in Southeast Asia and their intended objective.

The distinguished Senator from Arkansas (Mr. FULBRIGHT) touched on this in his response to the speech made by the distinguished majority leader. I think it is an important point.

I thank the Senator for yielding.

S. 30, THE ORGANIZED CRIME CONTROL ACT OF 1969, SPECIOUS CLAIMS OF CIVIL LIBERTIES VIOLATIONS

Mr. McCLELLAN. Mr. President, on January 23, 1970, the Senate passed by the overwhelming vote of 73 to 1, S. 30, the Organized Crime Control Act of 1969. During the debate in the Senate S. 30 was subjected to indiscriminate charges that it would, in the words of the American Civil Liberties Union, "make drastic incursions on civil liberties" and that it ran "counter to the letter and spirit of the Constitution"—letter of the American Civil Liberties Union to each Member of the Senate, dated January 20, 1970, page 1, hereinafter cited as ACLU January 1970 letter.

Certain newspaper commentators and a prominent mayor have echoed those charges—see, for example, Washington Post, Sunday, February 22, 1970, page D4 column 1, excerpts from speech by New York City mayor; New York Times, Sunday February 1, 1970, page 12E, column 5, column by Tom Wicker; Washington Post, Friday, January 30, 1970, page A18, column 1, editorial; New York Times, Tuesday, February 3, 1970, page 38, column 1, editorial—and recently a report critical of several key titles of S. 30 was published by the Committee on Federal Legislation of the Association of the Bar of the City of New York—"The Proposed Organized Crime Control Act of 1969 (S. 30) (1970)"—hereinafter cited at ABCNY. That committee, like the Civil Liberties Union, based its criticisms of S. 30 largely on supposed principles of civil liberties.

The House Judiciary Committee is now in the midst of a series of hearings on S. 30 which began on May 20, 1970. It is appropriate, now that these hearings are underway, that I take this occasion to set the record straight concerning the implications of S. 30 for fundamental civil liberties and our treasured Bill of Rights.

I

Mr. President, over 2,500 years ago the Greek slave Aesop embodied the folk wisdom of his people in a series of stories that remain relevant even today. In one of those stories, he told of the shepherd boy who repeatedly cried, "Wolf." Villagers came to his aid until they grew weary of hearing that he had each time sounded a false alarm. When at last the wolf appeared, no one responded to his call for help, and the wolf took his toll of the flock unmolested and unimpeded.

Mr. President, there are among us today self-appointed shepherds of civil liberties who decry every attempt to strengthen the processes of law enforcement in our society. Like the shepherd boy who so long ago endangered his flock by sounding false alarms, these modern day shepherds run the risk, too, of endangering the civil liberties of us all. No civilized society can long permit within its domain an ever-rising tide of lawlessness. Such a tide is now lashing out against our society, and there are few who do not agree that it must be stopped and turned back. Nevertheless, I am concerned that there is a danger that if this difficult task cannot be accomplished now with the enactment of prudent reforms in the administration of our system of criminal justice, other less prudent steps will be taken at a later time—to the detriment of us all. Edmund Burke aptly remarked to the House of Commons in 1780 on the question of electoral reform:

Consider the wisdom of a timely reform. Early reformations are amicable arrangements with a friend in power; late reformations are terms imposed upon a conquered enemy; early reformations are made in cool blood; late reformations are made under a state of inflammation. In that state of things the people behold in government nothing that is respectable. They see the abuse, and they will see nothing else. They fall into the temper of a furious populace provoked at the disorder of a house of ill fame; they never attempt to correct or regulate; they go to work by the shortest way; they abate the nuisance, they pull down the house. (Stanlis, *Edmund Burke: Selected Writings and Speeches* 287 (Anchor 1963).)

I deeply believe that the framework of civil liberty embodied in our Bill of Rights need not be condemned or demolished to achieve needed reforms in the operation of our system of criminal justice. I am concerned, however, lest our people come to believe that effective crime control requires us to set aside the Bill of Rights. I am troubled by the thought of what might occur if, panicked by an understandable fear of crime, they acted on that belief. It could mean the end of the kind of society that we know today.

I know, too, that specious claims of "repression," "police state tactics," or "civil liberties violations," indiscriminately made and constantly repeated in reference to any and all attempts to strengthen law enforcement, can soon lead to the creation of the belief that only abrogation of the Bill of Rights will protect us from criminals. It will then be only a matter of time until that belief forms the basis for action. It is thus important that those in positions of responsibility carefully identify the specious character of such claims, lest they contribute to that false and dangerous belief. It is therefore, because I love liberty more, not less, that I advocate the enactment of S. 30 and defend it from such unjustified and specious claims.

II

Mr. President, the passage of S. 30 by the Senate on January 23 was the culmination of a year of detailed study, hearings, and consultations, and a result of one of the most thoroughly gratifying bipartisan efforts in which I have participated since coming to the Senate. The process had its start on January 15, 1969, when, along with my distinguished colleagues, the Senators from Nebraska (Mr. HRUSKA), North Carolina (Mr. ERVIN), and Alabama (Mr. ALLEN), I introduced S. 30, the "Organized Crime Control Act." It continued through the introduction of seven other bills designed to deal with organized crime, which now appear with revisions in the 10 substantive titles of S. 30. Senators EASTLAND (S. 2022), MUNDT (S. 2022), ERVIN (S. 30 and S. 2122), HRUSKA (S. 30, S. 1623, S. 1861, S. 2022, S. 2122 and S. 2292) and TYDINGS (S. 975 and S. 976) and the late Senator Dirksen (S. 2022) joined me in introducing some of these measures or introduced other bills that are now reflected in S. 30.

Extensive hearings were begun in March and continued in June of 1969, and gradually the various bills were worked into S. 30 to form an integrated, comprehensive organized crime control measure. The subcommittee solicited the views of experts and interested organizations and worked closely with the Department of Justice. Indeed, the Department was most helpful and made a number of valuable suggestions that were incorporated in the bill.

Mr. President, the product of this process was a bill which was carefully drafted to cure a number of debilitating defects in the evidence-gathering process in organized crime investigations, to circumscribe defense abuse of pretrial proceedings, to broaden Federal jurisdiction over syndicated gambling and related corruption where interstate commerce is affected, to attack and to mitigate the effects of racketeer infiltration of legitimate organizations affecting interstate commerce, and to make possible extended terms of incarceration for the dangerous offenders who prey on our society. In addition, the bill incorporated the best of the recommendations in the organized crime field of the President's Crime Commission, the National Commission on Reform of Federal Criminal

Laws, the American Bar Association Project on Minimum Standards of Criminal Justice, the Model Penal Code, the Model Sentencing Act, and Senate subcommittee witnesses who represented the National Council on Crime and Delinquency, the Association of Federal Investigators, the New York County Lawyers Association, the American Civil Liberties Union, the New York State Commission of Investigations, the National Association of Counties and the New York State Bar Association. The bill has been endorsed in principle by such diverse groups as the National Chamber of Commerce, the National Association of Counties, and the International Association of Chiefs of Police. I am pleased to say, too, that the Department of Justice now supports, with two minor reservations not involving substantive civil liberties issues, S. 30 as it was reworked and amended in the subcommittee and the full committee and passed by the Senate. This bill embodies, in short, what I believe is the most appropriate response that this Congress can make to the special challenge that organized crime poses to the well-being of our Nation.

III

Mr. President, the Attorney General in his testimony on S. 30 before the Senate subcommittee aptly observed:

> Too few Americans appreciate the dimensions of the problem of organized crime; its impact on all America, and what must be done to reduce—and ultimately eradicate—its sinister and erosive effects.
>
> (*Measures Relating to Organized Crime*, Hearings before the Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, United States Senate, 91st Cong., 1st Sess. 107–08 (1969)) (hereafter cited as Hearings.)

Mr. President, America has had to contend with some form of organized crime since the founding of our Republic. Nevertheless, it has only been in the last half-century that these criminal groupings have begun seriously to threaten the very integrity of our Nation and the well-being of such large segments of our people.

"Organized crime groups," the President's Crime Commission observed in 1967, "are known to operate in all sections of the Nation." The Challenge of Crime in a Free Society, report of the President's Commission on Law Enforcement and Administration of Justice at 171 (1967)—hereinafter cited as Challenge of Crime. The most influential of these groups, the 26 families of La Cosa Nostra, estimated to have a total membership of some 3,000 to 5,000, operate, however, primarily in New York, New Jersey, Illinois, Florida, Louisiana, Michigan, Pennsylvania, and Rhode Island. The internal organization of these families is patterned after the ancient Mafia groups of Sicily. They are, however, more than mere criminal cartels.

The final report in 1965 of the Permanent Subcommittee on Investigations' examination into the internal structure of organized crime put it this way:

> There exists in the United States today a criminal organization that is directly descended from and is patterned upon the centuries-old Sicilian terrorists society, the Mafia. This organization, also known as Cosa Nostra, operates vast illegal enterprises that produce an annual income of many billions of dollars. This combine has so much power and influence that it may be described as a private government of organized crime. (S. Rept. No. 72, *Organized Crime and Illicit Traffic in Narcotics*, 85th Cong., 1st Sess., at 117 (1965) (hereinafter cited as Investigations Subcommittee Report.))

These groups are chiefly active in syndicated gambling, the importation and distribution of narcotics, and loansharking, each an offense which is parasitic, corrupting, and predatory in character. Economically, the price tag of organized crime may be conservatively put at twice that of all other crime combined.

Organized crime groups, moreover, have not confined their villainy to traditional endeavors, but have increasingly undertaken to subvert legitimate business and unions. For example, a leading young union leader—and founder of the new Independent Party in New York City that was instrumental in the present mayor's election—was identified in the Senate subcommittee hearings on S. 30 by the Department of Justice as a "captain" in the Gambino "family" of La Cosa Nostra. Hearings at 127. More important, these criminals have, in some localities, established corrupt alliances within the processes of our democratic society: with the police, prosecutors, mayors, city councils, courts, and legislatures.

All of this is, of course, disturbing. But the most serious aspect of the challenge that organized crime poses to our society is the degree to which its members have succeeded in placing themselves above the law. From 1960, the date meaningful statistics began to be collected, until March 1969, the combined efforts of the various Federal investigative agencies resulted in only 235 indictments involving 328 defendants identified as members of La Cosa Nostra. Hearings at 128. These leaders, moreover, have been notoriously successful in getting off even in these relatively few cases in which the evidence has warranted prosecutions. Our studies indicate that members of La Cosa Nostra have obtained dismissal or acquittal on the charges leveled against them more than twice as often, for their numbers, as ordinary offenders: 69.7 percent as against 34.8 percent. See CONGRESSIONAL RECORD, volume 115, part 25, page 34389. Indeed, 17.6 percent of the group of La Cosa Nostra defendants we studied — representing the leadership structure of key families and La Cosa Nostra members indicted by the Federal Government since 1960—were able to obtain acquittals or dismissals of cases against them five or more times each. The final report of the Permanent Subcommittee on Investigations' examination into organized crime and narcotics summed it up this way:

> The crime leaders are experienced, resourceful, and shrewd in evading and dissipating the effects of established procedures in law enforcement. Their operating methods, carefully and cleverly evolved during several decades of this century, generally are high effective foils against diligent police efforts to obtain firm evidence that would lead to prosecution and conviction.
>
> The crime chieftains, for example have developed the process of "insulation" to a remarkable degree. The efficient police forces in a particular area may well be aware that a crime leader has ordered a murder, or is an important trafficker in narcotics, or controls an illegal gambling network, or extorts usurious gains from "shylocking" ventures. Convicting him of his crimes, however, is usually extremely difficult and sometimes is impossible, simply because the top-ranking criminal has taken the utmost care to insulate himself from any apparent physical connection with the crime or with his hireling who commits it. (Investigations Subcommittee Report at 2.)

Mr. President, this intolerable degree of immunity from legal accountability must be put to an end. Our society cannot long safely permit the operation within it of an underworld organization as powerful and as immune from social accountability as La Cosa Nostra. The success story of this group is symbolic of the breakdown of law and order increasingly characteristic of our society. To hold the allegiance of the now law-abiding, society must show each man that no man is above the law. The loopholes through which the leaders of organized crime now escape the processes of our law must be closed. Justice and public safety demand no less, and it is to this end that S. 30 was carefully drafted—with due regard given in each instance to the civil liberties of all our citizens.

THE OVERBREADTH OBJECTION

Nevertheless, the curious objection has been raised to S. 30 as a whole, and to several of its provisions in particular, that they are not somehow limited to organized crime itself—for example, ACLU January 1970 letter at 1, 5; ABCNY at 37, 48 n. 80—as if organized crime were a precise and operative legal concept, like murder, rape, or robbery. Actually, of course, it is a functional concept like white collar crime, serving simply as a shorthand method of referring to a large and varying group of criminal offenses committed in diverse circumstances. The danger posed by organized crime-type offenses to our society has, of course, provided the occasion for our examination of the working of our system of criminal justice. But should it follow, as the union and New York City bar committee suggest, that any proposals for action stemming from that examination be limited to organized crime?

Mr. President, this line of analysis has a certain superficial plausibility, yet on closer examination we see that it is seriously defective in several regards. Initially, it confuses the occasion for reexamining an aspect of our system of criminal justice with the proper scope of any new principle or lesson derived from that reexamination. For example, our examination of how organized crime figures have achieved immunity from legal accountability led us to examine the sentencing practices and powers of our Federal courts. There we found that now our Federal judges, unlike many State judges, have no statutory power to deal with organized crime leaders as habitual offenders and give them extended prison terms. Having noted the lack of habitual offender provisions by

considering one class of cases, we obviously learned that it was lacking in other classes, too. Is there any good reason why we should not move to meet that need across the board?

Another title which exemplifies the distinction between the occasion for developing legislation, and the proper scope of legislation once it is developed, is title III. Title III, of course, codifies and clarifies Federal law concerning civil contempt of court, and protects the coercive force of civil contempt imprisonment from being undercut by granting of bail pending any appeal which raises no substantial possibility of reversal. Although it was the great value of civil contempt proceedings in organized crime cases, where witnesses are tempted to an unusual degree to withhold testimony even after being granted immunity, which prompted the development of title III, the power to hold a witness in civil contempt is a traditional and useful one in all kinds of cases. For that reason title III is made applicable to all Federal criminal cases.

In addition, the objection confuses the role of the Congress with the role of a court. Out of a proper sense of their limited lawmaking function, courts ought to confine their judgments to the facts of the cases before them. But the Congress in fulfilling its proper legislative role must examine not only individual instances, but whole problems. In that connection, it has a duty not to engage in piecemeal legislation. Whatever the limited occasion for the identification of a problem, the Congress has the duty of enacting a principled solution to the entire problem. Comprehensive solutions to identified problems must be translated into well integrated legislative programs.

The objection, moreover, has practical as well as theoretical defects. Even as to titles of S. 30 needed primarily in organized crime cases, there are very real limits on the degree to which such provisions can be strictly confined to organized crime cases. Many of those provisions, such as title I, deal with the process of investigating and collecting evidence. When an investigation begins one cannot expect the police to be able to demonstrate a connection to organized crime, or even to know that a connection exists. It is only at the conclusion of the investigation that organized crime involvement can be shown and verified. Therefore, to require a general showing that organized crime is involved as a predicate for the use of investigative techniques would be to cripple those techniques. On the other hand, each title in S. 30 which is justified primarily in organized crime prosecutions has been confined to such cases to the maximum degree possible, while preserving the ability to administer the act and its effectiveness as a law enforcement tool.

Lastly, and most disturbingly, however, this objection seems to imply that a double standard of civil liberties is permissible. S. 30 is objectionable on civil liberties grounds, the union and city bar committee suggest, because its provisions have an incidental reach beyond organized crime. Coming from the Civil Liberties Union in particular, this objection is indeed strange. Has the union forgotten that the Constitution applies to those engaged in organized crime just as it applies to those engaged in white collar or street crime? S. 30 must, I suggest, stand or fall on the constitutional questions without regard to the degree to which it is limited to organized crime cases. If the bill violates the civil liberties of those engaged in organized crime, it is objectionable as such. But if it does not violate the civil liberties of those who are engaged in organized crime, it does not violate the civil liberties of those who are not engaged in organized crime, but who nonetheless are within the incidental reach of provisions primarily intended to affect organized crime.

Laid bare for all to examine, therefore, this objection can be seen to be little more than a superficial rhetorical trick whose only effect can be to hinder rational and deliberate consideration of this legislation. It is unworthy of any group that calls itself a Civil Liberties Union, and is equally fallacious when expressed by the New York City Bar Committee.

Mr. President, the objections to S. 30 were not, however, confined to general criticisms of the supposedly unwarranted overall effect of the statute. The union undertook to offer detailed criticism of each and every provision in the proposed statute. Indeed, the union was alone among those who appeared in the hearings held before the Special Subcommittee on Criminal Laws and Procedures in offering opposition to each and every provision of the proposed statute. The city bar was somewhat more selective, but similarly onesided. I turn now, therefore, to a consideration of many of their particular objections.

TITLE I—SPECIAL GRAND JURY

Mr. President, title I of S. 30 establishes special grand juries in the major metropolitan areas of our Nation lying in judicial districts having in excess of 4 million in population. This would include these districts: Massachusetts, eastern and southern districts of New York, New Jersey, eastern and western districts of Pennsylvania, southern district of Florida, eastern district of Michigan, northern and southern districts of Ohio, northern district of Illinois, and the northern and southern districts of California. Where the Attorney General determines a need in other locations, special grand juries may also be convened on a case-by-case basis. These grand juries are required to meet at least once each 18-month period. All grand juries are broad based in composition under present law; special grand juries will also elect their foreman and deputy foreman, as is currently the petit jury practice. To insure that there is no arbitrary hampering of grand jury efforts, the jury is given the right to seek review of any dispute between the jury and the judge or the prosecutor.

The relatively greater degree of independence which a special grand jury will have under title I will permit the grand jury to indict or report upon a situation in which a prosecutor or court, for political or other reasons, would prefer that action not be taken. History has shown the wisdom of insulating grand juries from political influence. It was a "runaway grand jury" which in 1935 reported that the New York County prosecutor's office was not sufficiently diligent in pursuing organized crime investigations, and requested that Governor Lehman appoint a special prosecutor. The Governor's response was to appoint Thomas E. Dewey as a special prosecutor. As we all know, that appointment was the first step in a process by which the initial grand jury and its successors eventually indicated a number of political and organized crime leaders. See "The People's Big Stick," published by the Grand Jury Association of New York County, preface—1963. The historian, Prof. Richard D. Younger examined that experience and the experience of a number of other grand juries in a long and scholarly article, and stressed that grand juries must "remain independent of both court and prosecutor." The Grand Jury Under Attack III, 46 J. Cr. L., C. & P.S. 214, 224—1955. He concluded that—

> Today, grand juries remain potentially the strongest weapon against big government and the threat of "satism." (*Id.* at 225.)

Mr. President, I believe that the history of our Nation, and of other nations, reveals that a government which is deprived of the support of its citizens cannot effectively combat activity which is deemed criminal. Grand juries established under title I, selected at random from the community and free of external or internal pressures, will be properly regarded as objective citizenry in their evaluation of criminal activities in their community. They, of course, will be guided by the prosecutor in their investigations, and their findings will be subject to review by the judge, but the grand jury will not be controlled. They are empowered to report their findings on the standing of their community with respect to organized crime and official corruption and misbehavior. They will be empowered to make suggestions for legislative and executive measures which will alleviate these community problems, thus passing on the benefit of their investigations.

Mr. President, who can be more qualified to evaluate the problems of drug traffic in the ghettos than the citizens who are exposed to this depravity on a daily basis? I do not believe that we can stop the drug traffic or solve any other problem associated with organized crime without the cooperation and participation of those who are the victims of the criminal activity.

Mr. President, these citizens also need to be given an institutional voice in the community. Title I of S. 30 revives, therefore, the grand jury reporting powers that were a chief reason for the grand juries' creation in England at the Assize of Clarendon in 1166. Originally, the grand jury was an administrative device to keep the king in touch with the state of affairs in each community, to ensure that his officials performed their functions correctly, and to accuse those who violated the king's peace. This was and is citizen participation in government at its most basic level. As we are all aware,

the difficulty of a central government in evaluating the needs and problems of local communities are as great today as they have ever been.

Grand jury report powers, although a revival in our present federal system, have been retained from common law or statutorily enacted in several of our States. Twenty-one States have legislation similar to the New York statute which, in *Jones* v. *People*, 101 App. Div. 55, 92 N.Y. Supp. 275, appeal dismissed, 181 N.Y. 389, 74 N.E. 226 (1905), was construed to authorize reports, while six States explicitly authorize such reports by statute, and others have sanctioned them on a common law basis. See, for example, *In Re Report of Grand Jury*, 11 So 2d 316 (Fla. 1945). The effectiveness of such reports as an instrument of reform was affirmed at our hearings by Frank S. Hogan, district attorney of New York County. Hearings at 353–54. Mr. Hogan set out several examples of grand jury reports, and evaluated these reports, as follows:

> Since 1947, some 20 reports have been submitted by various grand juries of New York County disclosing either the noncriminal misconduct of public officers or the existence of conditions in public agencies or areas of public interest which required corrective legislative or administrative action. I cite a few instances of the exercise of this grand jury power which, I believe, demonstrate its effectiveness.

I have obtained copies of grand jury reports from New Jersey and elsewhere. On June 3, 1970, for example, I placed a copy of a New Jersey report, upheld after challenge in court, in the RECORD—18029—so that each Member of this body could observe the work product of such a grand jury. At that time, however, I pointed out that the reports authorized by title I would be subject to even greater restrictions than those now obtaining in New Jersey. I believe, in short, that in title I we have fairly balanced the public need for disclosure with the individual's need for anonymity.

I consider title I an implementation of several recommendations by the President's Crime Commission, including the Commission's statement that—

> When a grand jury terminates, it should be permitted by law to file public reports regarding organized crime conditions in the community. (*Challenge of Crime* at 200.)

It has been suggested, however, by Senator CHARLES E. GOODELL and by the New York City Bar Committee—at 10—that this recommendation of the Crime Commission did not include reports that might comment on specific individuals, and it must be conceded that the text of the Commission's report itself is ambiguous. Nevertheless, when it is read in the content of its "legislative history" it is difficult, I suggest, to interpret it in so limited a fashion. The Commission's recommendation here was based on the work of its Task Force on Organized Crime, which had before it a review of the law that specifically recommended that the "right to file reports should be restored" in Federal law.

That review of the law made it clear that existing Federal law permitted the filing of general reports not identifying individuals. The word "restored" could only be taken to mean, therefore, that the existing right under Federal law to file general reports should be expanded to authorize the filing of reports which commented on specific individuals. See Task Force report: Organized Crime 83–85 (1967). Even so interpreted, the Crime Commission recommendation, of course, is contrary to the policy of the Civil Liberties Union, which goes so far as to oppose even the filing of reports—

> Regarding organized crime conditions in the district. (ACLU Jan. 1970 letter at 2.)

Indeed, the union and the New York City Bar Committee both oppose enactment of title I. The union apparently objects primarily to the provisions for the filing of reports, while the bar committee objects both to the relatively great degree of independence of the special grand jury and to its power to file reports. In addition, both organizations oppose the title I amendment to section 3500 of title 18 of the United States Code.

The New York City Bar committee's objection to providing increased independence from the court and prosecutor for federal special grand juries is based on the bar's ignorance of the need for such independence. The Bar committee states:

> While such independence might be required if corruption of the court or the prosecutor were to threaten the federal grand jury's effectiveness, we are not aware that such conditions have been shown to exist at the federal level. (ABCNY at 9–10.)

On the contrary, the Senate hearings on S. 30 contained testimony, to which the bar committee makes no reference, in which Henry S. Ruth, Jr., discussed and illustrated the need for grand jury independence at the Federal level. Mr. Ruth, who now occupies a high law enforcement position for the city of New York and who previously has served as Director of the National Institute of Law Enforcement and Criminal Justice, a professor of law, the Deputy Director of the President's Crime Commission, and an organized crime prosecutor for the Department of Justice, summarized and discussed the recommendations of the President's Crime Commission concerning grand jury independence. Hearings at 332–33.

He then went on, in response to questions from the Chair, to describe two illustrated actual situations in which a Federal grand jury investigation was prematurely terminated by a district court judge and a prosecutor declined to sign a valid indictment. Hearings at 339–40. Corruption has existed in Federal executive departments and in the Federal judiciary, though fortunately it has not been common. The existence of those conditions and the need for enhancing the independence of grand juries was shown before the President's Crime Commission and in the Senate hearings. The Congress has an ample basis of experience on which to enact title I's provisions enhancing the independence of special grand juries.

The Civil Liberties Union expresses the general viewpoint of the New York City Bar Committee as well as itself, when it described title I's report writing powers as a—

> Procedure . . . fundamentally unfair and inherently abusive. (ACLU Jan. 1970 letter at 1.)

The arguments advanced to support this contention are not new. They are but a stale rehash of material culled from the files of the union, which has opposed grand jury activity in New York, where such reports have been routine since the turn of the century. Indeed, when the union was successful in getting the New York Legislature to abolish these report writing powers in 1946, the bill was vetoed by Governor Dewey because he felt that these powers were—

> One of the most valued and treasured restraints upon tyranny and corruption in public office. (*Public Papers of Governor Thomas E. Dewey* 140–41 (1946).)

The specific contentions now advanced by the union and the New York City Bar Committee have been cogently analyzed and refuted, particularly in the context of the present New York grand jury report statute—on which title I is based—in a most scholarly article from the Columbia Law Review. R. Kuh, "The Grand Jury 'Presentment': Foul Blow or Fair Play?", 55 Col. L. Rev. 1104 (1955). Since that article already has been reprinted in the RECORD at my request—CONGRESSIONAL RECORD, volume 115, part 19, page 39907—I shall not at this time repeat all the arguments in favor of grand jury reports, or attempt to rebut all the criticisms to which the reporting power is being subjected.

I do, however, wish to add to these basic materials some comments addressed to certain specific objections raised by the New York City Bar Committee and the Civil Liberties Union. They may be a useful supplement to the basic analysis found in the inserted law review article.

The New York City Bar Committee finds the traditional secrecy of grand jury proceedings to be of questionable fairness, and considers the fairness issue aggravated where the grand jury has the power to file reports. The bar states that those factors mean that—

> The public has no way of evaluating the basis for a charge, and that its publication in the press may be tantamount to a "conviction." (ABCNY at 10.)

This objection is unsound on more than one count, but that the objection is made at all is ironic, since the secrecy of grand jury proceedings is designed in part as a means of protecting witnesses and suspects from prejudice through disclosure to the public that their activities are being investigated. Compare *Jenkins* v. *McKeithen*, 395 U.S. 411, 441 n. 5 (1968), Harlan, Jr., in dissent).

Furthermore, ample means are provided for evaluation of a grand jury report, which is not a "charge" of crime but a set of findings regarding noncriminal conduct. First, the public official whose conduct is to be criticized in the report has the absolute right to require the appearance of witnesses before the grand jury to present his side of the story, and can file a rebuttal to the grand jury report to be published as an appendix to it.

Then, the court supervising the grand jury studies both the evidence against the subject of the report and the evidence which he adduced before the grand jury, to see whether the report is supported by the evidence. The court's determination on that question is subject to appellate review, and the report may not be published until there has been a final judicial decision. Thus, a great deal of "evaluation" of the report is done before it ever reaches the public.

Then, when the report is made public, the simultaneous publication of the report and the official's rebuttal, combined with any written opinions handed down by the courts reviewing the grand jury report, provide the public with more than adequate means of evaluating the accuracy of the report. The New York City Bar Committee's description of the report as "tantamount to a 'conviction' " is extreme, to say the least, when applied to a report on noncriminal conduct returned after such thorough procedural safeguards.

Another traditional feature of grand jury procedure which the New York City Bar Committee finds questionable, especially for a grand jury with report power, is "the non-adversary nature of the proceedings"—ABCNY at 10. Here I note that the Supreme Court itself in *In Re Grobar*, 352 U.S. 330, 333 (1957), remarked that a "witness before a grand jury cannot insist as a matter of constitutional right on being represented by his counsel." Nevertheless, the City Bar's statement—ibid.—that "there is no opportunity . . . to be represented by counsel" tells less than the whole truth, since the right to counsel traditionally is limited only to the extent that a witness' attorney is not allowed inside the grand jury room with him—he may leave the grand jury room at any time to consult with counsel—and the Court in *United States* v. *Capaldo*, 402 F. 2d 821, 824 (2nd Cir. 1968) termed this practice a "reasonable and workable accommodation."

This practice is also followed in New York. *People* v. *Ianniello*, 21 N.Y. 2d 418, 288 N.Y.S. 2d 462, 235 N.E. 2d 439 (1968). It is true that the subject of a report is not permitted to confront and cross-examine witnesses who appear before a grand jury, but it is not true that the title I procedures, which are customary for the State grand juries which under existing law have the power to file reports, impair the fairness or accuracy of grand jury reports.

The Supreme Court itself appears to have rejected the argument made by the New York City Bar Committee, since in the case of *Hannah* v. *Larche*, 363 U.S. 420, 449 (1960), it observed:

> [I]t . . . has [never] been considered essential that a person being investigated by the grand jury be permitted to come before that body and cross-examine witnesses who may have accused him of wrongdoing. . . . [T]he grand jury merely investigates and reports. It does not try.

The New York City Bar Committee's objection, therefore, makes the mistake of equating a grand jury proceeding, which determines only whether an indictment or report will be filed, with a trial which determines whether a defendant is guilty of crime and subject to punishment. As the Supreme Court made clear in the Hannah case, administrative agencies must grant cross-examination and confrontation only when their proceedings serve the purposes of adjudication or rulemaking. Proceedings for the purpose of investigation or factfinding, whether conducted, as the Supreme Court pointed out in Hannah, by an administrative agency or a grand jury, need not involve cross-examination and confrontation of witnesses.

A third feature of grand jury procedure which the New York City Bar Committee finds especially objectionable where a grand jury has the power to report is the immunity of grand jurors from libel suits and their alleged "immunity from the political processes"—ABCNY at 10. The latter, apparently, refers to the fact that grand jurors are selected more or less at random from citizens of the community and serve as grand jurors for a relatively brief period—two features which ordinarily are considered to make grand jurors unusually responsive to community sentiment, rather than the contrary.

The New York City Bar Committee believes that those factors, combined with the inability of the grand jury to indict the subject of a report for the "noncriminal misconduct" described in its report, deprive the person reported upon of an "opportunity for vindication at trial." The Civil Liberties Union makes what appears to be the same point, when it says that the subject of a grand jury report "has no adequate means of defending himself"—ACLU January 1970 letter at 1.

It is ironic that the New York City Bar Committee complains of the absence of an indictment, as a means of vindication, quite apart from the fact that an indictment would harm the defendant by exposing him to the possibility of conviction and punishment. In the first place, an indictment publicly accuses a defendant of far more reprehensible conduct, often, such as a violent or corrupt felony, than does a grand jury report under title I, which can report only upon "noncriminal misconduct, malfeasance or misfeasance in office."

In the second place, the returning of a Federal indictment is governed by far fewer procedural safeguards than the filing of a report under title I: the court may not judge the sufficiency of evidence upon which the indictment is based, there is no appeal from the decision that the indictment shall be made public, and a defendant named in an indictment has no right to append to it a detailed reply. The indictment may be dropped by the prosecutor at any time, depriving the defendant of his supposed right to "vindication at trial."

In the third place, even the one defendant out of about 10 who eventually is found not guilty at trial hardly obtains "vindication." The public is well aware that the State is subject to a number of handicaps at a criminal trial which often prevent it from proving an offense beyond a reasonable doubt although the defendant actually committed the offense, and often although reliable evidence of that fact is available but inadmissible. Because the public largely understands those handicaps, a "not guilty" verdict hardly "vindicates" the defendant in the public mind or removes the effect on his reputation of a public indictment.

A report filed under title I, on the other hand, evaluated and published under the safeguards described above, and alleging only noncriminal misconduct, exposes the subject of a report to far less danger of undeserved harm to his reputation than does the returning of an indictment against a defendant.

The New York City Bar Committee makes a fourth and final claim that there are questionable aspects of grand jury procedure, made more questionable where grand juries are authorized to issue reports. The committee alleges that "there are no objective standards governing the grand jury's conduct" concerning the filing of a report—ABCNY at 10–11. The American Civil Liberties Union makes a similar allegation, saying that "there is no limitation on the nature of the 'misconduct' " sufficient for making one the subject of a report—ACLU January 1970 letter at 1. That criticism is not accurate, and the attitude it reflects is inconsistent with the maintenance of high standards of public service.

Title I's phrase "noncriminal misconduct, malfeasance or misfeasance in office" actually is more restrictive than the comparable phrases in the New York grand jury report statute, on which the title I provisions are largely based. The city bar committee fails to draw the reader's attention to this tightening of the New York statute, despite the fact that the committee takes title I to task later in its report on the bill for alleged departures from the procedural provisions of the New York statute—which I discuss below—and despite the fact that the Senate hearings on S. 30 show clearly the occasion for this narrowing of the standard found in the New York statute. Prof. William Greenhalgh, representing the National Association of Counties, recommended that—

> A better, more specific, and purpose-related definition be supplied to define "noncriminal misconduct, nonfeasance, or neglect in office" to insure that the intent of the legislation is to relate to the purpose of the grand jury report toward organized crime control, and not, as it is possible under the present language, to issue a report against a local public official who misses 10 zoning meetings, or a Federal legislator who misses 10 roll call votes. We also suggest that consideration be given to more clearly expressing the organized crime control intent of this bill by the possible substitution of the words "malfeasance or misfeasance" for "non-feasance" as within the purview of the organized crime investigative grand jury report. The reason we state this is because these two words traditionally connote some degree of "mind-bearing on evil intent." (Hearings at 331.)

As Professor Greenhalgh's testimony clearly indicates, the key terms in the phrase "non-criminal misconduct, malfeasance or misfeasance in office" have received development and elaboration at common law, and the standard is sufficiently specific for a statute of this type. The condemnation of that standard by

the New York City Bar Committee and the Civil Liberties Union also ignores the teaching of New Jersey's Chief Justice, Arthur T. Vanderbilt, who rejected objections to grand jury reports such as the complaints raised against title I, and stated:

> There are many official acts and omissions that fall short of criminal misconduct and yet are not in the public interest. It is very much to the public advantage that such conduct is revealed in an effective way. No community desires to live a hairbreadth above the criminal level, which might well be the case if there were no official organ of public protest. Such presentments are a great deterrent to official wrongdoing . . . [and] inspire public confidence in the capacity of the body politic to purge itself of untoward conditions. (*In Re Camden County Grand Jury*, 10 N.J. 23, 66, 89 A. 2d 416, 444 (1943).)

The complaint by the New York City Bar Committee—at 12–14—that title I "eliminates or diminishes" safeguards found in the New York statute on grand jury reports, and so is objectionable, is almost wholly inaccurate and, so far as it reflects actual differences between title I and the New York statute, is not a sound basis for objecting to enactment of title I.

For example, the city bar committee notes—at 13, note 15—that Federal grand juries ordinarily need not have the testimony they hear recorded, and objects to the filing of a report based upon evidence which was not recorded. In fact, however, in most Federal districts it is already the practice to record all grand jury testimony verbatim, but in any case, title I's provisions for review of the evidentiary basis for any grand jury report explicitly require the court to examine the report "and the minutes of the special grand jury" prior to entering an order accepting the report.

It is not true, therefore, that the testimony taken before a grand jury convened under title I need not be stenographically recorded. Thus, there is no difference in this respect between the New York statute and title I; we see again the failure of the city bar committee to give S. 30 the workmanlike attention fair criticism requires.

Another difference which the New York City Bar Committee claims to find between the New York grand jury reports statute and title I is that the committee considers the New York statute's provision for judicial review of whether a grand jury report is supported by a "preponderance of the evidence" as an effective safeguard, but considers that safeguard "greatly diminished" in value when incorporated in title I, since Federal grand juries can consider hearsay evidence while New York State grand juries cannot. Without any supporting citation, the New York City Bar Committee simply asserts that—

> There are few guidelines for the district court to follow in weighing hearsay or double hearsay testimony." (ABCNY at 14.)

Actually, of course, there are ample "guidelines" and precedents for evaluation of the reliability of hearsay and multiple hearsay evidence, and State and Federal trial and appellate courts engage in weighing such evidence constantly. The numerous exceptions to the hearsay rule itself, such as the Federal shop book rule, are themselves examples of evidence which is admissible but which may have reduced reliability depending on the circumstances of its out-of-court making, and which consequently must be evaluated as to credibility by the district court. Another example of judicial review of the reliability of hearsay evidence, this time by an appellate court, is illustrated by the case of *United States* v. *Shiver*, 414 F. 2d 461 (5th Cir. 1969). In that case, a statement of pure hearsay was admitted in evidence on the issue of guilt or innocence since the defendant's counsel did not object to its admission. The court of appeals stated, at 463:

> This testimony presents the problem of considering the weight to be given to hearsay evidence admitted without objection.
>
> The general rule is that . . . hearsay evidence may properly be considered in determining the facts, [and] . . . [t]he rule followed in this circuit is that such evidence is to be given its natural probative effect as if it were in law admissible. . . .

The court of appeals went on to do exactly that, weighing the reliability of the evidence in view of all the circumstances, and found the evidence in that case to be insufficient to establish guilt beyond a reasonable doubt.

The city bar committee's statement also flies in the face of voluminous State and Federal experience with judicial review of determinations made by administrative agencies. Federal administrative agencies, for example, can base their decisions in large part upon hearsay evidence. (See *e.g.;* 5 U.S.C. section 556 (d) (Administrative Procedure Act); 45 C.F.R. section 702.8(a) ("rules of evidence" "not control" Civil Rights Commission); *Morelli* v. *United States*, 177 Court of Claims 844 (1966); *NLRB* v. *Imperato Stevedoring Corporation*, 250 F. 2d 297 (3d Cir. 1957); *NLRB* v. *Amalgamated Meat Cutters and Butcher Workmen of North America, Local 127*, 202 F. 2d 671 (1953).) The use of hearsay evidence by such agencies has in no way prevented courts from reviewing agency determinations under the "substantial evidence" rule. In view of those precedents and others, the bald assertion by the New York City Bar Committee that "there are few guidelines for the district court to follow in weighing hearsay or double hearsay testimony," without citation to any supporting authorities or to the opposing precedents, can only be considered irresponsible.

A third alleged difference between the New York grand jury report statute and title I is that, according to the New York City Bar Committee, ". . . there is no provision made for the taking of an appeal" from a court order approving a title I report. (ABCNY at 14.) The most that can be said for this objection is that no harm would be done by making the right of appeal more explicit on the face of the statute. Already, however, title I's grand jury report provisions refer to "an appeal," and a fair reading of title I leads to the conclusion that proceedings concerning a grand jury report are civil proceedings so are covered by the provisions of the Federal Rules of Civil Procedure concerning appeals.

The New York City Bar Association Committee complains next that "under the New York statute the court must be satisfied that a report purporting only to exonerate a public official or proposing recommendations for legislative, executive, or administrative action 'is not critical of an identified or identifiable person.' "—ABCNY at 14. The committee finds title I's deletion of the words "or identifiable" to be a substantial change in the standards, largely negating the procedural safeguards provided by title I for reports alleging misconduct by identified persons.

In fact, however, there is little difference between the terms "identified" and "identifiable" when they are considered in context. The city bar committee makes clear—at 14—that it considers the subject of a grand jury report to have been "identified" within the meaning of title I only if "—his name was—specifically mentioned in the report." The ordinary meaning of the word "identified," of course, covers identification by any means sufficient to establish clearly to what individual a report refers. It is this normal meaning of the term "identified" which is intended in title I, and that meaning is only slightly narrower than the meaning of the term "identifiable."

Title I needs this more precise term than the language used in the New York statute, since title I, unlike the New York statute, authorizes not only reports concerning misconduct by governmental officials but also reports on general organized crime conditions. The word "identifiable" could be read so broadly as virtually to eliminate the publication of reports on general organized crime conditions. While the narrower standard found in the New York statute is appropriate there, where general condition reports cannot be filed, the narrower standard is necessary in title I, since opening general condition reports to challenge by individuals who might for publicity reasons say that they are "identifiable" by general relevations would prevent the use of such reports. The standard used in title I poses no real threat to the safeguards applicable to reports which identify specific individuals, whether by name, job designation, or other clearly inferred means.

A key difference between the New York statute on grand jury reports and title I, which the city bar committee considers an important objection to enactment of title I, relates to the hearsay rule. The New York statute requires a court to accept a report only if it is supported by "the credible and legally admissible evidence," while title I permits a report to be supported by hearsay. This difference between the New York statute and title I simply reflects the broader difference, mentioned above, that New York permits grand jury indictments to be based only upon evidence which would be admissible at trial, while Federal grand juries can indict on the basis of hearsay—*United States* v. *Blue*, 384 U.S. 251 (1966); Note, "Validity of Federal Indictments and Warrants Based on Hearsay Evidence,"

65 Yale L. J. 391 (1956). Of course, there are some who oppose the use of hearsay by grand juries for indicting, as well as for filing reports, and would like to see the New York rule extended to the Federal courts. The Federal rule, however, permitting the use of hearsay as the basis for an indictment, is the majority rule in the states. It recognizes the logical value that hearsay has, especially in a proceeding which does not adjudicate guilt but results only in an accusation or the filing of a report on noncriminal misconduct. Indeed, grand jury use of hearsay is even more appropriate as the basis for a grand jury report than as the basis for an indictment, since a report receives judicial review prior to its publication.

The Civil Liberties Union's objections to the quantity of evidence which title I permits to support a grand jury report also are invalid. The union objects to the use of the standard "preponderance of the evidence" as a basis for the filing of a grand jury report, but gives only one reason for its opposition to that standard: that "only one side may present evidence"—ACLU January 1970 letter at 2.—However valid this objection might have been at the time, since title I was, of course, amended on the Senate floor to give the subject of a grand jury report an absolute right to require the hearing of witnesses to present his version of the facts, it is now no longer true that "only one side may present evidence."

In addition, the union misstates title I when it objects to the issuance of reports "when there is insufficient evidence to support indictments." (*Id.* at 1.) This phrase misconceives the nature of grand jury reports. A grand jury report is not a substitute for an indictment in a case in which the evidence of crime is insufficient. Grand jury reports are filed when the evidence is sufficiently clear to establish the facts, but the facts established show noncriminal misconduct, rather than crimes. Grand jury reports alleging the commission of crimes are not permitted.

The distinct and complementary roles played by grand jury indictments and reports are illustrated by the recent developments in New Jersey, where the mayor of Newark was indicted for extortion and income tax evasion, and a grand jury report was filed alleging failure of the city administration to maintain high standards of diligence in law enforcement and the administration of city government. The report and a New Jersey decision upholding it are set out in the CONGRESSIONAL RECORD, page 18209, June 3, 1970. If the grand jury which returned the indictments heard sufficient evidence indicating that the mayor was guilty of extortion and tax evasion, then it acted properly, since the indictments serve the purpose of permitting criminal prosecution. The indictments do not, however, begin to match the grand jury report as a means of alerting the community to the prevailing low standard of administration of municipal government.

In considering the adequacy of title I's report procedures generally, it is important to keep in mind the essential function of grand jury reports. They are designed to educate and instruct the community on matters of community interest, in much the way that reports of legislative committees and independent government commissions serve to inform the public. It is interesting to note that such commissions seldom labor under procedural restrictions even comparable in strictness to the safeguards which the city bar and the union find insufficient in title I. One example of such a commission, which exercises broad powers of investigating and reporting under minimal procedural restrictions, is the U.S. Civil Rights Commission.

The Civil Rights Commission was established by the 1957 Civil Rights Act. The process of authorizing the establishment of the Commission began with the 1956 House civil rights bill, H.R. 627. That bill was reported out of the House Judiciary Committee without any reference to the procedures to be used by the Commission in conducting its hearings. During the debate on the floor of the House, however, the bill was amended to contain provisions regulating the procedure of the Commission hearings. That year, though, the bill died in the Senate.

In the 1957 session of Congress, two bills similar to the 1956 bill became prominent, one containing the relatively full procedures passed in 1956 by the House and the other, introduced in the House of Representatives by Congressman EMANUEL CELLER, then as now chairman of the House Judiciary Committee, containing watered-down procedural protections. For example, the Celler bill contained no provision for confrontation or cross-examination, or for judicial review of Commission findings. It was the Celler bill, however, which eventually became law, despite adverse comment concerning the right of cross-examination in both the Senate and the House of Representatives, and it was the Celler bill whose procedural safeguards were sustained by the Supreme Court against due process objections in *Hannah* v. *Larche*, 363 U.S. 422, 1960. Indeed, the Court sustained the Commission's procedures in part by drawing an analogy between them and the grand jury. I suggest, in short, that the procedures of title I are more consistent with basic fairness than those of the Commission, and those of the Commission have been upheld; I do not see why those of title I should be rejected.

The relative freedom of the Civil Rights Commission from procedural limitations, moreover, is typical of legislative committees and other Government commissions. Since the grand jury reporting function under title I is similar to the reporting and public investigating functions of those bodies, but is exercised under far greater procedural restrictions, it is inconsistent to oppose enactment of title I, while supporting these other agencies. When the false equation between grand jury reports and trials of guilt or innocence of criminal charges is rejected, it is seen that grand jury reports, as permitted and regulated by title I, are an appropriate and unusually careful means of alerting the public to public problems.

Next, grand jury reports are opposed by the City Bar Committee and the Civil Liberties Union on the ground that a grand jury is an "arm of the court," and that therefore its filing of a report violates the doctrine of "separation of powers."—For example, ABCNY at 14–15. This argument overstates the doctrine of separation of powers, which actually is a flexible and qualified doctrine recognizing a great deal of overlap in the functions of the three branches of government. Each branch of government exercises some powers which would be appropriate to another branch. For example, administrative agencies exercise powers which appear appropriate to executive, legislative, and adjudicative bodies: they adjudicate controversies, and make rules having the force of law, as well as administer Federal statutes. Nevertheless, arguments that their exercise of those powers violates the doctrine of separation of powers were repudiated in the 1930's.

Similarly, it is common for courts to recommend enactment of legislation in the course of their written opinions. See, for example, the opinion of Judge Augustus Hand, in *United States* v. *Polakoff*, 112 F. 2d 888, 890–891 second circuit—cert. denied, 311 U.S. 653 (1940), in which he notes the handicap law enforcement at that time labored under without wiretap authority, expresses his opinion that it could be constitutional, and invites congressional action. Such recommendations, when made by judges themselves, are consistent with separation of powers, in part because the courts lack power to implement their legislative recommendations. The grand jury, similarly, lacks that power. In addition, grand juries, like administrative agencies, are more hybrid in their nature than courts themselves, in view of their close association with prosecuting officers. The special grand jury created by title I, because of its special degree of independence from the court and prosecutor, is even less an "arm of the court" than an ordinary grand jury, and its filing of reports recommending legislative, executive or administrative action is consistent with separation of powers.

The New York City Bar Committee's attempt to articulate and support the contention that grand jury reports are harmful, moreover, is misleading and unpersuasive. The city bar committee, for example, describes—at 11—a decision by Judge Weinfeld in the Federal Southern District of New York expunging a grand jury report, without noting that title I of S. 30 would also have prohibited the publication of the report expunged in that case, since the report criticized private individuals rather than public officials, and since the report was not prepared and published under the strict procedural limitations of title I. In addition, the city bar committee omitted to mention that Judge Weinfeld specifically excluded from his holding "reports of a general nature touching on conditions in a community"—111 F. Supp. at 869. Reports of that type, Judge Weinfeld observed, serve "a valuable function and may not be amenable to challenge"—Ibid. The city bar committee follows that example with another, from Missouri, again without pointing

out that the report was returned by a grand jury not subject to the procedural restrictions found in title I—ABCNY at 11.

The Committee also quotes at length—ibid.—from the decision of the New York Court of Appeals in the case of *Wood* v. *Hughes*, 9 N.Y. 2d 144, 154, 173 N.E. 2d 21, 26, 1961. The material quoted is a strong condemnation of grand jury reports identifying individuals. The city bar committee's use of it, however, is deceptive, since it fails to mention that the people of New York, through their state legislature, responded to the *Wood* decision by promptly enacting comprehensive legislation authorizing reports critical of identifiable individuals, under limitations designed to overcome the civil liberties objections voiced by the court—See Laws of 1964, Cr. 250, Code of Criminal Procedure Sec. 253-a.

Although the *Wood* case was set aside by the New York legislature, I recognize that the views expressed in that case may still remain the views of some judges of the New York Court of Appeals. It must be remembered, however, that eminent authorities support both sides of this question—though that fact cannot be gleaned from a reading of the Bar Committee statement. District Attorney Frank S. Hogan of New York County, one of the Nation's most esteemed prosecutors, stated: "In simple logic—it would seem that if a grand jury does not find actual crime but does find misconduct in public office it can and should do something about it." Quoted in "The People's Big Stick," published by the Grand Jury Association of New York County note 49, at 15 (1963). And as New Jersey Chief Justice Arthur T. Vanderbilt stated in 1955, in a decision upholding the grand jury report power over civil liberties objections, grounded on a fear of a possible abuse of the rights of individuals—*In Re Presentment by Camden County Grand Jury, supra* at 434:

> A practice imported here from England three centuries ago as a part of the common law and steadily exercised ever since under three successive state constitutions is too firmly entrenched in our jurisprudence to yield to fancied evils.

That the evils are fancied rather than real is apparent not merely from an examination of the criticisms of title I by the Civil Liberties Union and the New York City Bar Committee, but also from the hearing record of my Senate subcommittee. We attempted to obtain from opponents of title I examples of abuse of report writing powers circumscribed by provisions comparable to title I. The Committee on Federal Legislation of the New York County Lawyers Association, for example, also opposed title I's authorization of Federal grand jury comment on specific individuals—hearings at 216—but the spokesman for the committee conceded—*Id.* at 239—that he had no concrete experience to show that the New York law was not working well. The American Civil Liberties Union opposed the report writing power—*Id.* at 456-59—but was asked to provide for the record any indication of abuse where reports are filed, and failed to provide any—*Id.* at 481.

Apart from the merits of permitting grand jury reports which criticize identified individuals, it is incorrect to describe title I as a drastic change in existing Federal law—it might better be described as a clarification of the law, in view of the divergent Federal practices and precedents. One might compare, for example, the dictum of the Supreme Court in *Hannah* v. *Larche, supra*, that a grand jury investigates and reports, and the detailed and specific report recently filed by a Federal grand jury and ordered released by a Federal judge concerning the fatal shooting incident in Chicago between police and members of the Black Panther Party, with the decision of Judge Weinfeld in Application of United Electrical Workers, 111 F. Supp. 858—S.D.N.Y. 1953. Title I resolves this split of practice and authority in favor of grand jury reports, as a majority of the States do to at least some degree, and adds unusually strict safeguards against abuse of grand jury powers and against unwarranted and inaccurate publication of reports.

The provision of title I which would amend section 3500 of title 18 of the United States Code, concerning pretrial disclosure to a defendant of statements in the possession of the Government, also has received unfair criticism by the city bar committee and the Civil Liberties Union. The union, for example, claims that this provision of title I would abandon the trend set by recent decisions such as the case of *Dennis* v. *United States*, 384 U.S. 855, 870 (1967). The union fails to note, however, that the court in Dennis relied upon section 3500 as analogous authority for its decision in that case, and falsely implies that the guilding principles of the Dennis case and of title I are at odds. Likewise, the New York City Bar Committee misstates the effect of Rule 16(b) of the Federal Rules of Criminal Procedure—ABCNY at 17. Actually, Rule 16(b) expressly provides that it does not authorize the discovery of statements made by Government witnesses to Government agents except as provided in section 3500.

The present state of the law governing disclosure of satements is intolerable, since there are unjustifiable differences in the ways that various kinds of statements are treated for discovery purposes, and since various Federal circuits have adopted various rules for making discovery in particular situations. This provision of title I would provide the needed uniformity of treatment among various kinds of statements, and would clarify the law so as to obtain uniformity of treatment from one Federal circuit to another.

The need for a clarification of the law is most urgent, since the present uncertain state of the law leads unnecessarily to litigation of collateral issues and reversal of convictions on grounds not necessarily related to guilt or innocence—(*see, e.g., United States* v. *McGowan*, 7 Crim. L. Rptr. 2031—4th Cir., March 16, 1970—*Harris* v. *United States*, D.C. Cir., No. 21,511 (March 18, 1970). The harm done by the present state of flux and uncertainty in the law is well illustrated by the *Harris* case, *supra*, which reversed a conviction for robbery and assault with a pistol. A footnote to the opinion of the dissenting judge in that case reveals that the defendant committed another armed robbery and assault with a sawed-off shotgun before he was tried for his earlier crime. Having been convicted of both robberies and both aggravated assaults, Harris appealed both convictions and now has obtained reversal of one because the law on pretrial discovery was unclear. I think we should clarify that law now, and put an end to injustices to society such as occurred in the *Harris* case.

On the whole, title I would effect major improvements in existing Federal law, and has won impressive support from a variety of organizations. The claim by the New York City Bar Committee (at 9) that the U.S. Judicial Conference, the New York County Lawyers Association, and the National Association of Counties all urged that title I "be rejected in its present form" is, moreover, false. The judicial conference has never expressed a view concerning title I "in its present form." The judicial conference did disapprove an earlier draft, but stated no reasons for its disapproval, so there is no basis for drawing an inference as to its position on title I "in its present form." The earlier disapproval is set out in the CONGRESSIONAL RECORD, volume 115, part 25, page 33573. Indeed, to my knowledge the conference has never reviewed title I in the form in which it passed the Senate.

The New York County Lawyers Asso-tion, it is true, objected to the concept of grand jury reports identifying individuals. As noted above, however, the association conceded that it had no "concrete experience" on which to base its fears of abuse, and its opposition did not extend to exonerating reports or general crime condition reports. Finally, the National Association of Counties, supporting the central thrust of title I, opposed only certain provisions of the initial draft. At the same time, the Association made constructive suggestions for modifications. Those modifications were accepted by the Senate Judiciary Committee, something the bar association fails to note, and the modifications now are part of the bill passed by the Senate. The National Association of Counties, therefore, supports, not opposes, title I.

Indeed, what is remarkable about the public comments on title I is the degree to which associations of public officials who could be made the subjects of such reports have, in their desire for effective law enforcement and improvement of Government, endorsed both the grand jury report provisions and title I's grand jury minutes provisions. The Department of Justice supports these provisions fully—hearings at 369.

The Association of Federal Investigators testified that they "applaud" giving the public the "whole picture," so "strongly endorse" title I. (*Id.* at 276.) The National Association of Counties testified in the Senate hearings that there is "no greater deterrent to evil, incompetent and corrupt Government than publicity," and endorsed the report provisions with proposed modifications. (*Id.* at 330-31.) The International Association of Chiefs of Police have endorsed

S. 30, including title I, the CONGRESSIONAL RECORD, volume 115, part 22, page 29889. As one considers whether grand jury reports are needed, and whether the procedures in title I for their issuance provide the subject of a report with fair safeguards, the support of those groups is especially significant.

An amendment was offered on the Senate floor to strike the provisions of title I for reports on identified officials, and was defeated by a vote of 59 to 13. I submit that, when inaccurate claims about "fancied evils" are put to one side, and the need for direct influence by citizens over the conduct of public officials is recognized, it will be agreed that title I provides effective and fair means for improving the quality of Government.

TITLE II—GENERAL IMMUNITY

Mr. President, title II of S. 30 is a comprehensive immunity provision designed to replace more than 50 immunity statutes now in operation. When S. 30 was originally introduced its scope was limited to grand jury and court proceeding. It was designed to implement the recommendation of the President's Crime Commission that such a provision was not only necessary in the general administration of justice, but essential in the fight against organized crime. During the course of the hearings, however, the National Commission on the Reform of Federal Criminal Laws issued a report recommending that comprehensive reform and codification action be undertaken in this field. Accordingly, title II was reexamined in this context, and the decision was reached to go forward and properly to treat the overall problem in the administration of justice. Title II now provides for judicial, administrative and congressional immunity grants, subject to carefully framed safeguards for individual liberties, where information which may be necessary to the public interests is likely to be refused to be provided on the basis of the privilege against self-incrimination.

Mr. President, the relation between the privilege against self-incrimination and immunity grants has been examined by our courts over a considerable period of time. In *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892), the Supreme Court invalidated an immunity statute which only prevented evidence from being used in subsequent court proceedings, where the evidence had been compelled under an immunity grant. The court stated:

> It could not, and would not prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. (142 U.S. at 564.)

In response, Congress passed a "transaction immunity" statute, which provided that the person compelled to testify could not be prosecuted, under any circumstances, for the criminal activities concerning which he had testified. In *Brown* v. *Walker*, 161 U.S. 591 (1896), this statute was upheld, despite the argument that was made that the principle of *Counselman* should be extended to prevent self-degradation as well as self-incrimination. The court answered this contention:

> The authorities are numerous and very nearly uniform to the effect that, if the proposed testimony is material to the issue on trial, the fact that the testimony may tend to degrade the witness in public estimation does not exempt him from the duty of disclosure. A person who commits a criminal act is bound to contemplate the consequences of exposure to his good name and reputation and ought not to call upon the courts to protect that which he has himself esteemed to be of such little value. (161 U.S. at 605.)

The court also stated:

> Every good citizen is bound to aid in the enforcement of the law, and has no right to permit himself, under the pretext of shielding his own good name to be made the tool of others who are desirous of seeking shelter behind his privilege. (161 U.S. at 600.)

Immunity legislation remained at this point until 1964. In that year, the Supreme Court handed down *Malloy* v. *Hogan*, 378 U.S. 1 (1964), and *Murphy* v. *Waterfront Commission*, 378 U.S. 52 (1964). In order to make State immunity statutes valid, the court held that they must also protect against Federal prosecution.

Drawing upon recently developed criminal procedure rulings on the derivative suppression of evidence, the court stated:

> We hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him. (378 U.S. at 79.)

In a footnote, Mr. Justice Goldberg went on to state:

> The federal authorities have the burden of showing that their evidence is not tainted by establishing an independent, legitimate source for the disputed evidence. (*Id.* at n. 18.)

This is the use-restriction immunity that is embodied in title II. Under it, once a witness has testified, he can only be prosecuted for the acts concerning which he has been immunized if the prosecution can "establish an independent, legitimate source for the disputed evidence." *Ibid.*

Since *Murphy*, the highest courts of New Jersey and California have embraced this theory of immunity. In so doing, they specifically relied on the precedents in the U.S. Supreme Court.

The President of the United States on April 23, 1969, in his message on organized crime, commended the basic concept of title II to the Congress, stating:

> I commend to the Congress for its consideration . . . [the proposal under which] . . . a witness could not be prosecuted on the basis of anything he said while testifying, but he would not be immune from prosecution based on other evidence of his offense. (Doc. No. 91–105, House of Representatives, 91st Cong., 1st Sess. at 5 (1969).)

Mr. President, in a concurring opinion in *Murphy*, Mr. Justice White stated:

> Immunity must be as broad as, but not harmfully and wastefully broader than, the privilege against self-incrimination. (378 U.S. at 107.)

This was but another way of saying that we ought not tolerate anything which gives, in the words of Mr. Justice Holmes in *Heike* v. *United States*, 227 U.S. 131, 144 (1913), a "gratuity to crime."

Mr. President, in light of present derivative-suppression techniques, and Supreme Court decisions, to refuse to enact use-immunity legislation is to give a "gratuity to crime." In a society which is besieged by organized crime, the U.S. Senate is in no position to hand out such gratuities. Title II would revoke the gratuity that a member of organized crime enjoys under present immunity legislation and substitute for it carefully drafted legislation that both reforms and codifies the law in this field.

The New York City Bar Committee declines to take a position at this time on title II, but the American Civil Liberties Union objects to title II on several grounds. Most basically, the union states that "in 1892 the Supreme Court held a similar immunity statute unconstitutional because it protected only against use of evidence but not against prosecution, *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892)"—ACLU January 1970 letter at 4. The union clearly implies that title II, since it gives immunity against use of compelled evidence and its indirect fruits rather than immunity against prosecution, is of doubtful constitutionality.

In the first place, the union's statement of the Counselman against Hitchcock holding is grossly misleading, when it states that the immunity statute struck down in 1892 was "similar" to title II. In fact, they were different in the most important respect: the invalidated statute protected only against use of the witness' own words against him, while title II protects against use not only of the witness' words but also of evidence indirectly obtained through investigation based on his testimony. That difference appears to be crucial under the Murphy case discussed above. Indeed, the highest courts of California and New Jersey, which within the past year have held immunity which is similar to title II to be constitutional, have relied upon the Murphy decision and have considered that difference to be vital. The union fails to cite the Murphy case or the State cases, and even states that "nothing has happened" since 1966 to support the constitutionality of use restriction immunity—apparently considering the decisions by the highest courts of two States to be "nothing." In the present state of the precedents there is virtually no basis for the union's constitutional objection to title II, and the strongest grounds for the opinion that title II is sound and constitutional.

The union goes on to question the constitutionality of title II on the ground that a witness who is immunized under its provisions receives protection only "in any criminal case." The union recognizes that those are the precise words used in the fifth amendment itself, but notes that that phrase in the fifth amendment has been interpreted to include a variety of penalty or forfeiture proceedings, and expresses fear that "title II is intended to apply" to something less. It seems obvious, especially in view of the full discussion of this point in the hearings, at

298–300, that the reason why title II uses the phrase found in the Constitution is that it is intended that the interpretations placed on the fifth amendment also be placed on the statute. There is no better way to assure that result than the method used by the Judiciary Committee and the Senate in drafting and passing title II.

In view of that fatuous complaint by the Civil Liberties Union concerning the draftsmanship of title II, it is amusing to read the union's statement that title II "replaces a host of carefully drawn and limited specific immunity provisions"—ACLU January 1970 letter at 3. The truth of the matter is described in the comment to the draft immunity provision proposed by the National Commission on Reform of Federal Criminal Laws, on which title II is based:

> In summary, and reserving for the next section an analysis of problem areas in existing immunity legislation, it can be said that federal immunity legislation has developed haphazardly. Congress has made a series of ad hoc responses to the need to support particular statutory programs with a power to compel testimony. There is no general federal immunity statute. There is no uniform immunity statute for the independent regulatory agencies. There is no uniform immunity statute for the executive branch. There is no uniform immunity statute for criminal law enforcement. Nor is there uniform provision for consultation before one agency authorizes an immunity which may adversely affect the criminal law enforcement program under a statute administered by another agency. (Hearings at 296.)

Enactment of title II thus would replace a large group of statutes which, contrary to the assertion of the union, are diverse and poorly drafted, with a comprehensive immunity statute. Title II has had the benefit, also, of the careful study and draftsmanship which went into the project as a part of the work of the National Commission on Reform of the Federal Criminal Laws, which prepared an extremely thorough and detailed analysis and justification of the proposal now found in title II—hearings at 279–327.

In that study by the National Commission will be found, incidentally, analysis of the question whether a court should be empowered to disapprove an immunity grant proposed by a prosecuting officer—Id. at 312–13. The Civil Liberties Union objects to the provision of title II placing the decision whether to grant immunity in the hands of the prosecuting officer but, in view of the full discussion of the issue in the National Commission's study, I would like at this time merely to make two points. First, the prosecuting officer is, for reasons stated in the Commission study in a far better position than a court to judge whether paying the price of immunity is warranted, in terms of the value of the expected testimony to the investigative effort. Second, the risk of abuse by a prosecuting officer is minimized by the fact that the immunity grant confers immunity only from use of the evidence and its fruits, rather than from prosecution.

Title II, which has passed the Senate as a part of S. 30 and has been reported favorable by a Subcommittee of the House Judiciary Committee, promises to improve the conduct of the business of the Congress, courts, and administrative agencies, by making available needed testimony which otherwise would be withheld, while at the same time preventing the unnecessary immunizing of criminals from responsibility for their conduct, when that conduct can be proven by untainted evidence. It deserves the support of all those who are serious about moving against crime.

TITLE III—RECALCITRANT WITNESSES

Mr. President, neither the compulsory process of the grand jury nor a grant of immunity assures that the testimony of the witness will be obtained. When a witness is not in a position to invoke the privilege against self-incrimination, this does not mean that he will give his full cooperation during the investigation. At this point, however, the investigation may be continued through use of the contempt power.

The contempt power has roots that run deep in Anglo-American legal history, and under modern law there is no question that courts have the power to enforce compliance with their lawful orders. Current Federal laws expressly confirm this ancient power. When subpenaed before a grand jury, the witness must attend. The grand jury, however, has no power as such to hold a witness in contempt if he refuses to testify without just cause. To constitute contempt the refusal must come after the court has ordered the witness to answer specific questions. Two courses are open when a witness then refuses to testify after a proper court order: civil or criminal contempt.

Under civil contempt, the refusal is brought to the attention of the court, and the witness may be confined until he testifies; he is said to carry, as the Court noted in *In Re Nevitt*, 117 Fed. 449, 461 (8th Cir. 1902), "the keys of the prison in his own pocket." Usually, where contempt is clear, no bail is allowed when an appeal is taken. The confinement cannot extend beyond the life of the grand jury, although the sentence can be continued or reimbursed if the witness adheres to his refusal to testify before a successor grand jury.

Under criminal contempt, after a hearing, the witness may be imprisoned, not to compel compliance with, but to vindicate the court's order. Federal law requires a jury trial if the sentence to be imposed will exceed 6 months. No other limit is set.

Title III of S. 30 seeks to codify the civil contempt aspect of present law as it applies to grand jury and court proceedings in the area of the refusal to give required testimony. Here it is worth noting, too, that absent a valid privilege, in the words of the Supreme Court in *Piemonte* v. *United States*, 367 U.S. 556, 559 n. 2 (1961), "the public has a right to every man's evidence." Upon such a refusal, the court is explicitly authorized to order the summary confinement of the witness, and it is provided that ordinarily no bail shall be given to the witness pending the appeal, since this would undermine the coercive effect of the court's order and result in undue delay.

Mr. President, this is a vital investigative tool for the forces of law enforcement. The testimony of Mr. Paul Curran, chairman of the New York State Commission of Investigations, during subcommittee hearings on this title, underlines the necessity for such a provision:

> With this grant of immunity must be coupled the right of compulsory process to produce the witness, and also the right most importantly, to take meaningful action against recalcitrant witnesses. They must know that if after receiving immunity, they do not testify, they will go to jail until such time as they are prepared to testify. This provision of S. 30 for . . . [a] jail term will make it clear that the Government really means business. (Hearings at 178.)

The contempt power is most vital in organized crime cases, where investigators and courts often are confronted with witnesses who have sworn allegiance to La Cosa Nostra's code of silence. One of legitimate society's infrequent glimpses of the pervasiveness of that code was afforded last year when the De Cavalcante electronic bugging transcripts were made public by a Federal court, and the head of Philadelphia's Mafia family was overheard telling the head of a New Jersey family:

> The idea is, the main thing is that, that's why I say, he signed a statement, that is bad. Because no friend of ours is supposed to sign any kind of a statement with the law. Never. Plead guilty, because there is a deal made that by pleading guilty, instead of getting ten years, he gets two: however, he pleaded guilty, instead of getting ten, he got one. So there's a deal there, but you still don't sign a statement, even though you plead guilty, you don't sign a confession.

Mr. President, title III also amends title 18, chapter 49, United States Code, section 1073, entitled "Flight To Avoid Prosecution or Giving Testimony" to include flight to avoid contempt proceedings. The pertinent changes in section 1073 read as follows:

> Whoever moves or travels in interstate or foreign commerce with intent either . . . (3) to avoid contempt proceedings for alleged disobedience of any lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such state to conduct investigations of alleged criminal activities, shall be fined not more than $5,000 or imprisoned not more than five years or both.

Mr. President, the need to make this change in the Federal Fugitive Felony Act was recently brought to light in organized crime investigations in New Jersey. Concerned over a growing awareness of the sinister influence of organized crime in the State, the New Jersey Legislature in 1968 created a State commission of investigation, which was modeled on New York's successful commission. In a hearing held in July of 1969, two mob figures, Robert "Bobby Basile" Ochipinti and Frank Cocchiaro, both lieutenants of Cosa Nostra boss Simone Rizzo "Sam the Plumber" De Cavalcante of New Jersey, after being subpenaed by the commission, walked out of the statehouse in Trenton during a break in the hearing and fled the

State to avoid contempt charges for refusing to answer questions. Unlike a witness who flees to avoid grand jury or court testimony, these two mobsters could not be picked up by the FBI for unlawful flight. Instead, the time-consuming process of State extradition had to be undertaken.

Mr. President, this defect in the law may be easily remedied. With the addition of but a few words to the statute, it will be possible to use the FBI to help States such as New Jersey, now seeking to clean its own house, to help themselves.

Nevertheless, both the New York City Bar Association Committee and the American Civil Liberties Union raise questions about the length of confinement which can result where a witness commits a civil contempt under title III. The city bar committee members divided on the question whether confinement for civil contempt, which is permitted under existing law and would be continued under title III, becomes punitive if a witness can be imprisoned for the life of a title I special grand jury, which can extend up to as long as 3 years, rather than just for the life of a regular grand jury, which under present law can extend up to 18 months—ABCNY at 18–19.

The Civil Liberties Union was less restrained, and stated that the long life of a title I grand jury, coupled with the union's failure to find in title III a requirement that the grand jury investigation in question remain in progress for the duration of the civil contempt imprisonment, made imprisonment of a witness under title III "punitive," rather than coercive of testimony. For those reasons, the union opposed title III.

Those objections are not valid. As the city bar committee notes at 18, existing law permits civil contempt confinement, for refusing to answer questions before a grand jury, for the remaining life of the grand jury, which can extend as long as 18 months. Existing law also, however, permits a witness who remains in jail for refusing to testify until a grand jury is discharged, and then is released upon its discharge, to be reconfined if he repeats his refusal to answer questions before a successor grand jury—See *Shillitani* v. *United States*, 384 U.S. 364, 371 (1966). Therefore, title III does not substantially increase the likelihood of lengthy incarceration for civil contempt.

It is true, of course, under existing law as well as under title III, that in a particular case of extended confinement a time might come when continued incarceration became punitive rather than coercive. Any limitation upon such confinement for civil contempt, however, would be determined, as Judge Friendly indicated in *United States* v. *Doe*, 405 F. 2d 436, 438 (2d Cir. 1968), by consideration of all the circumstances in an individual case, not by an evaluation of the face of the governing statute. Indeed, under title I, the grand jury must show that it has unfinished business before it can secure an extension of its term beyond 18 months. This showing would tend to guarantee that a period of extended civil commitment was, in fact, sought because there was a continuing thwarting of the grand jury's investigation. Actually, therefore, a witness would find his rights protected to a greater degree where a special grand jury rather than a general grand jury was involved.

The Civil Liberties Union and the city bar committee object—at 19–21—to title III also on the ground that it establishes an unsound standard for the granting or denial of bail pending appeal by a witness confined for civil contempt.

When considering what criteria ought to govern the granting of bail pending appeal of a civil contempt confinement, it should be kept in mind that the issue of bail arises only after a witness is found, through a procedure which is thorough and most rigorous for the Government, to have been guilty of civil contempt. That procedure is very similar to the one outlined in *In Re Hitson*, 177 F. Supp. 834 (N.D. Cal. 1959). That case involved witnesses before a grand jury who refused on grounds of self-incrimination to answer, after being duly sworn, questions regarding matters being investigated by the grand jury.

Title III does not, of course, modify the procedure described in the Hitson case. Title II, on witness immunity, does so only to the extent of permitting prospective grants of immunity to be made in certain cases. Those procedures preserve a full opportunity for the witness to raise any objections and defenses he has to the civil contempt proceedings, so he is found to have committed a civil contempt, if he is, only after full litigation of the relevant issues. It is at that point that the issue of bail arises.

Title III's standard for bail in such cases is that a judge shall deny bail "unless there is substantial possibility of reversal." The city bar committee, after quoting that standard from title III, goes on to allege that the Senate report "suggests that this language is intended to deny bail in all cases, since the report's general description of title III—page 33—states that it would authorize 'confinement, without bail, until compliance is made with the order of the court' "—ABCNY at 19. The phrase quoted by the bar committee was taken from the portion of the committee report entitled "Scope of Amendment"—report at 32—which purported to be nothing more than the barest summary of the principal provisions of S. 30, and which summarized title III in only two sentences. The section of the committee report entitled "Section-By-Section Analysis"—report at 141, 148–49—stated explicitly, as did the face of title III itself, that title III permits the granting of bail "where there is a substantial possibility of reversal"—Id. at 149. Thus, it is difficult to explain how the bar committee could misstate the effect of title III's bail provision as it did.

The city bar is, perhaps, even more misleading in its statement of existing law on bail in civil contempt cases than in its statement of the meaning of title III. At three places in the body of the bar committee's report on title III—ABCNY at 7, 19, 20—it states or directly implies that rule 46(a)(2) of the Federal Rules of Criminal Procedure, providing that "bail may be allowed pending appeal—unless it appears that the appeal is frivolous or taken for delay," applies to civil contempt cases. The bar committee also asserts that title III violates "the spirit" of the Bail Reform Act, title 18 United States Code, section 3148—Supplement IV, 1969, ABCNY at 7, 19—although it concedes that the Bail Reform Act is confined to criminal cases and so has no application to civil contempt cases—Id. at 19, note 32. The bar committee's recognition that the Bail Reform Act does not apply to civil proceedings makes all the more remarkable its failure to acknowledge that rule 46 similarly does not, of its own force, have any application to civil proceedings.

The city bar committee raises inaccurate and careless objections—ABCNY at 19—to the way in which *Coplon and United States* v. *Testa*, 326 F. 2d 730 (3rd Cir. 1963) (per curiam), *cert. denied*, 376 U.S. 931 (1964), were cited in the section-by-section analysis in the Senate report on S. 30. It is true, as the committee states, that the Coplon court applied a standard argued by the Government to be analogous to that in Federal criminal rule 46(a)(2), and that the Testa court did not discuss the issue of bail pending appeal. The Senate report, however, did not cite those cases for "the standard announced" in them, or for the manner in which they "discussed" the issue of bail, to use the bar committee's terms. The report, instead, cited them as examples of "what is now present practice"—report at 149. Thus, the city bar committee's statement that the Senate report is "erroneous"—ABCNY at 19—is itself erroneous—once again.

The important question, of course, is whether the standard for granting or denying bail stated in title III is a sound one, in view of the interest of the public in the efficacy of civil contempt, and the interest of a witness in avoiding confinement for conduct which later will be found not to constitute contempt of court.

One should note, at the outset, that even for bail pending appeal of a criminal conviction a defendant does not necessarily receive bail even though it is determined that his appeal is not "frivolous or taken for delay." That phrase provides a prohibition against the granting of bail for frivolous or dilatory appeals, but the granting of bail for substantial appeals remains entirely discretionary—there is no right to bail, even under the criminal provisions of rule 46.

The question, then, is only how broad the prohibition against the granting of bail, the denial of discretion to allow bail in extreme cases, shall be. I submit that the substance of the two standards—criminal rule 46's standard of "frivolous or taken for delay," and title III's standard of "substantial possibility of reversal"—is the same in each case. What is different between title III and criminal rule 46 is not the substance of the standard, but the burden of showing whether the standard is or is not satisfied in each case. Criminal rule 46 places on the Government the obligation to show that the appeal is frivolous or dilatory, while title III places a comparable burden on the individual in contempt of court.

That burden, in my opinion, belongs on the witness once he has been held in

civil contempt. In the first place, the basis of the contempt already has been probed in the trial court under the rigorous procedures mentioned above. In the second place, civil contempt is unique in that its effectiveness is largely undermined if the witness found in contempt can take an appeal, regardless of its lack of merit, and remain free on bail. The purpose of holding him in contempt is to compel him to testify, but as time passes and the investigation either proceeds without the needed evidence or grows stale, the purpose of the contempt holding is defeated. At the suggestion of the Department of Justice—report at 109—a requirement that the appeal be disposed of within 30 days, and sooner if practicable, was inserted, so that the need to protect the effectiveness of civil contempt could be reconciled, as far as possible, with the interest of the individual witness. Of course, where there is a substantial possibility of reversal, bail can be granted in any case.

The city bar committee also makes the unfounded claim—ABCNY at 20—that a district judge who finds a witness to be in civil contempt will have more difficulty under title III's standard, than under the standard applied in the Coplon case, in rendering an unprejudiced decision as to whether or not to grant bail. As I said earlier, it is not so much the substance of the standard as the burden of satisfying it that has been changed by title III, while any issue of prejudice would go not to the procedure but to the substance of the judgment that the district judge must make about the accuracy of his contempt finding. More important, the authority in title III for bail pending appeal of the civil contempt finding is intended "to permit an appellate court to act to alleviate a manifestly erroneous confinement"—Senate report at 149. The Senate committee report made it explicit that the bail authority was aimed primarily at the appellate court, rather than the trial court, but the city bar committee's suggestion of district court prejudice makes no reference to that passage in the committee report.

Finally, omitted entirely from the bar association's discussion is rule 23 of Fed. R. App. Proc., which governs bail in habeas corpus appeals, an appellate procedure that is, like civil contempt, civil and not criminal in character. Rule 23 makes the question of bail solely one of discretion; it sets no standard whatsoever. It is, in short, seriously misleading to convey the impression that rule 46 or the Bail Reform Act expresses the full range of present Federal policy toward bail.

TITLE IV—FALSE DECLARATIONS

Mr. President, title IV of S. 30 represents the best efforts of the committee to insure that truthful testimony will be given in our grand juries and courts.

Organized crime's defeat of investigations and prosecutions through the fabricated story has occasioned our reexamination of the law in this area. However, the reforms implemented by these rules of pleading and evidence ought not be artificially limited to organized crime cases. At present, Federal law interposes several impediments to securing truthful testimony. As we all are aware, the usual standard of proof in a criminal prosecution is proof beyond a reasonable doubt. Meeting that standard, however, is not sufficient to secure a conviction for perjury. If the proof is circumstantial and not direct, no conviction may be obtained. For reasons rooted in medieval law—possessing no contemporary relevance—the testimony of one witness, no matter how trustworthy, reliable or sufficient—standing alone—is not legally adequate for a perjury conviction.

The American Civil Liberties Union refers to those two special rules for perjury cases, and the additional rule that the Government can obtain a conviction for perjury in the making of two manifestly contradictory statements under oath only if it can prove which of the two statements is false, as "time-tested" and "historic" rules—ACLU January 1970 letter at 6. The union does not bother to mention that as long ago as 1953 as a result of the studies of a special Commission on Organized Crime—see report at 50–52 (1951)—the American Bar Association and the National Conference of Commissioners on Uniform State Law had recommended their abrogation—"Handbook of the National Conference of Commissioners on Uniform State Laws" 403–09 (1952). These rules are more accurately described as anachronistic and outmoded. Time has shown them to be ineffective to accomplish the purposes which are supposed to justify them, and destructive of the sound administration of justice.

Since the irrelevance of the special perjury rules to the needs of the modern administration of justice becomes particularly apparent upon an examination of the history upon which those rules are based, some of that history was summarized in the Senate committee report:

> The first statutory reference to the crime of perjury appeared in 1495, 3 Hen. 7, c. 1 (1495). The Star Chamber read this act as authorizing punishment for perjury. Although the crime was theoretically cognizable in the ordinary criminal courts, it was dealt with almost exclusively in the Star Chamber, where the proceedings were presided over by the Lord Chancellor and conducted according to the ecclesiastical law under which a quantitative notion obtained of the credit to be accorded to the testimony of a witness under oath. From this notion, the so-called two-witness rule developed, that is, two witnesses to the same fact are necessary to establish it. Lord Chief Justice Hardwicke in *Rex* v. *Nunez*, Cas. T. Hard 265, 95 Eng. Rep. 171 (K.B. 1736), summed up the rule: "One man's oath is as good as another's." When the Star Chamber was abolished in 1641, the principles it had established in perjury prosecutions were carried over into the common law.
>
> In perjury cases Federal courts today still follow the two-witness rule and its corollary, the direct evidence rule, which requires a conviction for perjury to be based on direct not circumstantial evidence. The two witness rule, however, is misnamed. Under modern law, it no longer requires the testimony of two witnesses; it merely provides "that the uncorroborated oath of one witness is not enough to establish the falsity of the (testimony of the) accused . . ." *Hammer* v. *United States*, 271 U.S. 620, 626 (1926). The corroborating evidence need not independently establish the falsity of the testimony; it is enough if it furnishes a basis to overcome the oath of the accused and his presumption of innocence. The rule has no application, however, to elements of perjury other than falsity. (Senate Report at 58.)

The President's Crime Commission examined this issue thoroughly. It had before it a study explaining the history of the special rules for perjury cases, and demonstrating that those rules impede sound perjury prosecutions yet fail to accomplish their purpose of preventing abusive prosecutions—task force report: "Organized Crime," at 88–91. On the basis of its study of the problem, the President's Crime Commission concluded that Federal perjury law should abandon the ancient, restrictive rules on perjury prosecutions, as some of the States have done—"Challenge of Crime," at 201. The Crime Commission reported that the incidence of perjury is higher in organized crime cases than in routine criminal matters. We all know that perjury prosecutions are rarely successful. The effect of this lack of success upon the initiation of prosecutions is obvious. Again, we can easily infer the likelihood of perjury in instances of organized crime prosecutions, due to well-established witness-intimidation efforts of the underworld. The Department of Justice endorsed this provision, stating:

> We agree with the recommendation of the President's Commission that abolition of these rules is desirable. (Hearings at 371.)

There are at least two other barriers to obtaining truthful testimony. Under present law, even if a witness makes two statements which are so patently contradictory that one or the other must be false, the prosecution must nevertheless prove which of the statements is false and then prove an intentional falsehood. In accord with the Commission recommendation, the committee rightfully retained the requirement that an intent to falsify be shown. However, if one of two statements logically must be false, then title IV recognizes that fact.

The last impediment to the telling of truth is that under present Federal law one is not allowed to recant, correct untruthful statements, and escape prosecution. Therefore, at present a witness is discouraged from correcting untruthful testimony. Title IV would allow one to avoid criminal liability by correcting his testimony, so long as it is not already apparent by other testimony that he is lying, or so long as he has not substantially misled the proceeding by his original untruthful testimony.

Mr. President, title IV encourages truth by facilitating the prosecution of those who have lied, and by encouraging the correction of testimony without fear of prosecution. I am firm in my belief that this body should do everything in its power to make certain that there are no impediments to truthful testimony in the administration of justice in the Federal courts—in all cases as well as the more serious organized crime cases.

Since the thorough consideration of the history and merit of the restrictive rules for perjury cases by the Senate

committee and by the President's Crime Commission was a matter of record when the Civil Liberties Union submitted its letter of January 20 to every Senator, it is remarkable that the Union dismissed that experience simply by referring to the ancient rules as "time-tested" and "historic"—terms which could scarcely rebut the considered conclusions of the Senate Subcommittee and the Crime Commission, or the evidence upon which those conclusions were based.

Still more remarkable is the manner in which the Civil Liberties Union misuses a relevant decision by the U.S. Supreme Court, when it states:

> It [title IV] does away with the historic two-witness rule. See *Weiler* v. *United States*, 323 U.S. 607 (1944). (ACLU Jan. 1970 letter at 6.)

The New York City Bar Committee compounds the error by quoting at length from the Weiler decision, ABCNY at 22. The passage quoted by the city bar committee makes the points that the two-witness rule is "deeply rooted in past centuries." It notes that opponents of the rule argue that it interferes with the administration of justice while its proponents argue, "not without persuasiveness," that the two-witness rule protects honest witnesses from hasty and spiteful perjury prosecutions; and it goes on to conclude, based upon that discussion of the issue, that the Supreme Court "cannot reject as *wholly unreasonable*" the two-witness rule. Emphasis not appearing in Supreme Court opinion or city bar committee statement. The city bar committee, however, fails to quote the paragraph of the opinion immediately following the two paragraphs quoted in the City Bar Committee statement:

> Whether it logically fits into our testimonial pattern or not, the government has not [in the litigation of the *Weiler* case] advanced sufficiently cogent reasons to cause us to reject the rule. As we said in *Hammer* v. *United States*, *supra*, [271 U.S. 620] 626–27, "The application of that rule in federal and state courts is well nigh universal. The rule has long prevailed, and no enactment in derogation of it has come to our attention. The absence of such legislation indicates that it is sound and has been found satisfactory in practice. (*Weiler* v. *United States*, supra at 609–10.)

Thus, the Supreme Court declined to reject the two-witness rule less on the basis of its intrinsic merit, as to which the court stated opposing arguments and concluded only that the rule was not "wholly unreasonable," but more on the basis that the rule was one of long standing and had not been changed by affirmative legislation. Now, however, the President's Crime Commission and a committee of the U.S. Congress have devoted extensive study and consideration to the question, and have found in fact that the two-witness rule neither is "satisfactory in practice" nor "fits into our testimonial pattern." The role has also been rejected in State law. See, for example, New Jersey *Ann.* 8, 2A: 131–6. The very foundation which was lacking in the Weiler case, and led the Supreme Court there to decline, as a court, to change a rule of law which had not been changed by the Congress, now has been supplied by legislative action and thorough study. The Weiler case, therefore, represents insufficient authority against congressional abrogation of the two-witness rule, and was improperly employed by the Civil Liberties Union and the New York City Bar Committee.

The provision of title IV dealing with "manifestly contradictory declarations" is subjected, both by the Civil Liberties Union and by the New York City Bar Committee, to a criticism which is so inaccurate and unfounded that the criticism reflects less on the propriety of enacting title IV, than it does on the care with which its critics considered it before voicing their opinions. It reveals, in addition, the extraordinary degree to which the City Bar Committee appears to have served only as an echo of the Civil Liberties Union's position, rather than as an impartial committee of a professional association evaluating proposed legislation.

The criticism, as voiced by the Civil Liberties Union, is that title IV—

> Relieves the Government of the obligation to prove that a statement was in fact "knowingly false," by permitting a conviction to be based on nothing more than allegedly "contradictory declarations." Such a procedure is inconsistent with the presumption of innocence. (ACLU Jan. 1970 letter at 6.)

The City Bar Committee raised the same criticism by stating:

> First, it must be made more clear that willfulness must be established, even where falsity is shown through inconsistent statements. Requiring conviction upon proof of inconsistent statements would, in effect, fail to recognize the possibility of an innocent inconsistency or contradiction and take the issue of reasonable doubt away from the jury. (ABCNY at 23.)

The specific meaning of the City Bar Committee's objection was made more clear in the footnote to that suggestion, which stated:

> This could be accomplished by inserting the word "knowingly" before the word "made" in each of the first two sentences of Section 1623(c). (*Id.* at 23 n. 37.)

The inaccurate and prejudicial character of this criticism of title IV becomes apparent when the words of title IV itself are examined:

> In any prosecution under this section, the *falsity* of the declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made manifestly contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. (Emphasis supplied.)

Thus, according to the explicit terms of title IV, the only element of the offense which is established when the specified conditions are met as to inconsistent statements is the element of "falsity." The same point is repeated in the Senate committee report, which states that "proof of falsity may also be made by showing logical inconsistency"—report at 149. Falsity is, of course, only one of a number of elements of the offense created by title IV. This is apparent when the paragraph of title IV establishing the prohibition and the punishment for its violation is read:

> Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States *knowingly* makes any materially *false* declaration . . . shall be fined not more than $10,000 or imprisoned not more than five years, or both. (Emphasis added.)

Thus, knowledge and falsity are distinct elements of the offense. Regardless of whether falsity is proven by inconsistency of two statements of the witness or by some other means, the defendant's knowledge remains an issue in the case to be proven beyond a reasonable doubt. To put it another way, to make the change in title IV suggested by the city bar committee in its footnote would result in nothing but redundancy, and to raise the objection, as the union and bar committee did, can result in nothing but prejudice to the consideration of title IV.

It is worth noting, incidentally, that even if title IV did not require proof of knowledge in a case involving two inconsistent statements, the provision would not be, as the union claims, "inconsistent with the presumption of innocence"—ACLU January 1970 letter at 6. It is the requirement of criminal intent, not the presumption of innocence, which such a bill would attempt to abolish. As attorneys know, the "presumption of innocence" is a phrase by which one refers to the burdens of prosecution and proof borne by the Government in a criminal case. See *United States* v. *Nimerick*, 118 F. 2d 464, 468 (2d Cir. 1941.) Since the Civil Liberties Union must have been aware of that distinction, its escalation of an issue regarding the element of criminal intent—which the union erroneously thought to be involved in title IV—into an issue of violation of the presumption of innocence must be taken as a technique of rhetoric rather than analysis.

The city bar committee takes title IV to task also in terms of its draftsmanship, calling for "more carefully drafted limitations and protections" than those now found in title IV—ABCNY at 6. When specific changes in drafting which are suggested by the city bar committee are examined, however, confidence in the draftsmanship of title IV is restored. The city bar committee suggests—at 22—that falsity should be inferred from inconsistency of two statements only where the statements are "irreconcilably inconsistent and material." In order to accomplish that, the city bar committee recommends that title IV—

> Be amended to conform with the N.Y. Penal Law, § 210.20 (McKinney 1967), which requires that the defendant's declarations "are inconsistent to the degree that one of them is necessarily false" and that "the circumstances are such that each statement, if false, is perjuriously so. . . ." (ABCNY at 23.)

I submit that title IV provides exactly the same thing in fewer words by requiring that the two statements be "manifestly contradictory—[and] material to the point in question." Indeed, the language used in title IV is based both upon the New York law and upon the Model Penal Code approved by the American Law Institute. I find in its draftsmanship no grounds for criticism for title IV.

The Civil Liberties Union makes an-

other objection to title IV, which is so misleading that it, too, deserves comment:

> Finally, although title IV properly bars prosecution if a witness admits in a continuous proceeding the falsity of a contradictory statement in that proceeding, it limits that bar to situations where at the time of the admission the false statement "has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed." These conditions are too vague and subjective to provide sufficient notice and guidance to a person as to whether he is committing a crime. Indeed, if contradictory statements standing alone are sufficient for a conviction beyond a reasonable doubt, then it is difficult to see how the same contradictory statements, once made, have not made manifest that the falsity has been or will be exposed. As a result no admission would be soon enough to bar prosecution. (ACLU Jan. 1970 letter at 6.)

The last two sentences in that paragraph of the ACLU's statement are accurate, but are not a basis for rejecting or modifying title IV. The union simply points out that once a witness has made two manifestly contradictory statements the inconsistency has become manifest, so the witness is unable under title IV to obtain protection from perjury prosecution by recanting and telling still a third version of the events, or by reiterating one of the two inconsistent statements he has given previously. Existing Federal law gives a witness no right to recant and obtain protection from perjury prosecution, so it is scarcely a sound criticism of title IV to complain that it does not permit a witness, who has already given two inconsistent versions of an event, to obtain complete immunity from perjury prosecution by repeating one of them or coming up with still another version of the event.

The rest of the paragraph quoted from the ACLU statement is equally invalid as a criticism of title IV but, what is worse, it is even more misleading. It states that the criteria governing whether or not recantation is effective — which are whether or not the perjury already has substantially affected the proceeding, and whether or not it has become manifest that the falsity has been or will be exposed—are "too vague and subjective to provide sufficient notice and guidance to a person as to whether he is committing a crime." Those criteria do not, it is obvious, define a "crime." Instead, they determine whether or not a witness has repudiated his previous crime of perjury early enough so that his recantation should be allowed to bar his prosecution for the perjury. The recantation provision does not, as the union implies, deal with the case of a witness who first tells a true version of an event, and then changes his mind and wishes to perjure himself about the event. That kind of duplicity can hardly be called "recantation." Instead, the recantation provisions of title IV establish the right of a witness to protect himself from prosecution for perjury he has already committed, by righting the wrong before it has harmed the proceedings during which he lied. As criteria governing the right to establish a defense, rather than as a prohibition of conduct deemed criminal, the criteria in title IV are amply specific and clear.

The Congress has, of course, already abolished the two-witness and direct evidence rules for some false statement prosecutions—18 U.S.C. § 1001 (1964). The attempt by the City Bar Committee, at 23–24, n. 39, to distinguish that statute from title IV is not persuasive. It stresses the supposed danger of spiteful perjury prosecutions, which, as the President's Crime Commission study showed, is not substantially reduced by the special rules applied in common law perjury prosecutions. In any case, any difference in the incidence of spiteful prosecutions under section 1001 and under ordinary perjury provisions is speculative at best. If there were any such difference, it would appear to be outweighed by the increased danger of unwarranted perjury prosecution of truthful witnesses created by the fact that prosecutions under section 1001 are not restricted, as the City Bar Committee points out—ABCNY at 23–24, n. 39, to formal statements made under oath. The City Bar Committee's other attempts to distinguish section 1001 from title IV seem to display a lack of appropriate regard for the importance of the Federal judicial system, not only in organized crime cases but in other criminal and civil cases as well. The City Bar Committee points out that the purpose of section 1001 "is to prohibit false statements of all kinds which might impede the exercise of Federal authority—and to protect vital Government functions from deceptive practices," ibid. False testimony, of course, impedes the exercise of Federal judicial authority just as it impedes the exercise of authority by administrative agencies. The Federal courts review determinations made by such agencies, and perform so many other "vital Government functions" which are subverted by deceptive practices that the courts obviously need the protection of effective perjury provisions as much or more than do the departments and agencies covered by section 1001. That protective purpose is exactly the one underlying title IV, which in my view promises major improvement in the administration of justice in the U.S. courts.

TITLE V—WITNESS PROTECTION FACILITIES

Mr. President, title V, providing witness facilities, was drafted in response to the overwhelming difficulty of insuring that witnesses in organized crime cases are produced alive and unintimidated at trial. If witnesses have a duty to give to society the benefit of their testimony, then surely society owes to them every protection it can offer. Title V affords broad power to the Attorney General to care for witnesses and their families so long as there is jeopardy to the life or person of a witness or a member of his family. The Attorney General may offer these facilities to witnesses, but of course cannot require them to accept his offer.

This title is also in response to a recommendation of the President's Crime Commission. It has the full support of the Department of Justice. It is not necessary for me to recount horror stories showing the extent of torture and terrorism practiced by organized crime in its efforts to prevent unfavorable testimony. Suffice it for present purposes to note the testimony of the Attorney General that betwen 1961 and 1965, the organized crime program, despite attempts to offer protection, lost 25 informants. Hearings before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 89th Congress, first session, part 3, at 1158 (1965). More need not be added. All members of this body are aware of the need to protect Government witnesses against retribution by mob enforcers.

The only criticism of title V has been raised by the American Civil Liberties Union, which stated that—

> It would be desirable to make it perfectly clear that no witness can be unwillingly confined or detained in such facilities. (ACLU Jan. 1970 letter at 6.)

That already is "prefectly clear." Title V's section dealing with those facilities expressly authorizes the Attorney General only to "offer" witnesses the opportunity to use the facilities. The Senate committee report adds that—

> There is no requirement that any one accept such an offer by the Attorney General. (See Hearings at 465–66.) (Report at 150.)

All that this criticism of S. 30 reveals is the extreme character of the opposition to the bill offered by the American Civil Liberties Union.

TITLE VI—DEPOSITIONS

Mr. President, title VI deals with the taking of depositions to preserve evidence in Federal criminal cases. Such a measure was included in S. 30 when it was introduced, and its provisions were revised and improved considerably while the bill was in committee.

The proposed section would expand the present right of a defendant under rule 15 of the Federal Rules of Criminal Procedure to seek court permission to take the deposition of his own witnesses, and would extend the same right to the Government. Like rule 15, the section would permit such depositions only for the purpose of preserving a party's own evidence, not for the purpose of discovering the opponent's evidence. At the same time, the proposed section contains full guarantees of the defendant's rights to counsel and to cross-examination of the deponent. Title VI is designed to fill a gap in our criminal procedure which sometimes is important in other than syndicate cases, but most frequently is a frustrating problem in organized crime prosecutions.

The leaders of organized crime daily conduct their criminal activities and shady businesses by intimidating citizens and bribing officials. In the rare case in which the Government can overcome the difficulties in gathering evidence and can obtain an indictment, it is an all too common step for the Mafia boss to resort to the same techniques, intimidation and bribery of witnesses, in order to obtain a dismissal of the charge or a not guilty verdict. Should witnesses prove stubborn and honest, some organized crime figures

have shown little hesitation to murder witnesses. The distinguished senior Senator from Maryland (Mr. TYDINGS) in giving the subcommittee testimony based in part on his own experience as U.S. attorney for Maryland, aptly stated:

Unimplicated witnesses have been, and are now, regularly bribed, threatened, or murdered. Scores of cases have been lost because key witnesses turned up in rivers in concrete boots. Victims have been crushed—James Bond like—along with their automobiles by hydraulic machines in syndicate-owned junkyards. (Hearings at 161.)

Title VI is designed to protect that evidence, and evidence in other cases in danger of destruction or loss, in two ways.

By authorizing the taking and recording of evidence under full guarantees of counsel and cross-examination, title VI would preserve the evidence which a witness had to offer in a form which could be used at trial if and only if the evidence became otherwise unavailable. In addition, by preserving the evidence which an individual could give, title VI would largely eliminate any incentive of a defendant or his organized crime associates to threaten, injure, or kill the witness. Indeed depositions may be more effective than stone walls and guards in protecting the lives of informants and other citizens with information concerning organized crime.

The ACLU begins its attack upon title VI with a most unfair summary of its provisions. The ACLU says, in support of an objection that title VI is too broad, that—

Title VI provides for the taking of pretrial depositions from witnesses when "due to exceptional circumstances it is in the interest of justice." (ACLU Jan. 1970 letter at 7.)

This summary fails to disclose that the title further limits the taking of depositions by authorizing their taking only on Federal court order and only "after the filing of an indictment or information." Both of these additional limitations appear on the face of title VI, so there is no justification for the ACLU's overstatement of the scope of title VI. The error is particularly surprising when it is compared with the care with which the ACLU pointed out the limitations on deposition authority in the existing provisions of rule 15 of the Federal Rules of Criminal Procedure. In its only two summaries of rule 15, the ACLU was careful to specify that rule 15 authorizes the taking of a deposition "only in limited specified circumstances." When equal care is used in studying and analyzing title VI, the objections to it are found to be groundless.

The ACLU charges that title VI "adopts a vague standard" to be used in determining whether or not a deposition may be taken. Again, the ACLU is guilty of misstatement by omission. In its statement of the criteria for the taking of a deposition it fails to mention that depositions are further limited to the purpose of preserving evidence, and cannot be taken simply because, for example, the Government might wish to obtain discovery of the defendant's evidence. The New York City Bar Committee notes that limitation on title VI, but joins the union nevertheless in urging that the title fails adequately to specify the conditions under which depositions may be taken. For example, ABCNY at 7.

The criterion for taking a deposition which requires that "due to exceptional circumstances it—[be] in the interest of justice" that the deposition be taken and preserved is not, as the city bar and ACLU state, excessively vague. Phrases such as this one are commonly used in procedural statutes and rules. For example, rule 33 of the Federal Rules of Criminal Procedure authorizes a district court in a criminal case to grant a new trial "if required in the interest of justice." Against such precedents and usage supporting the propriety of standards similar to title VI's the city bar and ACLU offer only the bald and unsupported assertion that title VI's criteria are "vague."

The standards adopted by title VI for taking of depositions are supported by more than precedent. They are sustained also by the practical necessity that courts be given powers flexible enough to protect the interests of both society and the defendant. The use of a standard such as "the interest of justice" is necessary in making procedural decisions such as authorizations for depositions, since such decisions ordinarily depend upon too great a variety of circumstances to permit more detailed specification of the relevant factors. This need has been sadly demonstrated in individual cases such as the one described in the statement of Mr. Frank Hogan, the district attorney of New York County, to the Senate subcommittee concerning the deposition provisions of S. 30:

Had there been in existence in New York State, for instance, the authority to take depositions from prosecution witnesses in the public interest, the testimony of one Peter LaTempa, who died on January 12, 1945, from poisoning while in jail, would have been available in 1964 at the trial of Vito Genovese and four codefendants for the crime of murder and would have thus precluded the direction of an acquittal by the court. But under New York law, the authority to take testimony from a prosecution witness can only be exercised when a witness is about to leave the State or is sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial. If power to take depositions had been as broad as that which would be authorized in the public interest by the proposed amendment, the outcome of the Genovese case might have been different. (Hearings at 353.)

Thus, the criteria in title VI are necessary and appropriate ones, the Federal district courts are used to applying such standards, and the courts of appeal are accustomed to reviewing the exercise of discretion under such standards on procedural subjects.

The ACLU also complains that title VI is largely justified in the Senate Judiciary Committee Report by problems in cases concerning organized crime, but that the applicability of the title is not limited to organized crime cases. However, fact is that depositions are often desirable in cases not involving organized crime, and the Committee Report, though it stresses organized crime cases because of the great contribution depositions can make to their prosecution, points out that title VI should and would apply to cases not involving organized crime. The report specifies that title VI—

Will abrogate present Fed. R. Crim. P. 15 . . . and it is intended to reflect present practice under rule 15. (Report at 151.)

Rule 15, of course, is applicable to every Federal criminal case, whether involving organized crime or not.

Furthermore, it would be practically impossible to draft title VI in such a way as to confine its operation to organized crime cases. The special need for deposition authority in cases which do involve organized crime arises sometimes primarily from the characteristics and conduct of the defendant, and sometimes primarily from the nature of the precise charge and evidence against him. For example, a Mafia leader who is disposed to use violence, threats, bribery, or influence to destroy testimony against him will be as willing to use those means in a case against him not connected with his organized crime operations, such as a child molesting charge, as he will be in a prosecution for, say, extortion. However, obviously, the Congress should not attempt to write a deposition law which automatically discriminates among criminal defendants on the basis of their past history and membership in criminal syndicates. Such distinctions must be applied, and they already are applied under existing rule 15 when, for example, a defendant needs a deposition because organized crime retaliation threatens a defense witness whose testimony would expose syndicate operations. However, such distinctions must continue to be applied through the exercise and review of judicial discretion, not through the creation by Congress of automatically different pretrial procedures for different defendants. Title VI, like rule 15, relies to some degree upon judicial discretion to apply such distinctions. Only through judicial discretion can depositions be authorized for every case in which they are needed, many but not all of which will involve organized crime, and not for cases in which depositions are not needed.

Another criticism of title VI offered by the ACLU is that title VI would "carry us unduly close to a 'paper record trial,'" especially in view of "the absence of any provision in title VI governing the use of a deposition." The ACLU concludes that depositions under title VI "will tend to impair a defendant's constitutional right to cross-examine witnesses" unless "a defendant is given substantially greater rights to pretrial discovery," since the ACLU feels that the taking of a deposition forces "defense counsel to cross-examine Government witnesses long before trial, and hence long before it has been possible to learn the full scope of the evidence."

The New York City Bar Committee echoes these objections by the union. The Bar Committee decries the lack of an explicit provision in title VI dealing with the criteria for admissibility of a deposition in a criminal case. It argues that a defendant's opportunty to cross-examine at the taking of a deposition is inadequate, and calls, as the Union does, for

greater pretrial discovery for defendants in cases where depositions are taken—ABCNY at 24–26.

This criticism is a grave one, because of its constitutional implications and its superficial plausibility. However, examination of the criticism shows it to be utterly groundless.

In the first place, there is no basis for the feeling on the part of the critics of title VI that the supposed risk of a "paper record trial" is "heightened by the absence of any provision in title VI governing the use of a deposition"—ACLU January 1970 letter at 7. The committee report is most explicit on this question: "Admissibility of depositions—is to follow previous law." Furthermore, the provisions of existing rule 15 governing use of depositions at trial merely codify preexisting rules of admissibility of depositions, so even if the report did not state that the rule 15 standards of admissibility are to be maintained, nevertheless those standards would continue to apply.

There is no reason why the congressional intent, that the standards of admissibility found in existing law continue to apply, must be stated on the face of title VI. On the contrary, it is common practice to make no reference to existing law when there is no congressional intent to change it. Where extra clarity is desired concerning that intent, it is possible just to insert in the congressional history a statement that the existing law will continue to govern that subject, as the Senate Judiciary Committee did when it stated, in its report, at 151, that "admissibility of depositions—is to follow previous law." In view of that clear expression of intent, the failure to carry forward from rule 15 into title VI the sketchy provisions of rule 15 incorporating a massive and complex body of decisional law, both constitutional and supervisory, concerning the admissibility of depositions and analogous extrajudicial statements, has no significance.

Since the Senate Judiciary Committee report does make it so clear that title VI carries no intention of altering the law on admissibility of depositions, this statement, found in a footnote to the New York City Bar Committee's report—ABCNY at 25, n. 40—is misleading:

> While the Report does mention the distinction between the standards governing the taking of a deposition and those for using a deposition, the single example it gives of the latter hardly establishes minimal constitutional requirements:
>
> "A lawfully obtained deposition may not, for example, be substituted, without more, for the testimony of a witness otherwise present, able and willing to testify as to the same matters at trial." Senate Report at 152.

The statement from the Senate report quoted by the city bar committee obviously made no attempt to raise a negative inference that depositions are admissible in evidence in every case other than the abstract hypothetical briefly described there. For the city bar committee to create and then criticize such a negative inference, in spite of the clear expression of intent in the Senate Committee report that title VI does not alter existing law concerning admissibility, is unnecessarily to stir up constitutional fears regarding a measure which does not legislate regarding constitutional rules of admissibility. This escalation of the issues raised by title VI is exemplified in the succeeding footnote as well—ABCNY at 25, n. 41—where the city bar committee clearly implies that unless title VI legislates concerning the admissibility of depositions, their admissibility will have to be developed in "constitutional litigation." Actually, of course, the Federal and State courts develop rules of admissibility on nonconstitutional bases, such as the Federal power of appellate courts to supervise the administration of justice in lower Federal courts, and the traditional power of courts to develop rules for the admissibility of evidence in their proceedings. The bar committee is guilty, it appears, of seeing legal issues exclusively in constitutional terms.

Clearly, the already existing standards of admissibility do not authorize a "paper record trial." Instead of merely using that phrase the ACLU, if it desires repeal of the traditional common law rule of evidence codified in rule 15, should say so openly and make a persuasive case why it considers the existing rules of evidence unconstitutional. Clearly, the ACLU has not made that case insofar as title VI is concerned.

The New York City Bar Committee has, at least, made explicit its desire that the Congress overrule existing law concerning the admissibility of extrajudicial testimony. The Bar Committee states that—

> We believe that absence of a Government witness from the jurisdiction should rarely, if ever, permit the Government to use his deposition at trial. (ABCNY at 26.)

That belief appears to reject the existing law concerning what constitutes "unavailability" of a witness such that his previously cross-examined testimony can be admitted in his absence. See, for example, *Barber* v. *Page*, 390 U.S. 719 (1968); California Evidence Code § 240 (4), (5). While the City Bar Committee is more explicit than the Union in stating its desires it is not, however, superior in the degree to which it defends them. The committee states no reasons why absence of a Government witness from the jurisdiction, coupled with the efforts to procure his attendance which the City Bar Committee acknowledges appear already to be required by existing law, ABCNY at 25, n. 41, no longer should constitute "unavailability" as much as physical inability to testify admittedly does.

This failure of the City Bar Committee even to attempt to justify its position should be contrasted with the careful documentation by the Senate Judiciary Committee of the need for enactment of title VI's authority to take depositions, which would be admissible, if existing law governing admissibility is maintained, in a case where a witness was outside the jurisdiction and could not be brought before the court by the Government's most diligent efforts. This showing of the need for enactment of title VI was augmented recently by the experience of the Justice Department with the prosecution in Tucson of three reputed Mafia leaders. In that case, Joseph Bonnano, the alleged former boss of a New York La Cosa Nostra family, and Charles Battaglia and Peter Joseph Notaro, two alleged La Cosa Nostra members, were charged with conspiracy to obstruct justice by obtaining false testimony from a former police sergeant.

All three defendants were, however, acquitted last March 4, because an essential but reluctant witness, who had corroborated the Government's case in testimony before the grand jury that returned the indictment, disappeared before the trial. The testimony of that witness, Floyd Max Shumway, obviously was in danger of loss before trial, and could have been preserved if title VI had been law at the time. Since Congress had not yet enacted title VI, no deposition could be taken, and the jury was needlessly deprived of the opportunity to hear crucial evidence. The Bonnano case exemplifies the kind of situation in which the City Bar Committee would deny the Government any way of preserving the testimony of such a witness and using it in court if he disappeared the way Mr. Shumway disappeared. The Bar Committee's position on this point is, in my view, indefensible when compared with existing law.

The ACLU resorts again to hysterical language when it claims that title VI would "force defense counsel to cross-examine Government witnesses long before trial, and hence long before it has been possible to learn the full scope of the evidence." The court can control the timing of the deposition and the trial, so there is no basis for the suggestion that a "long" time would pass.

Nor is the union's insistence, joined by the city bar committee, that the taking of a deposition by the Government be conditioned on the Government's making pretrial discovery of its case to the defendant, warranted by existing practice or sound reason. The defense counsel's alleged ignorance of "the full scope of the evidence" when he cross-examines the witness at the deposition under title VI is exactly the same as it is under existing rule 15, where one codefendant takes a deposition and another codefendant finds that he must cross-examine before the trial. The situation is also very similar to that arising in every criminal trial when the Government's first witness takes the stand. The defense counsel often must cross-examine the first witness with the same degree of knowledge of the charge and evidence in the case as a defense attorney now has under rule 15 and will have under title VI.

There are some cases in which it is true that, as the city bar committee states—ABCNY at 25—the prosecutor makes an opening statement at the beginning of the trial and sheds light upon the Government's case which assists the defendant's counsel in cross-examining the first witness—though the committee cites no authority holding that the lack of an opening unconstitutionally or excessively impedes cross-examination. It is equally true, however, that the prosecutor ordinarily is under no legal obligation to make such an opening statement, or, if he does so, to make it comprehensive. Depending upon the evidence

which the witness to be deposed has to give and the relationship of that evidence to the criminal case, and depending in addition upon the tactics pursued by the prosecutor at the beginning of trial, there will be many cases in which the supposed protection of an opening statement is illusory, and the lack of full pretrial discovery creates as many supposed difficulties for a defendant whether a deposition has or has not been taken.

The ACLU and the City Bar Committee can hardly be taken seriously when they advance a proposition which would invalidate not only existing rule 15 but normal procedures in criminal trials. In effect, this amounts to a contention by the ACLU and the city bar that the Constitution directly requires full pretrial discovery for a defendant regardless of whether or not depositions are taken. Such a contention repeatedly has been rejected by the courts, and is hardly an appropriate issue to be examined in the course of considering a mere change in deposition provisions.

The contention that the taking of a deposition places a burden upon defense counsel's ability to cross-examine not only is incorrect, it ignores a positive advantage which a defense counsel who has attended the taking of a deposition of a Government witness has at trial in certain situations. For example, if the deponent is available at trial and testifies against the defendant, his deposition cannot be offered by the Government in place of his testimony but can be used by the defense counsel to cross-examine him and expose any inconsistencies in his accounts of the facts. As another example, if neither the witness' own testimony nor the deposition is used at the trial by the Government, still the defense counsel in effect has obtained discovery of some Government evidence concerning the case by attending the deposition, and can use his knowledge in cross-examining the Government's other witnesses.

Since circumstances such as these vary from one case to another and from one witness to another, the most that can be said against the admissibility of depositions is that it is possible that cross-examination as to a particular witness in a particular case at a deposition may be constitutionally "inadequate." "Adequacy" of the opportunity to cross-examine is the constitutional criterion, since the Supreme Court has stated that "an adequate opportunity for cross-examination may satisfy the confrontation clause even in the absence of physical confrontation before the trial jury—*Douglas* v. *Alabama*, 380 U.S. 415, 418 (1965) (dictum); see also *Pointer* v. *Texas*, 380 U.S. 400, 407 (1965). For that reason, the Supreme Court has held that the sixth amendment confrontation right is not violated by admission in evidence in a criminal trial of testimony given, in a prior criminal trial of the same defendant for the same charge by a witness who died between the two trials—*Mattox* v. *United States*, 156 U.S. 237 (1895).

The principle applicable to prior testimony applies equally to a deposition taken with full cross-examination and assistance of counsel in preparation for a criminal trial. That has been the conclusion of the many States which give both to the prosecution and to the defense the right to take depositions when justice requires their use, and provide that such depositions may be used when the witnesses are unavailable—for example, Ohio Rev. Code § 2945.50 (Supp. 1968); Oreg. Rev. Stats. § 45–250 (1955); Vt. Stat. Ann. tit. 13 § 6721 (Supp. 1969); Wis. Stats. § 887.06 (1967).

That conclusion also finds support in the proposed Federal Rules of Evidence—rule (804)(b)(1)—the Uniform Rules of Evidence—rule 63(3)—and the Model Code of Evidence promulgated by the American Law Institute. No authority to the contrary was cited in the city bar committee's report, in the union's formal statement to the subcommittee during the hearings on S. 30, or in the union's latest statement. The admissibility of depositions consistently with the Constitution also has been supported in the subcommittee hearings by Prof. Henry Ruth of the University of Pennsylvania and by the Department of Justice.

It is not the adequacy of the opportunity to cross-examine in some hypothetical case which governs the issue of constitutional admissibility, it is the adequacy of the opportunity to cross-examine the particular witness in the particular case. Since there clearly are cases in which, even without unusual pretrial discovery, the opportunity to cross-examine the witness at the deposition is "adequate," it is fallacious for the Union and Bar Committee to oppose the enactment of title VI on the ground that there may be other cases in which the opportunity to cross-examine turns out to have been inadequate and the deposition is excluded from evidence at trial.

While the constitutionality of using depositions taken as prescribed in title VI is clear, the most objectionable aspect of the criticism of the title on this ground by the City Bar and Union is its irrelevance. Title VI, as I noted earlier, does not prescribe that depositions are to be admitted in evidence, but leaves that issue entirely up to existing law. The right of confrontation and cross-examination can be violated in only one way: By the admission of evidence during a trial. The taking of a deposition authorized by title VI—as opposed to the using of a deposition, concerning which title VI is silent—is a mere preparation and cannot possibly violate the constitutional principles to which the ACLU and City Bar seek to divert attention. The constitutional objection thus is a classic red herring used in an attempt to defeat a sound and necessary proposal.

Nor is it valid to argue, as the bar committee does—at 26—that the proposal, whatever its merits, should be considered not by the Congress but by the advisory committee which the Congress has authorized to initiate consideration of proposed changes in the Federal Rules. That delegation of authority by the Congress was not, as the city bar committee notes in the same place an exclusive one, and the Congress has in no way deprived itself of the power to initiate, consider and enact changes in the rules of procedure. The Congress itself, through its committee system, has a hearing process which is more than adequate, and there is no reason for the Congress to defer to its delegate where questions are involved concerning criminal procedure. Recently Congress has enacted, as we know, reforms dealing with bail and jury selection in criminal cases, both of which could have been handled instead by the rulemaking process. No objection was raised, then, to the way in which those reforms were adopted, so it is strange that such an objection now is raised against enactment of title VI. The desirability of extension of the existing deposition authority to include the Government as well as defendants has been carefully considered in the Senate Judiciary Committee, whose resolution of the matter was approved overwhelmingly as a part of S. 30 on the Senate floor. There is no sound reason to oppose enactment of title VI.

TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

Mr. President, title VII is designed to regulate motions to suppress evidence in Federal criminal cases.

Title VII recognizes that suppression of evidence litigation is a major cause of undue expense, delay and distraction of emphasis in criminal cases; that present rules for disclosure of information in connection with suppression claims result in the revelation of information which is irrelevant to the claims and seriously harms specified public interests; and that when the suppression motions concern evidence of events occurring years after the acts which are the bases of the motions, the adverse results are aggravated, the motions cannot reliably be resolved, and it is virtually certain that the evidence is not suppressible.

To remedy this disturbing situation, title VII requires the opponent of a suppression motion to admit or deny the occurrence of the unlawful act which the moving party claims renders the challenged evidence inadmissible. It also provides that disclosure of information in connection with a suppression motion is not required unless the information may be relevant and disclosure is in the interest of justice and forbids consideration of a claim that evidence of an event is inadmissible because indirectly derived from an unlawful act occurring more than 5 years before the event. The combined effect of these provisions should be to mitigate many of the objectionable aspects of suppression litigation.

The most common situation which would be covered by title VII is a criminal trial in which a defendant who at some time, perhaps in the distant past, was the victim of illegal but unrelated police conduct seeks to delay and confuse the trial of whether he is innocent or guilty by filing, extensively litigating, and, if necessary, appealing a claim that the evidence to be used against him by the Government was in some way derived from the police violation.

Under present law, the defendant can

pursue such a diversionary tactic with great success, since the Supreme Court this year established a broad and absolute rule for such cases in *Alderman* v. *United States*, 394 U.S. 165 (1969). In the Alderman case, the Court held that, once a defendant claiming evidence against him is the indirect fruit of electronic surveillance has established that his own interests were unconstitutionally invaded, he must be given confidential materials in the Government's files to aid him in establishing that evidence against him was derived from the surveillance. The Court declined to place any limitation upon the rule or to permit a trial court to screen the Government's confidential files for possible relevance, even in cases where the surveillance bears no possible relationship to the defendant's crime.

Because the Alderman decision is unqualified, it encourages defendants who at any time have been unlawfully surveyed to file motions suppress the evidence in every case against them, however unrelated to the surveillance, knowing that the motion is certain to bring them either disclosure of confidential files or, if disclosure would be too harmful to the Government, dismissal of the charges against them. Thus, the Alderman case has begun to make a significant contribution to criminal cases, which already had begun to reach crisis proportions. The President's Commission on Crime in the District of Columbia, for example, found that great increases in pretrial motions were a major cause of a doubling from 1960 to 1965 of the time required to prosecute a District felony case, and suggested that in view of "excessive" delays in criminal cases, greater priority should attach to efforts aimed at accommodating judicial and legislative requirements regulating the conduct of trials and securing the rights of defendants with the goal of expeditious handling of criminal cases"—report at 256, 266–68 (1966). Title VII is just such an effort. Unlike the Alderman decision itself, title VII accommodates the interests of a defendant with those of society, and promises justice to both parties to a criminal case.

The urgency for the enactment of title VII has been stressed by the Department of Justice. The Department supports the measure and has informed the subcommittee that the sort of disclosure required by the Alderman decision often leads unnecessarily to flight by suspects who are under investigation, destruction of evidence, harm to the reputations of innocent third parties, danger to undercover agents and citizen informants, and deterrence of witnesses from coming forward with evidence. The Department also revealed that, in their experience, protective court orders to limit disclosure to defendants and their counsel have not been effective.

The existing law is an exercise in futility. It has been applied, for example, in *Aiuppa* v. *United States*, 394 U.S. 310 (1969), to require disclosure to an organized crime figure who, after being overheard during an organized crime surveillance, was picked up by a forest ranger for violating migratory bird laws. The notorious cases of Cassius Clay and James Hoffa were remanded to the district courts for hearings under Alderman. After ordering and supervising full disclosure and then sitting through full hearings in which the defendants tried to establish links between their electronic surveillance and the evidence in their cases, both of the courts concluded that there was absolutely no relationship. Indeed, the judge in the Clay case, after evaluating what the disclosure and hearing had contributed to his consideration of the motion to suppress, concluded that he could reliably have made his ruling on the motion after a simple in camera inspection.

The need for remedial legislation is well illustrated by the progress of the Federal Government's case against Felix—Milwaukee Phil—Alderisio following the Supreme Court's reversal of his conviction for committing extortion in Colorado in 1959. He was a codefendant of Alderman himself, and the Supreme Court remanded Alderisio's case for full disclosure of the confidential files and a new hearing on his claim that the evidence against him was the indirect fruit of electronic surveillance.

The district court, after extensive disclosure and 2½ days of defense interrogation of numerous FBI agents and supervisors connected with the surveillance, found that "there is absolutely no relevancy in any of the material from any of the logs of the electronic surveillance to any evidence offered at the trial of this case," and reaffirmed Alderisio's 4½-year prison sentence for the extortion—*United States* v. *Alderman*, Crim. No. 17377, U.S. District Court, D. Colo., July 7, 1969, *rev'd*, 7 Crim L. Reptr 2122 (10th Cir. 3–31–70) (in camera hearing on relation between "logs" and "airtels" ordered).

Alderisio, still pursuing the dilatory tactics he had used since the extortion case began, appealed the district court's latest decision and secured the new hearing, noted above. However, on January 30, 1970, the case finally was closed. Alderisio agreed not to seek further review of the extortion conviction, and to plead guilty to a charge of possessing—as a convicted felon—33 firearms confiscated from his home, and no defense to one of 21 counts of bank fraud—both committed while he was free during the extortion proceedings, which had begun when he was indicted in 1964. In return, he obtained the Government's agreement to drop the other 20 fraud counts and to let the new 2-year sentence on the gun charge and 5-year fraud sentence run concurrently with the extortion term. Since the new sentences are concurrent, they will add only 80 to 120 days to Alderisio's time in prison.

Alderisio, who has been identified as an enforcer and leader of loan sharking and gambling operations for La Cosa Nostra in the Chicago area, thus used the dilatory tactics title VII would curb to postpone beginning his punishment for extortion until 10 years after the crime and 5 years after indictment, remaining free in the meantime to commit bank fraud and a gun violation punished by only 80 to 120 days imprisonment—and this despite the fact that his motion to suppress was groundless. He now practically concedes he was guilty of all three crimes. The FBI, the Justice Department, and the Federal courts, on the other hand, spent a fortune and 10 years obtaining his imprisonment. Society got a raw deal, and Alderisio, as the Chicago Sun-Times reported—January 13, 1970, page 6—said, as he walked grinning from the court, "I just made the best deal of my life."

Worst of all, one result of the existing law is that some criminals are given a "license to steal"—and to murder, rape, rob, and destroy—for their entire lives. An organized crime figure, or an ordinary thief, may be overheard incidentially during unlawful surveillance of a spy ring or a foreign embassy. The Government may be absolutely unable to disclose the fact of the surveillance or the location of the electronic device. However, the criminal presently has an absolute right to examine the transcript and, when the transcript is not disclosed, to obtain dismissal of any State or Federal charge against him for any crime committed at any time. Therefore, he can go on to commit any crimes he chooses, as often as he pleases, with complete immunity from punishment and control. Title VII eliminates that intolerable dilemma, and revokes the criminal's license to terrorize law-abiding citizens.

The ACLU sets the tone of its comments on the provisions of title VII by referring to them as "novel" and as creating "a drastically altered procedure." Unfortunately, those phrases also set an example of inaccruacy and unfairness in the ACLU's comments on title VII—an example followed by the remainder of the union's comments and, to a great degree, by the report of the New York City Bar Committee.

In fact, enactment of title VII would not produce a great change in the procedures for considering motions to suppress evidence. Both the existing procedures, laid down by the Supreme Court in the case of *Alderman* v. *United States*, 394 U.S. 165 (1969), and the procedures proposed in title VII seek to insure that a criminal defendant whose rights have been violated by the Government can examine the direct product of that violation where doing so will aid him in establishing that the violation has led to the evidence against him. The only difference between the Alderman rule and title VII's rule is that title VII withdraws slightly from the absoluteness of Alderman. In an effort to protect the rights of society and of individuals who are not defendants, where the defendant has no legitimate need to examine confidential government files, title VII establishes two minimal limitations upon the Alderman rule, thus making that rule more flexible while preserving its basic thrust toward protection of the interests of a criminal defendant.

One of those two limitations permits a trial judge to screen material to be shown to a defendant under the barest of standards—disclosure is required where the material "may be relevant" and its disclosure is "in the interest of justice." This limitation is a return to the pre-Alderman procedure, under a criterion even more favorable to the de-

fendant than that used before the Alderman decision, and so cannot fairly be described as "novel" or "drastic." This screening procedure is a time-tested one, far more sensible and practical than an absolute requirement of invariable disclosure.

The second limitation also is based upon analogous existing law, and hardly can be called drastic. It provides that any claim that an illegal Government wiretap or other act, occurring more than 5 years prior to commission of the defendant's crime, led the police to evidence of that crime is so farfetched that it is obviously dilatory and need not be considered. Both the logic of the situation and the experience of the Justice Department establish that such a limitation must be placed on the Alderman rule, since otherwise defendants being tried for 1985 crimes, for example, will use Alderman to obtain transcripts of 1965 electronic surveillances on the ludicrous theory that the Government used the 1965 "bug" to gain evidence of the crime not even committed until 20 years later.

Title VII would not, as the Union and City Bar Committee assert, alter or undermine the exclusionary rule announced in *Weeks* v. *United States*, 232 U.S. 383 (1914), and extended to State criminal trials in *Mapp* v. *Ohio*, 367 U.S. 643 (1961). The committee and Union's conclusion that it does so rests upon their view of the exclusionary rule as a flat and absolute rule. They disregard a great deal of existing case law showing that the right to have illegally obtained evidence suppressed is not absolute or unqualified, but only a means to the end of preventing invasions of interests protected by the Bill of Rights, a practical technique for deterring unconstitutional Government action. It is, in addition, only one of several such deterrents, which include criminal prosecution of offending officers and private actions for civil damages. This is true especially where electronic surveillance, the type of evidence gathering to which title VII can be expected to have its greatest application, is involved. The Congress, as we know, enacted in 1968 title III of the Safe Streets Act, which contains a complex of other deterrents against unlawful electronic surveillance, ranging from steep private civil liquidated to immunity legislation and severe criminal penalties.

Since the exclusionary rule is only a means to the end of deterrence, and only one of several means at that, albeit apparently the most effective one, any proposed application of the suppression rule must be evaluated by a process of balancing. It is necessary first to estimate the degree to which the proposed application of the suppression rule would increase or decrease the deterrence of unlawful conduct, and then to balance that increase or loss of deterrence against the effect the proposed application of the suppression rule would have on countervailing interests.

The courts, including the U.S. Supreme Court, have engaged in that balancing process where suppression issues were involved in a variety of cases. In *Nardone* v. *United States*, 308 U.S. 338, 340 (1939), the decision in which the Court first formulated the "fruit of the poisonous tree" metaphor, Mr. Justice Frankfurter put the issue in these terms:

> Any claim for the exclusion of evidence logically relevant in criminal prosecutions is heavily handicapped. It must be justified by an over-riding public policy expressed in the Constitution as the law of the land. In a problem such as that before us now, two opposing concerns must be harmonized: on the one hand, the stern enforcement of the criminal law; on the other, protection of that realm of privacy left free by the Constitution and laws. . . .

In following this balancing policy, the Supreme Court has, for example, restricted the retrospective effect of the Mapp decision by weighing the degree to which retrospective application of the decision would increase deterrence of unlawful police conduct against "the effect on the administration of justice of a retrospective application of Mapp"—*Linkletter* v. *Walker*, 381 U.S. 618, 637–38 (1965). The countervailing interest recognized in that quotation from the Linkletter against Walker case—the interest in the effective administration of justice—is a basic interest underlying title VII, which seeks to protect the courts against delay and waste of resources through dilatory and abusive litigation over motions, to protect the prosecutive and investigative efforts of the executive branch from subversion through disclosure of confidential files to defendants, and to protect the interests of third parties in maintaining their privacy and reputations against the harm done when raw government files are made available unnecessarily to other litigants or to the public.

The legitimacy of weighing the burdens imposed upon the courts by suppression litigation against the interest of criminal defendants in obtaining suppression of evidence is illustrated by the decision of the Supreme Court in *Desist* v. *United States*, 394 U.S. 244, 251 (1969). The Supreme Court there ruled that its decision in *Katz* v. *United States*, 389 U.S. 347, holding electronic surveillance to be a search and seizure within the meaning of the fourth amendment and subject to its exclusionary rule, would be applied prospectively only. In reaching that conclusion, the Court pointed out:

> The determination of whether a particular instance of eavesdropping led to the introduction of tainted evidence at trial would in most cases be a difficult and time-consuming task, which, particularly when attempted long after the event, would impose a weighty burden on any court. (394 U.S. at 251).

The Alderman decision itself declined to expand the existing exclusionary rule by eliminating the requirement that a defendant who seeks to suppress evidence obtained by a violation of the Constitution has been a victim himself of the violation. The Supreme Court in the Alderman case stated that the rules excluding evidence at trial are not extended to other situations unless the additional deterrence of unlawful official conduct would be so great as to "justify further encroachment upon the public interest in prosecuting those accused of crime and having them acquitted or convicted on the basis of all the evidence which exposes the truth"—*Alderman* v. *United States*, 394 U.S. 165, 175 (1969).

Another illustration of the qualified nature of the suppression rule is the decision by the U.S. Supreme Court in *Walder* v. *United States*, 347 U.S. 62 (1954). In an opinion by Mr. Justice Frankfurter, the Court there recognized an exception to the suppression rule permitting illegally obtained evidence to be used by the Government to rebut affirmative deception by a defendant testifying in his own behalf.

Just this year the Supreme Court of California—*In Re Martinez*, Criminal No. 13858, January 23, 1970—and the U.S. Court of Appeals for the Second Circuit—*United States Ex Rel Sperling* v. *Fitzpatrick, Warden*, No. 33780, May 12, 1970—have found in the qualified and flexible nature of the constitutional suppression rule room for permitting parole authorities to consider illegally obtained evidence when determining whether or not to revoke parole.

The City Bar Committee and the Civil Liberties Union fail to cite and discuss these analogous precedents, and to present any arguments as to revision of the Alderman rule, unlike the applications of the suppression rule considered in those Supreme Court and other court decisions, would have so great an impact on the efficacy of the suppression rule that the benefits to the administration of justice are outweighed.

In addition, the City Bar Committee and Union fail to analyze and discuss the reason underlying those decisions. As expressed by Prof. Anthony Amsterdam in a scholarly article, that reason basically is that as the exclusionary rule is applied "time after time its deterrent efficacy reaches a point of diminishing returns, and beyond that its continued application" causes unwarranted harm to other interests; for that reason, we must recognize both the value and the limitations of the exclusionary rule as a restraint on overzealous officials: "As it serves this function, the rule is a needed, but grudgingly taken, medicament; no more should be swallowed than is needed to combat the disease"—A. Amsterdam, "Search, Seizure and Section 2255: A Comment," 112 U. of Pa. L. Rev. 378, 389 (1964).

Without explaining their disregard for that teaching of logic and experience, the city bar committee and Civil Liberties Union treat the suppression rule as an eternal and absolute truth the recitation of which demonstrates the supposed impropriety of title VII. Their unwavering reliance upon the suppression rule, as if the existence of the rule itself answered the question of whether the application of the rule can be regulated in the manner attempted by title VII, calls to mind the comment of Blackstone regarding excessive reliance upon the death penalty:

> It is a kind of quackery in government, and argues a wont of solid skill to apply the same universal remedy, the *ultimum suppliciun*, to every case of difficulty. (4 Blackstone, Commentaries 16 (Beacon ed.).)

Rather than applying the remedy of suppression without discrimination, we

should follow the teaching of Blackstone and the example of the U.S. Supreme Court. We therefore should evaluate the constitutionality and wisdom of the two principal provisions of title VII to which the city bar committee and union object as the Supreme Court has evaluated similar issues: by measuring the likely impact of enactment of the particular provision upon the effectiveness of the general suppression rule as a deterrent to illegal official conduct, and then by balancing that against the impact upon countervailing interests.

The first step in undertaking such analysis is, of course, accurately to understand the meaning of title VII, and dispassionately to analyze the effect which enactment of each of the provisions opposed by its critics would have upon the suppression sanction and upon other interests.

Instead, though, the provision of title VII setting up a 5-year period of limitations in connection with suppression motions receives from the union and the New York City Bar Committee treatment running the gamut from inflammatory epithets, through misstatement of the content of the provision, to shallow and inaccurate analysis of its validity.

The ACLU describes the 5-year provision as arbitrary. Of course, every legislative act specifying a period of time—such as a statute of limitations on prosecution, a period of time within which procedures must be followed, or a maximum period of imprisonment—always selects that period of time from among alternatives a number of which would be defensible. To call such a provision arbitrary is to make no contribution to analysis of the legislation. What is worse, however, the ACLU and city bar committee actually misstate the plain meaning of the 5-year provision in two important respects.

First, the ACLU fails to note that the provision prevents consideration of a motion to suppress evidence only where the motion is aimed at the indirect, rather than the direct, product of an unlawful Government act, that is, the 5-year provision does not in any way change existing law preventing the use in evidence of the direct product of the Government's illegality, such as the transcript itself of an unlawful electronic surveillance. The ACLU fails to make that point clear, since it does not explain that the word "fruits" means indirect fruits when it says:

> As to the fruits of illegal action, title VII arbitrarily bars any claim of admissibility if 5 years have elapsed between the unlawful act . . . and the event as to which the evidence is sought to be admitted.

The committee report on S. 30 was much more clear on this point—report at 153—and actually referred the reader to a passage in the ACLU's statement to the subcommittee which had expressly misstated the scope of the provision, pointing out that it was incorrect to say that the 5-year provision permitted admitting in evidence the direct product of an unlawful act. In view of the committee report's explicit response to the ACLU's earlier error, it is most regrettable that the ACLU did not use language in its more recent statement which would prevent readers from making the same error. This is especially unfortunate in view of the fact that the Washington Past, whose editorial criticizing S. 30 apparently was largely drawn from the ACLU's statement, made precisely the error which the ACLU's statement encouraged, saying:

> This means that if the police break into your house illegally and seize property wrongfully but do not use it for 5 years, you cannot complain. (The Washington Post, Fri., Jan. 30, 1970, p. A18, col. 1.)

Of course, title VII does nothing of the sort, and it is a disservice to the Congress for the ACLU, in view of the correction of their error, not to have made clear the limitation of title VII's 5-year provision to evidence indirectly obtained.

The second misstatement in which the city bar committee joins the union, relates to the definition of the relevant 5-year period. Under title VII, that period begins when the Government breaks the law by illegally wiretapping or otherwise, and ends when the defendant commits his crime or another relevant event occurs which the Government later attempts to prove at the trial. Title VII provides that, where that period exceeds 5 years, the motion to suppress indirectly obtained evidence shall not be considered, since it is not plausible that a wiretap, search, or interrogation would lead indirectly to evidence of a crime not even committed until over 5 years later.

The ACLU's misstatement of this aspect of the 5-year provision is even more blatant than their misleading statement of its scope. They say title VII provides that—

> After five years a person no longer has a Constitutional right to exclusion of the fruits of illegal action as evidence of subsequent events.

This sentence means that the Government can use illegally obtained evidence provided that the trial occurs more than 5 years after the Government's unlawful action—but that is not what title VII says. Again, this is an error which the ACLU had made in its original statement to the subcommittee on S. 30, and which the committee report had corrected explicitly, with a reference to the page in the hearings at which the ACLU's error appeared. It is most surprising, therefore, that the ACLU should repeat its error in a formal statement delivered to Senators on the eve of the vote on S. 30 on the Senate floor. What is more, the Washington Post again was led into error by the ACLU statement, since its editorial concluded that the police need only wait 5 years to "use" the illegally obtained evidence.

Worst of all, the uncritical acceptance by the city bar committee of the point of view of the Civil Liberties Union apparently led the bar committee into making the same error. Although at some points in its statement the bar committee correctly describes the starting and ending points of the 5-year limitation period, at another point it states that—

> By cleansing the indirect fruits of information disclosed under compulsion after five years, Subsection 3504(a)(3) would abridge the right of a person not to be compelled to be a witness himself against himself, as well as undercut the scope and effect of a purportedly unqualified grant of immunity such as that which Title II would provide. (ABCNY at 33.)

Finally, the ACLU caps its misstatement of the definition of the 5-year period with a reference to "the fruits of illegal action," which assumes that in fact evidence of a crime committed more than 5 years after the Government's unlawful act is the "fruit" of the unlawful act. The New York City Bar repeatedly employs the same circular argument, claiming that the 5-year provision makes "tainted fruit" admissible—for example, ABCNY at 50, 51, 60, 61, 63, 66 n. 15.

The 5-year provision, of course, simply does not say what the ACLU and city bar state that it says. Title VII, after it defines the proper 5-year period, does not provide that the "fruits" of unlawful conduct are sometimes admissible. On the contrary, it makes, in effect, a legislative finding that evidence of an event occurring more than 5 years after an unlawful seizure is not the fruit of the seizure, that is, the likelihood of any relationship whatsoever is too insubstantial to warrant litigation.

The question is not merely whether the evidence is the fruit of the unlawful seizure but whether, unlawful fruit or not, suppression or admission of such evidence would have a substantial impact upon the degree to which the suppression rule deters unlawful police conduct. Measured by this standard, enactment of the 5-year provision of title VII would have no impact upon the efficacy of the suppression rule. It would be foolhardy for a police officer to make an illegal search or surveillance in 1970 in the hope that, on that day, he would discover evidence useful to prove a crime which will not even be committed until 1976, and police will have no incentive to waste their time and resources in that fashion.

Indeed, the principle applied by the 5-year provision of title VII already has been specifically recognized by the Supreme Court. The Supreme Court has not, of course, approved a specific period such as 5 years between an unlawul police act and a later event to be proved, declaring that claims that the unlawful act led to evidence of the later event shall not be considered. Specific rules of that type are the province of the Congress, rather than the courts. The Supreme Court has, however, recognized that the relationship between an unlawful investigative act and evidence derived indirectly from that act can become so "attenuated" that the derivative evidence should not be suppressed, and that even evidence which was obtained by the exploitation of an unlawful investigative act should be admitted in evidence if it was obtained in part from a second, independent source *Wong Sun* v. *United States*, 371, U.S. 471, 487, (1963); *Nardone* v. *United States*, 403 U.S. 338, 341 (1939) ("so attenuated as to dissipate the taint"); *Costello* v. *United States*, 365 U.S. 265, 280 (1961). In *Nardone* v.

United States, 308 U.S. 338, 341–42 (1939), Mr. Justice Frankfurter put it this way:

> Sophisticated arguments may prove a causal connection between information obtained through illicit wiretapping and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint. * * *
>
> Dispatch in the trial of criminal cases is essential in bringing crime to book. * * * To interrupt the course of the trial for [a suppression hearing] impedes the momentum of the main proceeding. . . . Like mischief would result were tenuous claims sufficient to justify the trial court's indulgence of inquiry into the legitimacy of evidence in the Government's possession. So to read . . . [the suppression rule] would be to subordinate the need for vigorous administration of justice to undue solicitude for potential . . . disobedience of the law by the law's officers. Therefore, claims that taint attaches to any portion of the Government's case must satisfy the trial court with their solidity. . . .

Title VII thus can well be viewed as a legislative particularization of the doctrines of attenuation and of the second independent source, already approved by the Supreme Court. The 5-year provision is, therefore, consistent with "the spirit of decisions requiring the Government to demonstrate by clear and convincing proof that its case is free of the taint of illegally obtained evidence," in spite of the contrary suggestion by the City Bar Committee—ABCNY at 27. The 5-year period established by title VII is so long that the Congress is warranted in finding that every case in which the 5-year period is exceeded in a case in which the challenged evidence in no way was derived from the previous illegal act, or any relationship has become so attenuated that suppression is not required. It still more clearly is within the power of Congress to determine—recalling again that this is the primary issue—that the possibility that application of the 5-year provision would expand admissibility beyond existing rules on derivative evidence and attenuation is so slim as to have no substantial impact upon the efficacy of the suppression sanction as a deterrent.

While the extreme length of the limitation period itself is sufficient to support the congressional determination that litigation of such claims is not warranted, the decision of the Senate Judiciary Committee and of the full Senate, when a motion to strike title VII from S. 30 was defeated on the Senate floor, is amply supported by the experience of the Department of Justice. The Department, in response to my inquiries, conducted a study of its experience with suppression litigation in the field of electronic surveillance, to which the Supreme Court made the Alderman decision expressly applicable. This study by the Justice Department amply documents both the harm being done to public and individual interests by the application of the Alderman rule without a limitation such as the 5-year provision of title VII, and the insignificant impact which enactment of title VII would have upon the ability of defendants to assert and substantiate any valid claims that the evidence against them was indirectly derived from such surveillance. Although the Department's systematic maintenance of unlawful electronic surveillance continued from 1961 to 1965, there has not been a single case in which evidence of an event occurring more than 5 years after a surveillance has been found to have been tainted by the surveillance. In this connection, the city bar committee raises a question as to the adequacy of the legislative information before the Congress as a basis for enactment of title VII. Had they examined my remarks in introducing S. 2292, from which title VII was derived, they would have seen, in part, the results of the Justice study. It more than adequately provides the necessary factual underpinning for title VII—See CONGRESSIONAL RECORD, volume 115, part 11, page 14342.

Neither have the critics of title VII, including the Civil Liberties Union with its apparent access to data concerning constitutional litigation by defendants in criminal cases, presented to the Congress any actual case in which evidence of an event occurring more than 5 years after a constitutional violation was found to have been derived from the violation. Even their attempts to pose hypothetical cases of taint which would be covered by the 5-year provision, such as the city bar committee's attempt in footnote 57 on page 32 of its report, are so far-fetched and unrealistic as to be ludicrous. The bar association's position may be reduced to little more than the defendant's contention in the third Nardone case, 127 F. 2d 521, 523 (2d) cert. denied, 316 U.S. 698 (1942). There, after a third conviction had been obtained even though two previous convictions had been overturned, since wiretap, or wiretap-derived evidence, was used, Judge Learned Hand wrote for the Court:

> The question therefore comes down to this: whether a prosecution must show, not only that it has not used any information illicitly obtained, either as evidence, or as the means of procuring evidence; but that the information has not itself spurred the authorities to press an investigation which they might otherwise have dropped. We do not believe that the Supreme Court meant to involve the prosecution of crime in such a tenebrous and uncertain inquiry, or to make such a fetish of the statute as so extreme an application of it would demand. On the last appeal the court made it abundantly clear that it did not contemplate a chase after will-o'-the-wisps. "Tenuous claims" are not "sufficient to justify the trial court's indulgence of inquiry into the legitimacy of evidence." The "claims * * * must satisfy the trial court with their solidity." We are not "to subordinate the need for rigorous administration of justice to undue solicitude for potential and, it is to be hoped, abnormal, disobedience of the law." (308 U.S. 338, 60 S. Ct. 268, 84 L. Ed. 307.) Such expressions indicate no disposition towards the refinements inevitable in deciding how far the illicit information may have encouraged and sustained the pursuit. We hold that, having proved to the satisfaction of the trial judge that the "taps" and telegrams did not, directly or indirectly, lead to the discovery of any of the evidence used upon the trial, or to break down the resistance of any unwilling witnesses, the prosecution had purged itself of its unlawful conduct.

Since the 5-year provision, for those reasons, can be expected not even to result in the use of presently inadmissible evidence against any individual, and certainly not to decrease the deterrent efficacy of the suppression rule, there is little to balance against the interest of society in the enactment of title VII, in determining its constitutionality.

In addition, the societal interests involved are important ones and are seriously invaded by application of the flat Alderman decision. Those interests have been well articulated in the legislative history of S. 30, so the city bar committee in an effort to minimize them, resorts to quoting a statement by the Department of Justice that—

> The factual situation which would be reached by the subsection [containing the 5-year provision] is a very limited one. (ABCNY at 29.)

Examination of the letter from which that quotation was taken, however, makes it clear that the Deputy Attorney General there was not minimizing the impact that enactment of the 5-year provision would have to improve the administration of justice, but was stressing the point that the direct product of an illegal investigative act, as opposed to its indirect product, would remain suppressible despite the 5-year provision—Senate Report at 135. Apparently, though, the city bar committee considers the avoidance of needless litigation through enactment of the 5-year provision to be of minor importance, since in another part of its statement the city bar committee directly implies that it does not believe "that conserving Government time and effort from litigation resulting from its own misconduct * * * [is] a legitimate concern"—ABCNY at 28. I do not consider the violation even of constitutional provisions by some Government officers to be a valid reason to subject all the citizens of this Nation to needless and fruitless punishment, by permitting unlimited dilatory litigation in criminal cases over evidence which has been obtained lawfully and the exclusion of which, in any case, would not serve to deter future Government lawlessness. It is only by ignoring both the relevant Supreme Court precedents on other suppression issues, and the interests of society in the sound administration of justice, that the city bar committee can fabricate a constitutional bar to title VII's 5-year provisions.

There are analogous precedents supporting title VII's 5-year provision in areas other than suppression of evidence, as well. There are, for example, the statutes of limitations which prevent the bringing of criminal prosecutions and civil lawsuits more than a given period after one becomes entitled to do so. In comparing the 5-year provision of title VII with those statutes of limitations, it is important to notice that title VII's 5-year provision does not foreclose a "defense," as the bar committee says it does (at 33), which goes to the question of guilt or innocence. The motion to suppress is instead a means to the affirmative enforcement of a right, and in this respect is quite similar to the bringing of a civil suit or criminal prosecution. Indeed, as I noted above, the Federal Government and some of the States provide, as a remedy for a person who is subjected to unlawful electronic surveil-

lance, not only the remedy of suppression of evidence in any criminal case against him but the additional remedies that the offending officer can be criminally prosecuted and that the person surveyed can bring a civil action for damages against the officer. The statutes of limitations limiting the commencement of such civil actions have been held to be consistent with due process despite the fact that they deprive a person surveyed of a property right—his cause of action—after a given period of time. Note, of course, that under due process no legislature has the right to destroy an existing cause of action. *Angle* v. *Chicago St. Paul Ry.*, 151 U.S. 1 (1894). But no one questions the right of the legislature to say that it must be exercised, if at all, within the period of limitation in order that justice may be done on fresh not stale claims. This is true despite the fact that his claim for damages, or the criminal case against the officer, may be clearly valid and amply supported by evidence, especially since it is the time when the civil suit is brought or the criminal prosecution against the officer is commenced which determines whether or not the action is barred by the state of limitations: those periods of limitations are not so defined as to bar implausible claims, only those which have become stale.

The 5-year period in title VII is, of course, measured differently. Under title VII, it is not the time of moving to suppress the evidence, but the time when the event occurs which is to be proved by the evidence, which determines whether or not the motion to suppress is barred by the period of limitations. It is for that reason that claims barred by title VII's 5-year provision always are implausible. Thus, the validity of the period of limitations found in title VII is a fortiori from the validity of the periods of limitations on criminal prosecutions and civil actions.

Turning, now, from title VII's 5-year provision to its provision for in camera screening of material disclosure of which is sought by a defendant, it, too, survives the balancing test by which the Supreme Court has worked out other limitations on the suppression sanction. Once again, the city bar committee begs the question of the validity of the screening provision by assuming that the evidence which a defendant moves to suppress under that provision is in fact the "fruits of unconstitutionally seized evidence"—ABCNY at 31. Actually, of course, the screening provision of title VII does not legislate on the question whether evidence is or is not tainted in individual cases: it legislates only concerning the procedure to determine that question of fact. By referring to litigation concerning "the fruits of unconstitutionally seized evidence" when it is arguing whether or not the procedure for determining that question is a sound one, the bar committee assumes its conclusion and undermines its constitutional argument.

The screening provision of title VII sets the criteria to be applied by the court in camera so low that disclosure will be denied or limited only in a few, very extreme cases. Those standards permit disclosure if the judge, after in camera inspection of the information requested to be disclosed, finds that the information "may be relevant to a pending claim of such inadmissibility, and such disclosure is in the interest of justice." This provision of title VII simply recognizes that, in a small but significant number of cases, in camera inspection of files by the trial court is sufficient for a clear and completely reliable determination that there is no possible relevance and that disclosure would be unnecessary and harmful. An example is *Aiuppa* v. *United States*, 394 U.S. 310 (1969), the case I described earlier in which an organized criminal was overheard during an organized crime electronic surveillance and later was prosecuted for violating the migratory bird laws. While cases in which such obviously irrelevant disclosures are requested will be few, they arise often enough to make the automatic disclosure requirements of present law a serious problem.

Police authorities, aware of how easy it would be for defendants to satisfy those criteria, hardly will be led to break the law by the remote hope that their offense will yield information which will lead indirectly to relevant evidence of a crime by a defendant, but the possible relevance of which will not be apparent to a trial judge. The ground for suppressing evidence is a showing that the case against a defendant actually was obtained by exploiting governmental illegality, while title VII's ground for refusing to disclose confidential files to the defendant as irrelevant would be a determination by the trial judge that it is impossible that the files could have any relevance to the case against the defendant. It must be remembered that there is a very wide gulf between those two standards. The ACLU and bar committee take a very extreme position when they say that the Congress cannot find any point along that spectrum, however minimal the criterion, which permits the court to screen out obviously irrelevant material. While it certainly would be difficult for a judge to determine absolute relevancy or even probable relevancy ex parte, and the likelihood of error might be excessive, there is no reason to think that a standard as low as possible relevancy cannot fairly be applied by the court in camera.

With respect to the provision's second standard for in camera screening, that disclosure be in the interest of justice, it is significant that the Supreme Court has recognized the validity of the principle that disclosure of facts useful to an accused in defending himself can be made to depend in part upon a judicial determination of the public interest, as in the case of a defendant seeking to learn the identity of a Government informant—Cf. *McCray* v. *Illinois*, 386 U.S. 300 (1967); *Rovario* v. *United States*, 353 U.S. 53, 60–62 (1959).

Congress has constitutional power to substitute the minimal criteria found in the screening provision of title VII for the absolute disclosure rule of the Alderman case, since that case was an exercise of the Supreme Court's supervisory jurisdiction, not a constitutional opinion. On the day that the distinguished Senator from Ohio (Mr. YOUNG) placed the American Civil Liberties Union's letter in the CONGRESSIONAL RECORD, during the Senate debate on S. 30, I explained on the floor the rationale and precedents under which the Supreme Court's ruling in Alderman is found to be not a constitutional decision but an exercise of the Supreme Court's jurisdiction to supervise the administration of Federal criminal justice—116 CONGRESSIONAL RECORD pages 851–852, Thursday, January 22, 1970, as follows:

Mr. President, let me add a few comments before we quit tonight. It is well within the affirmative power of the Congress to enact proposed section 3504(a)(2) of title VII. It is not, as suggested, unconstitutional. Paragraph (2) would overrule the Supreme Court's decision in *Alderman* v. *United States*, 394 U.S. 165 (1969), which held that Government records of any illegal electronic surveillance which a criminal defendant has standing to challenge must be given to him without a preliminary judicial determination that they have possible relevance to his case.

The reason why Congress can reverse the rule laid down by the Alderman case is that that decision was not an interpretation of the Constitution, but an exercise of the Court's power to supervise the administration of Federal criminal justice.

That power was described by Mr. Justice Frankfurter for the Court in *McNabb* v. *United States*, 318 U.S. 332, 340 (1943), in these terms:

"[T]he scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. Judical supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence."

It is a basic rule of practice of the Supreme Court to place its decisions upon nonconstitutional grounds, such as statutory interpretation or the supervisory power, whenever doing so permits avoidance of a constitutional issue. See, for example, *Peters* v. *Hobby*, 349 U.S. 331 (1955). It must be presumed, therefore, that the Court followed this practice in the Alderman case unless the contrary can be affirmatively shown.

In its statement of the holding of the case, the Court declared:

We conclude that surveillance records as to which any petitioner has standing to object should be turned over to him without being screened *in camera* by the trial judge. *Alderman* v. *United States*, *supra* at 182.

Nowhere did the Court explicitly say that this practice was mandated by the fourth amendment. Instead, the Court merely ruled that this practice would "substantially reduce" the incidence of error by guarding against the "possibility that a trial judge acting in camera would be unable to provide the scrutiny which the fourth amendment exclusionary rule demands"—394 U.S. at 184. In short, the fourth amendment guarantees freedom from unreasonable searches and seizures, and this freedom must be enforced by the suppression sanction, but the disclosure rule implementing that sanction is not constitutional doctrine, as it is well settled that the details of implementation of constitutional guarantees often lie below the threshold of constitutional concern. (See *Ker* v. *California*, 374 U.S. 23, 34 (1963).) The significance of the use of the word "should" in the Alderman holding is emphasized by the Court's later concession that its decision "is a matter of judgment" on which "its view" was that in camera inspection by the trial court is inadequate—394 U.S. 182. Indeed, the Court expressly based its decision in part upon its desire to "avoid an exorbitant expenditure of judicial time and en-

ergy," 394 U.S. at 184, a consideration most appropriate in the exercise of the supervisory jurisdiction. Thus, the Court's language indicates that the ruling was supervisory. Nothing in its may be used to make the necessary affirmative showing that the Court was reaching out needlessly to decide a constitutional issue.

A supervisory decision by the Supreme Court is subject to change or overruling by the Congress. Exactly such a course was followed when the Congress enacted the Jencks Act, 18 U.S.C. 3500 (1958), modifying the Supreme Court's decision in *Jencks* v. *United States*, 353 U.S. 657 (1957). Thus, the Congress is equally free to enact title VII of S. 30 despite the Supreme Court's supervisory decision in the Alderman case.

The city bar committee sets out in its report on title VII certain quotations from the Alderman decision, italicizing phrases which the committee feels indicate that Alderman was a constitutional decision. I simply point out that there is other language in the opinion, quoted in my remarks on the floor last January 22, which sustains the opposite view. It is a hallowed rule of Supreme Court adjudication that doubt in such cases is resolved in favor of the conclusion that the Supreme Court did not reach out unnecessarily to decide a constitutional question, since nonconstitutional grounds for the decision were available.

I would like to elaborate, also, on the analogy which I drew, during my remarks of January 22, between the Alderman decision and the decision of the Supreme Court in the Jencks case, which the Congress subsequently modified with the Jencks Act. The city bar committee rejects the analogy between title VII and the Jencks Act—ABCNY at 32—but detailed examination of the Jencks decision and the Court's treatment of the Jencks Act supports the analogy.

According to the bar committee—at 32:

> The analogy fails because, while constitutional questions may have been close to the surface, the *Jencks* decision was based solely on the Court's standards for the administration of criminal justice in the federal courts, 353 U.S. at 668, and did not mention constitutional rights. . . . On the conrtary, I find the constitutional rights to confrontation and effective assistance of counsel *on* the surface, not merely close to it, in the *Jencks* case, and do not agree that the Court's omission there to cite the Bill of Rights by name constituted failure to "mention constitutional rights."

The Jencks opinion, holding that FBI reports should have been disclosed to the defendant so he could determine their value for impeachment of Government witnesses, stated:

> The impeachment of that testimony was singularly important to the petitioner. (353 at 667.)

Any discrepancies between the reports and the testimony, the Court noted, would be relevant to the cross-examining process of testing the credibility of a witness' trial testimony, requiring the accused first to show conflict between the reports and the testimony is actually to deny the accused evidence relevant and material to his defense.—Ibid.

Using language strikingly similar to that later used in the Alderman case, the Court concluded:

> Because *only the defense is adequately equipped to determine the effective use* for purpose of discrediting the Government's witness and thereby furthering the accused's defense, *the defense must initially be entitled to see them* to determine what use may be made of them. *Justice requires no less.* (353 U.S. at 668–69.) (Emphasis supplied in each quotation.)

The constitutional underpinning of the Jencks decision was further revealed when Mr. Justice Brennan, who had written the Court's opinion in Jencks, concurred in the result of the case which upheld the constitutionality by Jencks Act (*Palermo* v. *United States* 360 U.S. 343 (1959)), and wrote in an opinion joined by three other Justices:

> It is true that our holding in *Jencks* was not put on constitutional grounds, *for it did not have to be;* but it would be idle to say that the commands of the Constitution were not close to the surface of the decision; indeed, the Congress recognized its constitutional overtones in the debates on the statute. (360 U.S. at 362–63.)

In spite of the Jencks decision's deep pervasion by constitutional factors, it was, as history has shown, a supervisory decision. Though Alderman, likewise, is related to constitutional rights, it, too, is a supervisory decision. It obviously is not the "mention"—ABCNY at 32—of a specific amendment to the Constitution in a Supreme Court decision which determines whether the decision itself is a constitutional mandate. The language of the Alderman decision indicated that it concerned the "details of implementation" of constitutional rights, so was not necessarily itself of constitutional dimension. In view of the presumption against decision of constitutional questions when other grounds are available, it is clear that the Alderman decision was supervisory and that the Jencks Act experience is an instructive precedent on the issue.

The ACLU also makes the incidental argument that—

> Although a stated purpose of title VII is to reduce the burden of suppression motions on the courts, the reinstitution of an "irrelevancy" requirement inevitably returns to the judiciary the screening burden which *Alderman* sought to remove. (ACLU at 8.)

The city bar committee makes the same point, and supports it by adding a misinterpretation of the meaning of the screening provision of title VII. ABCNY 28–29, n. 47. The misinterpretation is found in the statement that "subsection 3504(a)(2) was intended to limit disclosure of information to the defense only after a determination has been made that evidence has been illegally obtained." ABCNY at 28. This was not the intent, and there is nothing in the Senate Judiciary report at the pages to which footnote 47 on page 28 refers the reader to indicate that the subsection was so intended.

The experience of the Federal courts in the past suggests that the city bar committee and union are wrong in their contention that title VII's screening provision will unduly burden the courts, and supports the conclusion reached by the Judiciary Committee, following its study of the problem, and by the Senate.

The threshold criteria for disclosure under title VII can be applied expeditiously and economically by the courts. This is true especially in comparison with the automatic disclosure rule laid down by the Alderman case, which opens up the opportunity for long periods of examination of Government files by attorneys and lengthy evidentiary hearings and arguments.

The Federal district courts are accustomed to screening material in camera quickly, efficiently, and economically, in order to determine whether to order disclosure to a party in other contexts, such as a challenge to the scope of a subpena duces tecum, pretrial discovery under criminal rules 16 and 17(c), disclosure of prior statements of witnesses under the Jencks Act, and the discovery of grand jury testimony. The courts can be expected to apply their experience and techniques developed in those situations to the minimal screening required by title VII.

For any occasional case in which the volume of material to be examined in camera is too great for examination by the trial judge himself, the Department of Justice has made this suggestion:

> [A]ssistance could be provided either by another district judge, a procedure approved in *Baker* v. *United States*, 401 F. 2d 958, 978 n. 90 (C.A.C.D), or by a United States magistrate. Section 636(b)(2) of Title 28 of the United States Code specifies that a United States magistrate may be appointed for the purpose of "assistance to a district court in in the conduct of pretrial or discovery proceedings in civil or criminal actions." Unlike a ruling on an issue affecting the reliability of the guilt-determining process, a ruling affecting the applicability of the exclusionary rule to plainly trustworthy evidence is a function of a nature which appropriately may be delegated. Certainly the deterrent purposes of the exclusionary rule can be served as well by the possibility of an adverse ruling of a magistrate as by the possibility of an adverse ruling of a judge. (Hearings at 555.)

For those reasons, application of title VII by the courts will be economical and efficient, far more so than application of the Alderman rule.

In the final analysis, of course, the question which of two procedures is more swift and economical is one which the Congress can decide without the constraint of constitutional doctrine. Indeed, the nature of this aspect of the Alderman and title VII problem, as the ACLU and bar committee spell it out, is one convincing demonstration of the fact that the Alderman decision rested upon considerations of supervisory rather than constitutional dimension, so is subject to reversal by the Congress.

The city bar committee's statement that the screening provisions of title VII would "make it far more difficult to prove that any evidence resulted from an illegal search" ABCNY at 7 is not correct. It is incorrect not only because the two criteria established by the screening provision are minimal, but also because existing law already limits the access of defendants to such confidential materials in some contexts. A trial judge considering a case of electronic surveillance conducted in violation of title III of the 1968 Safe Streets Act has discretion, as the city bar committee points

out—ABCNY at 30, n. 53—whether or not to make available to the defendant "such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice." 18 U.S.C. § 2518 (10) (a). That provision not only imposes a limitation upon the defendant's access to such files, but does so by reference to a standard also used in the screening provisions of title VII. Other disclosure provisions, such as rule 16 of the Federal Rules of Criminal Procedure, also grant broad discretion to trial judges to examine files in camera, deny or delay disclosure, and make protective orders, and provide no standard for the exercise of that discretion.

Neither is the city bar committee's interpretation of the meaning of "interest of justice" consistent with the expressed intent of the Senate Judiciary Committee. The city bar committee—at 30—concludes that under the screening provisions of title VII:

> Evidence which would be relevant, and perhaps critical, to a defendant's charge that the case against him was unconstitutionally tainted could, nevertheless, be denied him for a variety of reasons, such as danger to the reputation of a third party.

On the contrary, it is apparent that evidence which was critical to such a charge always would have to be disclosed since the interest of justice simply could not exalt the reputation of a third party over the constitutional right of the defendant to defend himself. Disclosure would clearly be required, at least of that portion of the files which in fact was critical to the defendant's claim.

Nor is it correct that the screening provision of title VII limits defense access to materials now given to a defendant for purposes other than suppression litigation, such as the defendant's confession, whether coerced or not, and physical property belonging to the defendant and illegally seized. ABCNY at 30–31. By its terms, title VII's screening provision regulates the making of disclosure only for a determination if evidence is inadmissible on specified grounds. Where the reason for making disclosure is not to aid in the determination of that question, but to vindicate a defendant's property right in seized items or to assist him in preparing to cross-examine witnesses, for example, title VII explicitly has no application. A more careful reading of the screening provisions of title VII, including the phrase "disclosure . . . for a determination," would have permitted the city bar committee to avoid making its inaccurate statements regarding supposed conflicts between title VII's screening provision and existing procedures. It should be noted also, when the city bar committee complains about the possibility that a defendant would be denied inspection of his own confession, that the express language of rule 16(e) of the Federal Rules of Criminal Procedure already gives the court discretion to deny the defendant leave to inspect his own confession—but see *United States* v. *Projansky*, 44 F.R.D. 550 S.D.N.Y. 1968—and establishes no standards for the exercise of that discretion.

Finally, the city bar committee criticizes the screening provision of title VII by noting that it applies to civil proceedings and nonjudicial bodies, such as administrative agencies, as well as to courts. The bar committee goes on to allege that—

> In many instances, officials or official bodies with little or no expertise would be deciding what information is relevant to constitutional claims and what the "interest of justice" requires. (ABCNY at 29 n. 50.)

The bar committee fails to mention that such agencies are subject to judicial review, and that the scope of judicial review of legal questions such as admissibility, and issues of constitutional fact upon which motions to suppress rest, is broad. In addition, it must be recalled that title VII will have no application to any such agency unless the agency applies an exclusionary rule forbidding the consideration of evidence obtained as the direct or indirect product of an unlawful act. Since any such agencies already engage in considering constitutional claims, it hardly is appropriate to claim that they have sufficient expertise to exclude evidence on constitutional grounds but not to decide "what information is relevant to constitutional claims."

Not only does title VII not violate constitutional rights protected by the Alderman case, it protects rights of American citizens to privacy and to the safety of their reputations—considerations which the Alderman decision completely subordinated to the interests of criminal defendants. The court in Alderman relied upon protective orders, by which a court furnishing transcripts to a defendant can prohibit him from disclosing them to others, to protect privacy and reputations. However, protective orders are not an adequate substitute for title VII as a means of preventing unauthorized disclosures.

That is true in part because it is not always practical for the court to make a protective order. When one of the cases remanded by the Supreme Court for further proceedings in the light of its decision in Alderman reached the district court again, for example, the court made a protective order at the Government's request. In the court's words:

> However, it became apparent that it would be impossible to conduct a public hearing and explore the relevance of the logs in light of the protective order. The order was therefore dissolved, and the logs were admitted into evidence. (*United States* v. *Clay*, Cr. No. 67–H–94, U.S. District Court, S.D. Tex., July 14, 1969.)

As a result, a transcript of electronic surveillance embarrassing to a third party who was merely referred to rather than overheard in the conversation was made public. That intrusion on his privacy proved to have been completely gratuitous, since after the disclosure and full hearing the district court found not only that the transcripts were "totally innocuous" but that the court could reliably have made that determination on an in camera inspection.

Even where the circumstances of a case do permit the court to make a protective order, the Department of Justice reports that they have been found to be ineffective. Hearings at 145. For example, national security information dealing with surveillance of a foreign embassy was disclosed in a December 2, 1966, Washington Post article in spite of a protective order made by the Federal District Court for the District of Columbia. Such breaches of security do untold harm to the public interest, and, often, to the interests of innocent individual citizens. Disclosures may lead suspects who are under investigation to flee. Evidence may be destroyed. The reputations of innocent individuals may be irreparably harmed, as by the Life magazine publication on May 20, 1969, of surveillance transcripts containing unflattering references to national prominent entertainers, named Chicago aldermen, and three judges. The identities of undercover agents and informants may be revealed, and their lives and families endangered. And citizens with evidence of crime may be deterred by the fear of identification from coming forward to aid law enforcement.

In view of the demonstrated inadequacy of protective orders truly to protect public and private interests, they are no substitute for title VII as a means of preventing unwarranted revelation of confidential material.

The ACLU complains that the provisions of title VII would apply "in any Federal, State, or local court or agency" where suppression of evidence is sought on the ground that the evidence was obtained through a violation of law "by anyone"—ACLU January 1970 letter at 7. It is understandable that the ACLU, since it opposes title VII entirely, wishes that, if the title is enacted at all, it be made as narrow as possible. However, the ACLU provides no reasons or justifications for limiting the jurisdictions and agencies in which title VII would apply, nor the identities of those whose violations of law give rise to claims governed by title VII. On the contrary, treatment of the problem raised by the Alderman case requires consistency among jurisdictions, grounds of objections, and the like. As the Senate Judiciary Committee pointed out in its report on title VII:

> [A]pplication [of the provisions of title VII] beyond Federal criminal cases to State and civil proceedings is necessary to prevent Federal and State agencies from frustrating one another's policies, to promote cooperation between Federal and local law enforcement officers, and to avoid inconsistent treatment of litigants. Congress has the power to act in this fashion. See *Elkins* v. *United States*, 364 U.S. 206 (1960); cf. U.S. Const. amend. XIV, § 5; *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966); *Adams* v. *Maryland*, 347 U.S. 179, 183 (1954); see generally 18 U.S.C. § 2515. (Report at 70.)

This is true despite the fact that the Alderman decision was not an interpretation of the Constitution, and therefore is not directly binding upon State courts, since other provisions of law extend exclusionary rules into State and administrative proceedings and suppress products of unlawful conduct by private citizens as well as Government officials. For example, some of title VII's most important applications will concern electronic surveillance, covered by title III of the Omnibus Crime Control and Safe Streets Act of 1968. Under title III, section 2515

of title 18 of the United States Code, forbids the use of intercepted communications or their fruits in evidence in any proceeding before any Federal or State judicial or nonjudicial authority, and makes that exclusionary rule applicable whether the interception was committed by a public official or not. The Congress cannot be oblivious to the likelihood that States will apply Alderman to their proceedings, either in a mistaken belief that the Constitution requires them to do so, or under State lawmaking power. The harm which would result to the Federal administration of justice from inconsistent treatment of the Alderman issues among Federal and State agencies requires that the subject be treated comprehensively and consistently, and the ACLU has presented no rebuttal to this showing of need.

The same is true of the ACLU's complaint—ACLU January 1970 letter at 7—that title VII is "an overreaction" since it goes beyond electronic surveillance. The absolute rule of the Alderman case would do harm as great where a defendant or the public were given a number of private letters between two nondefendants which had been seized by the Government, or a confession implicating, perhaps falsely, individuals other than the defendant and the confessor, as where the defendant seeks the transcripts of electronic surveillance. The ACLU itself acknowledges, in the summary of Supreme Court decisions on the exclusionary rule with which it provides background for its criticism of title VII, that the Supreme Court has tended to treat one right like another in determining whether a government violation requires suppression of evidence. Id. at 8. Since the Supreme Court does not distinguish for this purpose among electronic surveillance, physical seizure, arrest, interrogation, and other means of obtaining evidence which can lead to suppression at trial, limitation of title VII to electronic surveillance would produce inconsistency and anomaly in the law. Although the Alderman decision itself discussed only electronic surveillance, that is the only subject which was presented to the Court in that case. Therefore, we unfortunately cannot infer that the courts will show greater recognition of the competing interests of third parties and society generally where disclosure of Government files concerning other types of evidence is concerned.

In this connection, the ACLU apparently wants to have it both ways: Although they would prefer that title VII be limited to cases involving electronic surveillance, they also attempt to arouse emotions against title VII by asserting that electronic surveillance is especially offensive since:

> In the case of illegal electronic eavesdropping or wiretapping, the government engages in a deliberate violation of the rules which under the Constitution law enforcement officers are bound to obey (*Id.* at 9.)

They attempt to contrast this alleged characteristic of electronic surveillance with other constitutional violations by public officers where police complain that under the exclusionary rule the "criminal goes free because the constable blunders." Ibid. However, this inflammatory distinction is not only irrelevant, it is inaccurate. Since the Alderman rule is absolute and inflexible, it can be applied in many cases where the Government's electronic surveillance was conducted in the good faith belief that it was lawful, and even cases in which the surveillance would have been lawful but for a technical or minor error. This is true, obviously, as to surveillances conducted under title III of the 1968 Safe Streets Act, which apply to electronic surveillance the warrant procedures used for other searches, but with still more technical and complicated procedural requirements. It is even true as to electronic surveillances conducted before the Safe Streets Act became law, such as surveillances conducted under the New York statute through cooperation between Federal and State officers.

The ACLU would go still further in confining the operation of title VII. They complain that the title is "not limited to organized crime cases." It is not difficult to imagine the criticisms which the ACLU, opposed to any legislation which would modify the Alderman rule to accommodate the public interest, would raise to any definition which attempted to define the complex and subtle concept of "organized crime." Regardless of the ACLU's position, moreover, the need for enactment of title VII extends beyond "organized crime" prosecutions, and in any case it would be impossible to prepare a rational definition of such cases in this context. This is true since the need for enactment of title VII springs from a variety of factors, such as first, the harm to privacy and reputations where the private gossip of hoodlums about innocent public officials and other parties not overheard is disclosed. Second, the danger to informants, undercover agents and witnesses where confidential government files are given to ruthless criminals, and third, the harm to the administration of justice when unnecessary opportunities for dilatory proceedings are furnished to whole classes of professional criminals.

These factors arise in part from the characteristics of the defendants and in part from the content of the evidence to be disclosed. This is obvious from the case, which I described earlier in these remarks, in which the Alderman case was applied to require that an organized crime figure, who was overheard during a Mafia surveillance, be allowed to inspect the full transcript simply because he later was picked up by a forest ranger for violating migratory bird laws, despite the obvious lack of relationship between the surveillance and his crime. *Aiuppa* v. *United States*, 394 U.S. 310—1969. If organized crime cases were defined according to the nature of the crime charged, it is highly doubtful that migratory bird violations would be included. On the other hand, it would be offensive to provide one statutory suppression procedure automatically applied to persons suspected as organized criminals and another for all other defendants. Similarly, the Alderman case also is applicable to a person who is innocent of any organized crime involvement, stumbles into an organized crime wiretap by dialing a wrong number, and then 10 years later is charged with driving while under the influence of alcohol. Neither the character of the defendant nor the nature of his crime makes the prosecution an organized crime case, yet there is an obvious need for title VII's limitation upon disclosure.

Before I conclude this discussion of the real and imaginary issues raised by the critics of title VII, it might be well for me to touch briefly upon two rather general points raised by title VII's critics as they sought to prove it unconstitutional.

First, the Civil Liberties Union, in its January 1970 letter—at 7—attempts to buttress its constitutional objections to title VII by stating that "even the Justice Department concedes that constitutional problems may exist under tile VII . . ." The City Bar Association committee was more candid, but still tried to get mileage out of the Justice Department testimony, stating that:

> The Department of Justice recognized that the *potential* application of a *predecessor* of this Subsection to coerced confessions presented *possible* Fifth Amendment problems." (ABCNY at 31.) (Emphasis supplied.)

A simple comparison of the union's statement with the bar committee's statement raises serious doubts about the reliability of the union as a commentator on title VII. Even the city bar committee's statement fails to attain a desirable level of candor and impartiality, since it omits to mention that the Department of Justice did not press its desire that the scope of title VII be limited in view of its question as to constitutionality, and now fully supports the conclusion reached by the Senate Judiciary Committee that title VII is constitutional and sound. This conclusion was challenged again on the floor of the Senate on January 22, 1970, the ACLU's statement critical of title VII was placed in the CONGRESSIONAL RECORD the same day, and the next day the Senate soundly defeated an amendment which would have stricken title VII.

Second, the union asserts that title VII is based upon assumptions which are "totally inconsistent with our traditional presumption of innocence." ACLU January 1970 letter at 9. As I explained above, this type of objection completely mistakes the meaning of the "presumption of innocence." This presumption is a technical, legal concept, applicable only at trial, and in reality constitutes simply a burden upon the Government to come forward with evidence and to prove guilt. See *United States* v. *Mimerick*, 118 F. 2d 464, 468 (2d Cir. 1941). This limited nature of the presumption is shown by the fact that our law authorizes searches under warrants, bail, and other pretrial restraints and invasions based upon probable guilt. While some laymen mistake the presumption of innocence, and may suppose that it compels the Government unrealistically to close its eyes to the probable consequences of pretrial court orders, actually nothing in the presumption of innocence prevents courts before trial from drawing realistic dis-

tinctions among cases where claims are substantial and cases where they are not.

Realism is exactly what is lacking in the statement of the ACLU, and in the remarkably similar complaint of the city bar committee that title VII is assumed by the Senate only to apply to mobsters. ABCNY, at 27–28. Those critics of title VII close their eyes to the frequency with which criminal defendants use dilatory proceedings, perjury, and other unlawful means to escape punishment. If criminal defendants never resorted to unlawful means of defending themselves—if, indeed, they never committed crimes at all—then a rule as onesided and inflexible as the Alderman rule would be serviceable. Since they do violate laws, and since society must have some protections against such violations, title VII sets up standards and procedures, similar to those now used in other contexts, to distinguish dilatory motions to suppress evidence from substantial ones.

TITLE VIII—SYNDICATED GAMBLING

Mr. President, the general consensus of opinion among law enforcement officials is that gambling is the greatest source of revenue for organized crime. The Permanent Subcommittee on Investigations' examination of gambling and organized crime, the hearings of which I was privileged to chair, concluded that although estimates of the revenue obtained through illegal gambling vary it was generally agreed that the flow of money to bookmakers taking bets on horse races and sporting events totals billions of dollars annually—report at 2.

Organized crime, of course, does not limit its illegal gambling operations to horse racing and sporting events. It also includes gambling in the form of lotteries, dice games, and illegal casinos. More recently, the President's Crime Commission estimated the annual gross revenue to organized crime from gambling in the United States at from $7 to $50 billion—report at 189. The Commission indicated that an analysis of organized crime betting operations showed the profit to be as high as one-third of gross revenue and concluded that while it was difficult to judge the accuracy of these figures, even the most conservative estimates put a substantial amount of capital in the hands of organized crime leaders.

Mr. President, it is from these huge gambling profits that organized crime is able to finance other illicit operations such as narcotics, loan sharking, prostitution, and bootlegging. This large source of illegally gained revenue also makes it possible for organized crime to infiltrate and pollute legitimate business.

The President in his Message on Organized Crime in April of last year, characterized gambling income as the "lifeline of organized crime," and suggested that if we can cut or constrict it we will be striking close to its heart—Doc. No. 91–105, House of Representatives, 91st Cong., 1st Sess., at 6 (1969). I need not emphasize too highly that it is in the field of gambling that the mob leader is most vulnerable to honest law enforcement. If we can remove the syndicate gambler from circulation, we will have at the same time largely eliminated the extortioner, the corruptor, the robber and the murderer—the gangster himself.

One of the inevitable byproducts of illicit gambling, moreover, is corruption—of the police, the prosecutor, the courts—indeed, the whole system of criminal justice. Gamblers and bookmakers, in order be be free to operate, must pay off someone. The President in his message on organized crime put it this way:

> It is gambling which provides the bulk of the revenues that eventually go into usurious loans, bribes of police and local officials, "campaign contributions" to politicians . . . and to pay for the large stables of lawyers and accountants and assorted professional men who are in the hire of organized crime. (*Ibid.*)

The report of the Permanent Subcommittee on Investigations on Gambling and Organized Crime described the problem as follows:

> It must be conceded that for various reasons, mostly justifiable and understandable, local law enforcement agencies cannot adequately cope with the grave internal threat posed by organized crime. Jurisdictional limitations and lack of sufficient funds to provide adequate manpower or modern equipment are among the most frequently cited obstacles to the attainment of this objective. While most local law enforcement officials and prosecutors are honest and dedicated in their efforts to stamp out organized crime, too often local criminal statutes are not vigorously enforced or prosecuted because a dishonest policeman or prosecutor is motivated solely by financial or political gain. (Report at 1.)

The junior Senator from Washington (Mr. JACKSON), in the course of those hearings, during an exchange with Jacob Grumet, a member of the Commission of Investigation of the State of New York, aptly expressed it this way:

> You and I know what the problem is. They buy off the judge, they buy off the prosecutor, they buy off the sheriff, and they buy off the law enforcement officers locally, directly or indirectly. (Hearings, Part I, at 31.)

Today's corruption is less visible, more subtle and therefore more difficult to detect and assess than the corruption of the prohibition era. But organized crime flourishes only where it has corrupted local officials. And as the scope and variety of organized crime's activities have expanded, its need to involve public officials at every level of local government has grown.

Mr. President, something must be done to stop this flow of money to organized crime from gambling enterprises, and we must stop the corruption of local officials and law enforcement officers by organized crime. To do this we need new weapons. Title VIII would give the Federal Government two new means to aid the States in combating large-scale gambling. Part A contains special findings on the character of syndicated gambling. Part B of title VIII would make it a felony for large-scale gamblers and law enforcement officers or public officials to conspire to obstruct enforcement of State and local laws against gambling through bribery of governmental officials. Part C of this title would make it a Federal offense to engage in a large-scale business enterprise of gambling.

At this point, Mr. President, I want to make one thing very clear. No part of this title will, or is intended to, preempt local efforts in this area, but it will add to such local efforts the expertise, the manpower, and the full resources of the Federal Bureau of Investigation, and other appropriate agencies of the Federal Government.

There is one other important point which I have not touched upon, and it is a point on which the Congress cannot legislate. I refer to public apathy about gambling—indeed, about organized crime in general. The public must be informed of the dangers of organized crime, and must be cognizant of the fact that each bet with the local bookie, no matter how small, is not a harmless diversion but part of a large-scale process leading to the eventual decay of his community, for the effects of apathy poison our whole well-being. The late Robert F. Kennedy, commenting on the relation between organized crime and street crime, put it well:

> Crime in the streets is directly related . . . public apathy about organized crime. The young man in the ghetto who decides to steal rather than make that extra effort to find work is unquestionably influenced by the success which the numbers runner down the block has had. The bookmaker or the narcotics pusher is all too often the only conspicuous figure of success in the ghetto, the one who has demonstrated how to beat the system and gain wealth and prominence. Similarly, the worker who belongs to a corrupt union, or the businessman who must pay protection to keep his business or his life, are taught every day—as are their children—that our legal system has nothing to offer them. As long as the public cares too little about the racketeers who control the gambling and the narcotics and the prostitution that feed upon the poor and the weak there will be youngsters who see the gangster's way as the model, the path to follow. (Address before the Columbia Law School Forum, Jan. 19, 1967, reprinted in 113 Cong. Rec. 1243 (Jan. 23, 1967).)

It is in this context, particularly, that the Senate must assess part D, which would set up, 2 years after the enactment of the bill, a Commission To Review National Policy Toward Gambling. Federal concern over gambling has a long history. Nevertheless, it is time to take stock of where our Nation is and what direction it should take in the future. We know too little about the full scope of the impact of syndicated gambling and attendant police corruption on our society, or about the most realistic way to respond to them. There is a need here for careful study and public enlightenment after the formulation of prudent action plans.

Nevertheless, the ACLU characterizes title VIII as making it "a Federal offense to engage in 'an illegal gambling business' or to participate in a 'scheme to obstruct' state criminal laws with the intent to facilitate such business, without regard to any connection with interstate commerce"—ACLU January 1970 letter at 9. In fact, however, title VIII does not make the proscribed conduct criminal "without regard to any connection with interstate commerce." Instead, it limits its definition of the prohibited "illegal gambling business" to gambling operations so large or permanent that they

necessarily depend upon and affect interstate commerce, and thereby eliminates the need of adducing evidence in each case linking the illegal business to the facilities of interstate commerce.

As the special findings in title VII point out:

The Congress finds that (1) illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof; (2) illegal gambling is dependent upon facilities of interstate commerce for such purposes as obtaining odds, making and accepting bets, and laying off bets; (3) money derived from or used in illegal gambling moves in interstate commerce or is handled through the facilities thereof; (4) paraphernalia for use in illegal gambling moves in interstate commerce; and (5) illegal gambling enterprises are facilitated by the corruption and bribery of State and local officials or employees responsible for the executive or enforcement of criminal laws.

During hearings before the Senate subcommittee on S. 2022, which has been incorporated into S. 30 as title VIII, Assistant Attorney General Will Wilson, who is in charge of the criminal division of the Department of Justice, stated:

Testimony already given before the committee . . . establishes conclusively that without interstate commerce organized gambling cannot exist." (Hearings at 382.) Mr. Wilson further testified that "[t]here can be little question that illegal gambling has a substantial effect on interstate commerce. It uses the facilities of interstate commerce, its profits are distributed in interstate commerce, and its paraphernalia is shipped in interstate commerce." (*Id.* at 381.)

The committee report—at 73–74—is explicit regarding the authority of Congress to enact legislation under the commerce clause to prevent criminal activities which affect interstate commerce. The pertinent section of the report states as follows:

It is well established that Congress is empowered under the commerce clause to prevent criminal activities which take place in or affect interstate commerce. As Mr. Justice Day stated for the Supreme Court in *Caminetti* v. *United States*, 242 U.S. 470, 491 (1917):

The authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.

It is equally well established that once Congress concludes that some general activity affects interstate commerce, and enacts a statute regulating participants in that activity, an individual participant will not be heard to claim that his particular segment of the activity does not affect interstate commerce. See, e.g., *Wickard* v. *Filburn*, 317 U.S. 111 (1942); *cf. Heart of Atlanta Motel* v. *United States*, 379 U.S. 241, 258 (1964); *Katzenbach* v. *McClung*, 379 U.S. 294 (1964).

The need for Congress to take action such as that proposed in title VIII was illustrated recently, when the Justice Department disclosed a conspiracy through which the chief of intelligence of the Columbus, Ohio, Police Department, received $40,000 over a 3-year period, and certain patrolmen received some $250 per month, for failing to close a known numbers operation. A Federal prosecution was brought, but ended with an acquittal by a jury apparently convinced of the defendants' substantial guilt, but not of the Federal authorities' jurisdiction under existing law. According to Assistant Attorney General Will Wilson, "the daily intake of one operator was believed to exceed $15,000." Illegal gambling businesses of that size, especially where local law enforcement is crippled by corruption, are most appropriate subjects of Federal jurisdiction, and title VII would strengthen the ability of our laws to deal with them.

The specific objections to title VIII raised by the city bar committee and by the Civil Liberties Union are not persuasive. Once again, the city bar committee's statement mirrored that of the Civil Liberties Union; both claim that title VIII's use of the word "scheme" in the provision making it unlawful "for two or more persons to participate in a scheme to obstruct the enforcement of the criminal laws of a State or a political subdivision thereof" is so vague as to be unconstitutional. They join in contrasting the term "scheme" with the term "conspiracy," which they both quote Mr. Justice Jackson as criticizing for its elasticity—ABCNY at 36; ACLU January 1970 letter at 9. Neither group points out that an individual can commit the offense of conspiracy simply by making an informal verbal agreement with one other man to commit a crime which actually never occurs, while the "overt act" which the law requires can be committed by the other member of the conspiracy and can be, in itself, an innocent act. Title VIII, on the other hand, requires that a defendant "participate in a scheme," and thus requires that each individual defendant take an active part, whether by financing supervising, operating, or profiting from the scheme. The additional element of "participation," not required in conspiracy cases, makes the prohibition in title VIII more specific in one respect than the laws prohibiting conspiracy, which, although they have been criticised by Mr. Justice Jackson and some others, are today of unquestioned validity and great utility.

There are, in addition, strong affirmative reasons for using the term "scheme" in title VIII. Some of the reasons were presented in testimony before the Senate subcommittee by the Assistant Attorney General Will Wilson:

Senator MCCLELLAN. What is the difference under your proposed section 1511, title I, between "devising or participating in a scheme," and "conspiring"?

Mr. WILSON. Well, the purpose of that language is to broaden the word "conspire" to include a situation, for instance, where you could trace some of the profits of a scheme of a gambling enterprise into a given individual, but couldn't ever put him in the room where conversations or other acts of conspiracy occurred.

Senator MCCLELLAN. What you are doing is saying that if you accept the fruits or benefits of that conspiracy you would be guilty?

Mr. WILSON. Yes, sir. As you probably know, in the biggest gambling rackets it is relatively easy to make cases against the street sellers, and clear up through the bookkeeping department, but through the use of carriers and banking connections it is sometimes very difficult to develop proof against the person who is the most guilty, that is the top proprietor, because he isolates himself from it rather effectively. This would provide broader language which would permit us to go after the big ones with a lessor degree of proof than in conspiracy.

Senator MCCLELLAN. In other words, if they get a take out of it, whether or not they participated in the actual activity, it would make no difference, they would be guilty?

Mr. WILSON. That is the intent of the language.

Senator MCCLELLAN. Someone might start something down here, and get it going, but then outsiders step in and say, "Well, we are going to take a part of it." They should be included, too.

Mr. WILSON. And conceivably might not either have been a party to it or known about it in the sense of knowing the mechanics of it—at least to the extent that you could prove it.

Senator MCCLELLAN. But if they step in and get the benefits or the fruits from it, then they are guilty?

Mr. WILSON. That is the meaning of the language (hearings at 397).

It should be noted in addition, that the use of the word "scheme" in a substantive criminal prohibition is not novel. The mail fraud statute, 18 U.S.C. 1341, makes it criminal to "devise any scheme or artifice to defraud."

The substantive prohibitions in title VIII are criticized by the city bar committee and the Civil Liberties Union for overbreadth on another ground. They consider the prohibitions broad enough to reach very small gambling operators, and the city bar committee, for example, feels that title VIII would permit Federal prosecution of a "mom and pop" bookmaking operation which pays a small bribe to the policeman on the beat—ABCNY at 37. To support these contentions, both the union and the bar committee interpret title VIII's prohibitions as reaching not only the operators of a gambling business, but also the players. That interpretation is unwarranted. The statute itself states that it prohibits only "participation in an illegal gambling business" or "participation in a scheme to obstruct the enforcement of the criminal laws". Obviously, playing the horses does not make one a participant in the gambling business, any more than buying groceries at the A & P makes a person a participant in the grocery business. The committee report emphasizes the point by specifying that the prohibitions do not "include the player himself in an illegal game"—Report at 155.

When it is understood that title VIII does not prohibit the playing of an unlawful game, it becomes still more obvious that title VIII prohibits only relatively large gambling operations. Title VIII defines an "illegal gambling business" as involving five or more participants in the gambling business, and either remaining in operation over 30 days or grossing at least $2,000 per day. A fair reading of those elements of the crime created by title VIII makes it clear that the two-person "mom and pop" bookmaking operation whose future concerns the bar committee does not constitute an "illegal gambling business" under title VIII. One can only wonder how the Civil Liberties Union was able to state in its January 1970 letter that "the statute itself easily encompasses such petty crimes and criminals and by

its terms could apply to two men who park illegally on their way to an all-night poker game"—ACLU January 1970 letter at 10.

The union—ACLU January 1970 letter at 10—and bar committee—ABCNY at 38—join also in objecting to the provision of title VIII which reads:

> For the purposes of this section, if it is found that a gambling business has five or more persons who participate in such business and such business operates for two or more successive days, the probability shall have been established that such business receives gross revenue in excess of $2000 in any single day.

The union begins its criticism of that provision by misstating it. The union states that the provision creates a legislative conclusive presumption that the specified business "has" the necessary daily gross revenue—ACLU January 1970 letter at 10. A reading of the provision itself makes clear that the presumption is not that the business "has" such gross revenue—a presumption which would be useful at trial—but only that it probably has such gross revenue—a presumption which has utility only in the sole situation where probability is an issue: a search or arrest.

It is strange, therefore, that both the union and the bar committee complain that the statute permit's application of the presumption at trial. The Senate committee report—at 156—and the Senate hearings—at 401—make it explicit that the presumption applies only to the making of probably cause findings. It would seem, though, that such explicitness was not necessary, since whether or not an essential element of the offense has been shown probably to have occurred, is as the union and bar committees surely know, utterly immaterial at trial. Even if this provision of title VIII attempted to create such a legislative presumption, the end result of the presumption could not be admitted in evidence or disclosed to the jury in the case, because of its immateriality.

The bar committee and the union criticized the provision concerning probability also on the ground, as expressed by the bar committee, that "we have grave doubt whether a constitutionally required nexus between the findings and the facts on which it is made to depend can be established. *Cf. Leary* v. *United States*, 95 U.S. 6, 6 (1969); *Tot* v. *United States*, 319, U.S. 463 (1943)"—ABCNY at 38. The Leary and Tot cases do not deserve even citation as analogous authorities. They dealt with legislative presumptions concerning the establishment of elements of offenses for use at trial when proof beyond a reasonable doubt was required, so involved a far tighter "nexus" than is necessary for the validity of the probability provision of title VIII.

The bar committee and Civil Liberties Union object also to the requirement of title VIII that a gambling business, in order to be subject to the prohibitions of title VIII, be conducted in violation of the law of a State or a political subdivision thereof—ABCNY at 39–39; ACLU January 1970 letter at 10. As soon as some thought is devoted to the question, it becomes apparent that the supposed difficulties with this type of reference to State law in a Federal statute are actually nonexistent. Title VIII simply requires that the gambling business which is to be brought within its terms have been conducted in violation of the law of a State or a political subdivision having jurisdiction over the conduct violating its laws. If there is one or more States or political subdivisions as to which that is shown to be true, then that element of the offense under title VIII has been established. Title VIII, in this respect follow the example of 18 U.S.C. 1952, which punishes interstate travel with intent to promote any unlawful activity, and which defines "unlawful activity" as including "any business enterprise involving gambling in violation of the laws of the State in which they are committed."

As for the reference by the city bar committee to the provision of title VIII that "gambling" includes bookmaking and several other specified gambling activities, but does not provide that the list of activities is exclusive, and the committee's statement that "we question whether such an important definition be open-ended,"—ABCNY at 37 n. 66—I simply call to mind the disastrous experience with legislation designed to curb the use of interstate commerce to promote slot machine gambling. Senators will recall, whether the city bar committee does or not, that the inventive genius of certain manufacturers of electromechanical devices in the Chicago area required the Congress, until it learned that undue specificity is no virtue in a gambling statute, to enact a series of laws designed to curb first the one-armed bandit, and then progressively more sophisticated machines for evading the latest Federal prohibitions. I suggest we decline the New York City Bar Committee's invitation to repeat that experience. See the Gambling Device Act of 1951, ch 1195, 64 Stat. 1134, as amended, 15 U.S.C. § 1171 (1964); H.R. Rep. No. 1828, 87th Cong. 2d Sess. 1 (1962).

On the contrary, I find the complaints and suggestions of the city bar committee and the Civil Liberties Union regarding title VIII to be, by and large, misguided and unconstructive. Although the New York City Bar Committee does not mention the fact, title VIII has been approved, in major part, by the House of Delegates of the American Bar Association, as well as by the U.S. Senate. It is strongly supported by the administration, which initiated the introduction of the bill. I think it is clear title VIII has withstood the criticism leveled at it by the bar committee and the union, and should be recognized as a valuable proposal against organized crime.

TITLE IX—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Mr. President, title IX of S. 30 as originally introduced was supported by the Department of Justice in these terms:

> The Department favors the objectives of S. 1861, and believes that with some possible revisions its combination of criminal penalties and civil remedies, which has been highly effective in removing and preventing harmful behavior in the field of trade and commerce, may be effectively utilized to remove the influence of organized crime from legitimate business. (Hearings at 404, 405.)

The subcommittee and committee have now agreed with the Department on their suggested revisions and, along with other improving amendments, have approved title IX.

The infiltration of legitimate business by organized crime has been increasingly documented in the past year. Once it invades a legitimate field of endeavor, the mob quickly brings with it a full range of corrupt practices. It sometimes uses terror tactics to obtain a larger share of the market. Labor unions are infiltrated, and then labor peace is sold to businesses. This does not inure to the benefit of the workingman. To the contrary, for example, as documented in a grand jury report I inserted in the CONGRESSIONAL RECORD, volume 115, part 28, page 37196, in New Jersey members of the mob recently required payments from a contractor so that nonunion men could work at lower wages on a project. In business, the mob bleeds a firm of assets, then takes bankruptcy. It steals securities and then uses the stolen securities to fraudulently obtain funds from lending institutions. It evades taxes and thereby gains an unfair advantage. It monopolizes goods and services thereby raising prices. Through the violence used in its operations and its rigidly enforced code of silence, as well as exploitation of nonmembers in its schemes, the mob seeks to gain immunity from the rules of our society governing business and labor practices. We cannot afford to allow it to succeed in this endeavor.

Mr. President, title IX is aimed at removing organized crime from our legitimate organizations. Experience has shown that it is insufficient to merely remove and imprison individual mob members. Title IX attacks the problem by providing a means of wholesale removal of organized crime from our organizations, prevention of their return, and, where possible, forfeiture of their illgotten gains.

Title IX uses three primary devices to achieve these ends—criminal forfeiture, civil remedies which have proven successful in the antitrust area, and a number of civil investigative procedures.

The concept of criminal forfeiture is an old one in our common law. It was extensively used in England and had some limited use in the colonies. Title IX, drawing on this early history, would forfeit the illgotten gains of criminals where they enter or operate an organization through a pattern of racketeering activity. To bring this special criminal remedy into play, the offender must be chargeable as a principal in the commission of at least two racketeering acts, each of which is chargeable as a crime apart from title IX.

Since enactment of the Sherman Antitrust Act in 1890, the courts have used several equitable remedies, and developed new ones to implement the language of 15 U.S.C. sections 1 and 2. I believe, and numerous others have expressed a similar belief, that these equitable devices can prove effective in cleaning up organiza-

tions corrupted by the forces of organized crime. The first step in cleaning up an organization will be to require the mob to divest itself of its holdings in legitimate endeavors, where its members have abused that right by the condemned practices. In some cases, the organization will no doubt be so corrupt that it will have to be dissolved. Once the mob is removed, an injunction against it ever again entering that particular type of organization should prove effective to prevent its return to corrupt anew.

As the criminal process has a grand jury for investigations, the civil process will need an investigative arm to determine whether there have been violations. To accomplish this end, the Attorney General is authorized to use either a civil investigative demand or investigative powers now existing in other agencies.

Mr. President, I am sure that there are some who are not aware of the extent of infiltration of our legitimate organizations by the mob. The facts, however, are truly disturbing.

According to Internal Revenue sources, of this country's 113 major organized crime figures, 98 are involved in 159 businesses. In like manner, the President's Crime Commission in 1967 reported that racketeers control nationwide manufacturing and service industries with known and respected brand names. It has also been reported that the mob controls one of the largest hotel chains in the country, dominates a bank with assets from $70 to $90 million, operates a $20 million yearly gross laundry, and so on. In an Eastern State the mob burned several stores and killed employees of a large grocery chain—the venerable A. & P. Nevertheless, violence is not the mob's only technique. Approximately 200 syndicate-inspired bankruptcy schemes are perpetrated annually, each involving up to 250 or more creditors and upwards of $200,000 in merchandise or material. Organized criminals, too, have flooded the market with cheap reproductions of hit records and affixed counterfeit popular labels. They are heavily engaged in the illicit prescription drug industry.

This is just a sampling. I could go on at length in this fashion, but I think the necessary point has been made.

Nevertheless, the city bar committee attacks title IX and the statement in the Senate report—at 34—that the list of crimes the commission of which constitutes one element of the prohibitions in title IX is a list of "specific State and Federal criminal statutes now characteristically violated by members of organized crime—ABCNY at 41. The bar committee complains that the list is too inclusive, since it includes offenses which often are committed by persons not engaged in organized crime. The Senate report does not claim, however, that the listed offenses are committed primarily by members of organized crime, only that those offenses are characteristic of organized crime. The listed offenses lend themselves to organized commercial exploitation, unlike some other offenses such as rape, and experience has shown they are commonly committed by participants in organized crime. That is all the title IX list of offenses purports to be, that is all the Senate report claims it to be, and that is all it should be.

Members of La Cosa Nostra and smaller organized crime groups are sufficiently resourceful and enterprising that one constantly is surprised by the variety of offenses that they commit. It is impossible to draw an effective statute which reaches most of the commercial activities of organized crime, yet does not include offenses commonly committed by persons outside organized crime as well. A few illustration should make that point. J. Edgar Hoover, for example, in testimony before the House Appropriations Subcommittee considering Justice Department appropriations for 1970, cited a variety of offenses committed by organized crime leaders, including assault on a Federal officer, bank robbery, and conspiring to transport stolen television sets in interstate commerce—hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 91st Congress, first session, part 1 at 557 (1969). At another point in the testimony before that subcommittee, Mr. Hoover, for example, testified:

> We have over 30 pending cases (March 1, 1969) involving thefts of securities from brokerage houses. Close associates and relatives of La Cosa Nostra figures are known to be involved in at least 11 of these cases. (*Id.* at 559.)

In his most recent testimony for 1971, he cited these offenses: armed robbery, pornography, stolen securities, Federal Reserve Act, theft, perjury, burglary—hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 91st Congress, second session, part 1 at 770–776 (1970). At one point in his testimony, for example, he indicated:

> In New York City, the late La Cosa Nostra "Commission" member Vito Genovese has not been replaced yet and his organization is being run by an "acting boss" and a crew of "captains." Two of these "captains" have been convicted in recent months as the result of FBI investigations, and two others are currently awaiting trial. On July 23 and 24, 1969, Sam Mavarite, a captain, and 10 of his associates were arrested in five States, breaking up one of the country's largest interstate operations in pornography and obscene literature. (*Id.* at 770.)

Indeed, one of the statutes which the city bar committee cites as an example of a Federal law which should not be included in the title IX list of offenses is the statute prohibiting use of a stolen telephone credit card—18 U.S.C. 1343. Credit card offenses illustrate my point extremely well, because while they are commonly committed by persons having no organized crime connections, organized crime has made a big business out of dealing in stolen and counterfeit credit cards, sometimes selling $250 kits, each with a credit card and proof of identity. Credit cards have, therefore, played a role in organized crime activities. For example, Salvatore "Bill" Bonanno, son of former Mafia boss Joseph "Joe Bananas" Bonanno and a Cosa Nostra member, was recently convicted of mail fraud and conspiracy for using a Diners Club credit card extorted from a New York travel agent. These examples, of course, were only Federal crimes; when one examines State offenses as well, still greater variety appears.

It is self-defeating to attempt to exclude from any list of offenses such as that found in title IX all offenses which commonly are committed by persons not involved in organized crime. Title IX's list does all that can be expected, as does the list found in the electronic surveillance provisions of title III of the 1968 Safe Streets Act—it lists offenses committed by organized crime with substantial frequency, as part of its commercial operations. The danger that commission of such offenses by other individuals would subject them to proceedings under title IX is even smaller than any such danger under title III of the 1968 act, since commission of a crime listed under title IX provides only one element of title IX's prohibitions. Unless an individual not only commits such a crime but engages in a pattern of such violations, and uses that pattern to obtain or operate an interest in an interstate business, he is not made subject to proceedings under title IX.

The union offers an inaccurate and prejudicial criticism of title IX when it states that " 'pattern of racketeering activity' is defined as two or more acts of 'racketeering activity,' " and worries that a person could be subjected to the sanctions of title IX simply for committing two widely separated and isolated criminal offenses, one of which related to an interstate business. Again, a careful reading of title IX would have informed the union that a pattern under title IX is not defined as two or more acts of racketeering activity, but requires them. As the Senate committee report points out:

> The target of title IX is thus not sporadic activity. The infiltration of legitimate business normally requires more than one "racketeering activity" and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern—report at 158.

The term "pattern" itself requires the showing of a relationship, and the committee report thus reinforces that interpretation. So, therefore, proof of two acts of racketeering activity, without more, does not establish a pattern and the ACLU's fears are unwarranted.

Once again, the city bar committee complains that a reference to State law, this time found in title IX, creates choice of law problems—ABCNY at 42. Once again the objection is groundless, for reasons I have explained in reference to title VIII. An individual who engages, for example, in a lending transaction which violates the law of any State having jurisdiction over the transaction, has broken a State law. Thus, he satisfies that element of the prohibitions of title IX.

Neither is the city bar committee correct when it describes the difficulties of tracing tainted funds as nearly "insuperable"—ABCNY at 8, 41. Such tracing is difficult, of course, but it has been done in the past. The FBI, for example, has traced money skimmed from Las Vegas casinos into Swiss bank accounts. That tracing was done, it is true, through unlawful surveillance, but the enactment in 1968 of authority for court-supervised

electronic surveillance holds the promise of similar tracing by legal means in the future. Other titles of S. 30, in addition, contain new investigative techniques, such as grants of use-restriction immunity to witnesses, which will make the tracing of tainted funds more practicable, though still difficult. It should be remembered, too, that only one of the three prohibitions in title IX requires tracing of funds and that violations of the other two—which essentially proscribe acquisition or operation of a business through racketeering activity—will be far easier to prove.

Although the Civil Liberties Union objects to the procedure used for issuing and executing a civil investigative demand under title IX, on grounds such as the alleged burden on a witness of bringing before the court a proceeding to resist allegedly unreasonable or improper investigative demands, those procedures are substantially the same as those presently used by grand juries, Internal Revenue Service investigators, and investigators using the civil investigative demand authorized for antitrust investigations.

Nor is the union on firmer ground in objecting to civil investigative demands on constitutional grounds. The union was so bold as to state, in January 1970, that "if material acquired in connection with a civil investigation can be used in a subsequent criminal case, any fifth amendment privilege would thereby be destroyed. Unless this privilege covers all prosecutions which result from the gathering of this information, broad civil investigative powers in an area involving criminal activity would clearly be unconstitutional"—ACLU January 1970 letter at 12. A person reading the Civil Liberties Union objections on constitutional grounds to titles I, II, VII, X, and other titles of S. 30, would do well to keep in mind the comparison between this language concerning title IX, in which the union made flat and absolute assertions of clear unconstitutionality, with the decision of the Supreme Court when it spoke on the subject shortly after the union filed its statement. In that case, *United States* v. *Kordel*, 6 Crim. L. Rept. 3059—2-24-1970—the Supreme Court rejected the criticisms leveled by the ACLU against title IX, in the context of the Federal Drug Administration's enforcement of its governing statute by civil and criminal means.

The concept of title IX has been generally approved by the House of Delegates of the American Bar Association and, with two minor reservations, by the Judicial Conference of the United States. It offers the first major hope of beginning to eradicate the growing organized criminal influence in legitimate commerce, while posing no real threat to civil liberties. It should be supported by all those who wish to turn the tide of lawlessness.

TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

Mr. President, title X would authorize extended prison sentences for carefully defined categories of particularly dangerous special offenders.

Title X authorizes a Federal prosecuting attorney to notify an adult felony defendant and the court before trial on any grounds for finding the defendant to be a dangerous special offender. The concept of dangerousness is defined, as are the types of special offender: recidivist, professional offender, and organized crime offender. The court determines the accuracy of the allegations upon a full hearing with substantial presentence report disclosure and rights to notice, counsel, compulsory process, and cross-examination, imposes sentence up to a special maximum of 30 years, and records its findings and reasons for the sentence. The title authorizes appellate review of the sentence at the instance of the defendant or the Government, preserves the right of a Federal court to consider the fullest information possible in determining an appropriate sentence, and establishes within the FBI a central repository for admissible copies of conviction records.

Title X would be a dramatic improvement of our law in the one area, sentencing, which is most important to the great majority of defendants and yet has received the least legal development by the Congress and the courts. The basic difficulties in our sentencing law have been that, for a given crime, every offender has been exposed to the single maximum authorized punishment set by the Congress, and that a trial court's selection of a particular penalty at or under that maximum has not been subject to appellate review. Those two factors have led the Congress, as it has fixed maximum sentences for individual offenses over the years, to set the maximums at compromise levels which curb somewhat the danger of excessive sentences for ordinary offenders, but are of insufficient length to protect society by incapacitating recidivists, professionals, and Mafia members or others engaged in organized crime.

The inadequacy of sentences imposed upon organized crime leaders has been well known to racket prosecutors for years. Our people, too, are aware of the facts. A Gallup poll early last year found that 75 percent of those interviewed thought that our courts did not deal harshly enough with criminals. (N.Y. Times, Feb. 16, 1969, p. 47, col. 1.) A recent staff study by the Criminal Laws Subcommittee based on FBI sentencing data, moreover, confirms that experience and the judgment of our people. That study appears in the CONGRESSIONAL RECORD, volume 115, part 25, pages 34389–34394, so it is necessary now to point out that two-thirds of La Cosa Nostra members included in the study and indicted by the Federal Government since 1960 have faced maximum jail terms of only 5 years or less, and that nevertheless fewer than one-fourth have received the maximum sentences, 12 percent have received no jail terms, and the sentences of the remainder have averaged only 40 to 50 percent of the maximums.

Statistics, however, outline only the bare bones of the situation. An example should flesh out the deplorable situation. One of the worst gangsters uncovered in the labor racketeering investigation of the Select Committee was Anthony "Tony Ducks" Corallo, then a captain in the Lucchese family of La Cosa Nostra. It was Corallo who helped James Hoffa gain control of New York City's 140,000 teamsters. Our hearing record showed how this gangster brought in 40 hoodlums with records of 178 arrests and 77 convictions for crimes ranging from theft, robbery, burglary, and stinkbombing to extortion and murder. One New York employer told how he hired Corallo simply to walk into his plant and "glance at the employees to keep them in line." The late Robert F. Kennedy, our committee counsel, commented, "This seemed rather funny at the time. But when Tony Ducks appeared on the witness stand and turned his glare on us, I changed my mind." (Kennedy, *The Enemy Within*, at 81 (1960).)

It was just such experiences as this that led Kennedy, when he became Attorney General, to mount the first truly effective, concentrated Federal attack in our Nation's history on organized crime, and, by 1962, Corallo had been convicted under 18 U.S.C. section 1952, the Federal Anti-Racketeering Act, for conspiracy to pay a $35,000 bribe to a New York judge and an assistant U.S. attorney to fix a cohort's sentence in a $100,000 bankruptcy fraud case. Despite Corallo's shocking public record as a vicious racketeer, he was sentenced to but 2 years out of a possible 5. He was actually released to the street within 18 months, and there is every indication that he and his associates control at least seven of the 56 Teamster locals in the New York area, piratically forcing millions of consumers to pay hidden tribute.

Nevertheless, this is only half of the deplorable story. In June of 1968, Corallo once again stood before the same judge, incredibly once again convicted under the same Federal statute. This time, by loan sharking a financially pressed city water commission, he had been able to arrange and share a $40,000 kickback on a city contract. In sentencing Corallo, the judge observed:

> What the court noted then about him still remains true. His entire life reflects a pattern of anti-social conduct from early youth. It is doubtful that his money over any substantial period of his adult life came from honest toil. It is fairly clear that his means derived from illicit activities—bookmaking, gambling, shylocking and questionable union activities.

Nonetheless, the court this time—incomprehensibly—gave Corallo only 3 years out of a possible 5.

Mr. President, if we do not give gangsters such as Corallo the maximum, for whom then will we reserve it?

Mr. President, as convicted organized crime offenders like Corallo walked out free to resume their criminal careers, they were scoffing examples that for big-time mobsters, crime in America too often does pay—and richly.

Title X will begin to correct that situation by implementing the principle, approved by the Department of Justice, the ABA, the National Council on Crime and Delinquency, the American Law Institute, and the President's Crime Commission, that the Congress should authorize one maximum sentence for ordi-

nary offenders and a greater maximum for more dangerous offenders.

All three of title X's definitions of special offenders will apply in some cases to hardcore members of large criminal syndicates. For example, the staff sentencing study referred to previously indicated that almost 60 percent of La Cosa Nostra members included in the study would, upon conviction of another Federal felony, qualify under title X as recidivists. More importantly, the three definitions have been so drawn as to accurately define the three types of offenders who should be singled out for special sentencing treatment, regardless of their relationship to La Cosa Nostra. Again, recidivists are an obvious example. The National Commission on the Causes and Prevention of Violence recently reported that "by far the greatest proportion of all serious violence is committed by repeaters. While the number of hardcore repeaters is small compared to the number of one-time offenders, the former group has a much higher rate of violence and inflicts considerably more serious injury—CONGRESSIONAL RECORD, volume 115, part 26, pages 35546. 35547. The staff sentencing study revealed that 68 percent of all persons arrested on Federal charges during the period of the study who would have qualified as recidivists under title X accumulated an average of 4.3 charges per offender following those Federal arrests.

In view of modern knowledge of the role recidivism plays in our exploding crime problem, we have gone too long without a Federal general recidivist statute, and it would be intolerable if now we should reject this opportunity to enact a law making the distinction between aggravated offenders and ordinary ones for the vital purpose of sentencing.

The provision of appellate review of sentences is of great importance for offenders who are shown under title X to be unusually dangerous to society and are exposed to unusually long sentences. They implement a recommendation of the President's Crime Commission that—

> There must be some kind of supervision over those trial judges who, because of corruption, political considerations, or lack of knowledge, tend to mete out light sentences in cases involving organized crime management personnel. Consideration should therefore be given to allowing the prosecution the right of appeal regarding sentences of persons in management positions in organized crime activity or groups. Constitutional requirements for such an appellate procedure must first be carefully explored. (Report at 203.)

The appellate review provisions of title X have been drawn with great care so as to avoid infringing individual rights under the due process and double jeopardy clauses. Supreme Court decisions rendered last term, and lengthy and detailed hearings into the legal and constitutional aspects of appellate review of sentences, have indicated that the concept can be implemented as title X does within constitutional bounds. Appellate review under title X will not only permit correction of unjust sentences in particular cases, it will also promote the evolution of sentencing principles and enhance respect for our system of justice. It promises a major improvement in the administration of criminal justice at a stage where that improvement long has been needed.

Nevertheless, the ACLU and bar committee are critical of title X and in particular its definitions of "dangerous special offenders," who are made subject to extended prison terms. The phrase "special offender" is defined in title X to include three types of criminals found by the Senate to pose special threats to cially "dangerous," and defines that professional criminals, and organized crime offenders, but each type is defined in detail. Title X makes the special prison term depend in addition on a separate court finding that the defendant is especially "dangerous," and defines that term. The ACLU, however, finds each of those four definitions vague or overbroad.

The ACLU summarizes the definition of a recidivist by saying it covers—a person previously convicted two or more times in any court—and imprisoned one or more times—of offenses punishable by imprisonment for more than 1 year—regardless of how long ago the convictions occurred or for what crimes, or whether the person was over or under juvenile court age. This summary is inaccurate and misleads the reader in two respects.

First, it states that the extended sentence can be imposed for any crime, while actually title X provides that the extended sentence can be imposed only if the defendant's latest crime, for which he is to be sentenced, is a felony. The ACLU must have been alert to this limitation on the scope of title X. It was the recommendation of the ACLU which led the Senate Judiciary Committee to amend the details of title X's definition of a prior felony conviction, although the ACLU's recent statement draws no attention to the Judiciary Committee's acceptance of this earlier suggestion.

Second, the ACLU's statement that the recidivist definition covers a prior conviction "whether the person was over or under juvenile court age" is a half-truth. It omits to mention that under the definition, as the committee report makes perfectly clear, juvenile proceedings are not included.

On the other hand, the city bar committee is correct in its statement that a defendant's previous convictions expose the defendant to the possibility of sentencing as a recidivist. (ABCNY at 48 n. 81.) Such convictions should be considered, since unlike juvenile proceedings they reflect, as much as to ordinary criminal convictions, the results of full criminal trials of defendants, and findings after jury trial or waiver of jury trial that the defendants committed the felonies involved. Once such a defendant's commission of a subsequent felony has demonstrated that the defendant failed to respond to his youth offender sentence, there is no reason to require the court to close its eyes to the significance of the defendant's prior felonious conduct. After all, convictions for which a defendant receives youth offender sentences are not, as the city bar committee asserts, "offenses . . . received" by the defendant—they are felonies committed by him, and are quite relevant in determining the sentence which the defendant should receive for a subsequent felony.

The evaluation of the recidivist definition by the union and bar committee is no more valid than the union's summary of it. The union implies—at 13—that convictions occurring long before the defendant's latest felony should not be considered a basis for sentencing him as a repeater. The city bar committee similarly raises fears that title X may be applied to impose the maximum sentence authorized by title X, a 30-year term of imprisonment, to the latest aggravated offender who comes within the terms of the title X definitions. For example, the bar committee states that "under Section 3575(e)(1), a judge could give the same thirty-year sentence to an offender guilty of a minor felony, for which the maximum punishment was only two years, as to a person convicted of bank robbery, who could otherwise receive twenty-five years—all based upon a subjective evaluation of prior convictions—ABCNY at 44–45. This is so, the city bar committee asserts, because under title X—the severity of the sentence is unrelated to the defendant's most recent crime—*Id.* at 47.

Of course, it is true that not every individual who barely satisfies the title X recidivist criteria will at the time of his sentencing require 30 years of incarceration—and the same would be true of any other definition of repeaters, however restricted its terms. A defendant's most recent felony, for example, may not have discovered or prosecuted until several years after its commission and he may have completely reformed in the meantime, or there may be other extenuating circumstances.

However, such a defendant is protected from severe sentencing as a recidivist by several provisions of title X other than the definition of a recidivist. For example, the title requires that the court find at the time of sentencing that the defendant is especially "dangerous," in the sense that—a period of confinement longer than that—ordinarily provided—is required for the protection of the public from further criminal conduct by the defendant. The title also authorizes the district court in its discretion to impose a sentence less than either the special maximum or even the ordinary maximum, even though the defendant meets the statutory criteria. Furthermore, title X permits the court of appeals to review both the finding of dangerousness and the district court's exercise of discretion.

The vital point to keep in mind is that, though not every defendant barely meeting the definition of a recidivist in title X will deserve or receive a maximum 30-year sentence, every defendant who meets that definition, is found to be dangerous, and meets every other requirement of the title does merit some increase in punishment, large or small. Title X merely gives courts discretion to increase the punishment to the degree appropriate in each case.

In addition, many recidivists deserve and require very long sentences despite the fact that their most recent convictions prior to the felonies for which they are being sentenced occurred a number

of years earlier. Indeed, a subcommittee staff study of FBI sentencing experience showed that the average La Cosa Nostra member in the study had a criminal career of over 20 years. Racket prosecutors have found this pattern to be typical: a Mafia member is convicted of several minor or moderately serious offenses in early adulthood, rises in the criminal organization and is immune for many years, and then is convicted of a felony in late middle age when his prominence in the syndicate has led to a concerted effort to obtain evidence of his activities. Title X's recidivist definition covers such a criminal career; the staff study I have referred to indicated that almost 60 percent of La Cosa Nostra members upon conviction of another Federal felony would qualify under title X as recidivists. To impose a time limitation on the definition would reward syndicate members for avoiding detection of their crimes, and for corrupting law enforcement officials and witnesses. It also would prevent effective sentencing of many recidivists who are not members of organized crime but who present special dangers to society nevertheless. The complaint that prior convictions are stale overlooks the fact that each defendant covered by title X's recidivist definition has committed a new crime recently, a felony at that. We must not fetter the right of a sentencing judge to evaluate the case of every repeater in the light of all its circumstances, by imposing a mechanical, mathematical time limitation. That conclusion is the one reached by the American Law Institute in its Model Penal Code (7.03), and by States, such as Missouri, having general recidivist laws. Vernon's Ann. Mo. Stat. section 56.280 (1951) and *State* v. *Humphries*, 350 Mo. 938, 169 S.W. 2d 350. Indeed, title X's recidivist definition generally was drawn largely from the model penal code and existing State recidivist laws, and then was refined in view of testimony received by the subcommittee.

Numerous precedents from States having general recidivist statutes undercut the complaint that a recidivist sentence much more severe than that ordinarily authorized for the defendant's most recent felony is improper. Such statutes have been held constitutional as employed by the States, despite the fact that they commonly permit or require imposition of a prison sentence for life or for an extremely long term regardless of the seriousness of the defendant's most recent felony. The U.S. Supreme Court has held, for example, that the imposition of a life sentence for a third conviction is not "cruel and unusual punishment," although the defendant's latest offense merely is larceny. (*Graham* v. *West Virginia*, 224 U.S. 616 (1912).)

It is the existing recidivist statutes—at least such of them as do not impose mandatory prison sentences—which permit sentencing based upon the "subjective evaluation of prior convictions" of which the city bar committee complains. Title X, on the contrary, will make recidivist sentencing objective, both by articulating on the face of the statute the criteria for finding a defendant to be a recidivist, to a greater degree than is common in the State general recidivist laws, and by authorizing appellate review of recidivist sentences, which is designed to produce a body of decisional precedent developing and refining objective standards for discretionary sentencing of recidivists. For those reasons, the sentences under title X will be, to a far greater degree than sentences held to be valid under existing State recidivist statutes, related in severity both to the seriousness of the defendant's most recent felony and to the character of his previous convictions.

The language of title X itself quite properly declines to place mechanical limitations on the relationship which sentencing and reviewing courts must find to exist between the appropriate sentence for a recidivist in a given case and the maximum authorized sentence for his most recent felony. The committee report in the Senate does, however, make it clear—at 91, 166—that both the trial court and the court of appeals must measure the "appropriateness of any sentence to be imposed, and the provisions for discretionary rather than mandatory sentencing and appellate review provide effective means by which this principle will be applied. So far as any constitutional undercurrents in the concept of relationship between a recidivist's sentence and his most recent felony are concerned, any constitutional question would be resolved—as the reporter to the American Bar Association's Advisory Committee on Sentencing and Review, Associate Dean Peter Low, of the University of Virginia Law School, has acknowledged—hearings at 204—not upon a reading of a face of the recidivist statute but upon evaluation of each application of the statute through the imposition of a specific sentence in a specific case.

Title X's definition of a professional offender also is rejected by the ACLU, asserts that "even the Justice Department opposed a similar proposal in the original bill as being so vague as to create due process problems and, being unable to suggest constitutionally acceptable language, called for its deletion. See, for example, *Lanzetta* v. *New Jersey*, 306 U.S. 451 (1939)." (ACLU Jan. 1970 letter at 14). It is odd that the ACLU says "even the Justice Department." The Department was nearly as critical as the ACLU, and much more thorough and constructive, when it submitted its comments on the original version of S. 30. The Department proposed a great many changes in the bill, some of them major, and nearly all were accepted by the Judiciary Committee.

In fact, the committee adopted all the Department's criticisms of the professional offender definition, which are stated in the subcommittee Hearings on S. 30—at 376. Far from being unable to suggest constitutionally acceptable language, as the ACLU claims, the Department made these constructive suggestions:

> In order to withstand a constitutional attack on grounds of vagueness . . . it is felt that the definition of professional offender must be made more specific and must emphasize a pattern of specific past criminal activity and conduct in opposition to the legal structure of society as a whole, rather than emphasis on his income from a source other than legal. This could perhaps best be approached by adopting the approach taken in the Model Sentencing Act. . . .

Comparison of S. 30 as originally introduced, with the Model Sentencing Act and S. 30 as passed by the Senate, demonstrates that the Judiciary Committee made the suggested changes. Therefore, the ACLU's reliance on the Justice Department's criticism is inexplicable and irrelevant, and the union's statement that S. 30's present definition of a professional offender is "similar" to the one criticized by the Department is a falsehood.

Nor is the "professional offender" definition invalid under the case of *Lanzetta* v. *New Jersey*, 306 U.S. 451 (1939), though the ACLU implies that such is the case by citing that decision. *Lanzetta* involved a substantive statute defining a crime, while title X merely applies sentencing criteria. Substantive law must be relatively clear and precise, so that citizens may know in advance whether their acts will be crimes. Remedial law such as title X, on the other hand, may be less precise, and those who violate clear substantive prohibitions have always been required to accept a risk of relatively flexible, less predictable consequences at the stage of sentencing. In any case, neither the "professional offender" definition nor the others in title X are at all comparable to the vague, undefined terms held impermissible in *Lanzetta*, such as "gang" and "known to be a member," and similar statutory language has been sustained by the Supreme Court. See *Minnesota* v. *Probate Court*, 309 U.S. 270 (1940).

The city bar committee complains that title X's definition of a professional offender, which requires, in part, that "the defendant committed such felony as part of a pattern 'of criminal conduct,' nowhere defines what is a sufficient pattern of conduct"—ABCNY at 48. The city bar committee goes on to state that—

> The section-by-section analysis, Senate Report 164, explains that this requirement "precludes the application of the provision to an isolated offense." But all that is apparently necessary to trigger the possibility of a thirty-year sentence are two isolated offenses, no matter how widely separated in time. (*Ibid.*)

The bar committee's conclusion that two isolated offenses are sufficient is inaccurate and unwarranted. The committee reached that conclusion, and makes the conclusion appear to the reader to be tenable, only by failing to note that the Senate report, on the page immediately following the page from which the city bar committee took its short quotation, states:

> The phrase "pattern of conduct" covers continuing, repetitive, intermittent, sporadic, or other conduct in which two or more similar or different criminal acts bear relationships to one another which are relevant to the purposes of sentencing, regardless of the nature of the relationships. The variety of such relationships precludes more detailed specification of them in the bill. See proposed section 3575(e)(2), above.

Report at 165—clearly, just as in title IX, where the concept of "pattern" is employed, the intent of S. 30 is clear, on

its face and in the Senate committee report, that the term "pattern" itself conveys the requirement of a relationship between various criminal acts. In addition, the establishment of a pattern is only one of a number of elements which must be satisfied before the possibility of a 30-year sentence is triggered, such as the requirement that the defendant be "dangerous," that he have been convicted of a subsequent felony, that he have been over 21 at the time his most recent felony was committed, and so forth. The bar committee's statement that a 30-year term can be triggered by two isolated offenses and nothing more is plainly incorrect and inflammatory.

The ACLU's objections to the "professional offender" definition also include the complaint that "it is unclear whether a 'criminal' pattern of conduct includes misdemeanors as well as felonies." On the contrary, it is perfectly clear. In referring to the defendant's most recent offense, title X invariably uses the narrow word "felony," so that offense plainly must be a felony; and, in referring to the previous offenses to be considered in ruling whether the defendant is a professional or organized crime offender, it invariably uses the broad word "criminal"—so those offenses may be any crimes, whether felonies or not.

The meaning of title X in this respect is not only clear, it is sound. It follows the example of the model penal code—section 7.03—promulgated by the American Law Institute. Indeed, title X goes further than the model penal code to insure that the defendant's prior criminal activity was sufficiently serious and relevant so that it should be considered in sentencing. Both the professional and the organized crime offender definitions in title X require that the prior criminal conduct be so related to the latest offense, which must be a felony, as to form a "pattern" with it.

The ACLU also asserts that it violates the privilege against self-incrimination to permit an inference against a defendant alleged to be a professional offender to be drawn from his income or property, where it is not explained as derived from a source other than crime. The city bar committee goes still further, stating that it disagrees "that failure to explain income or property in the defendant's possession supports an inference that it was derived from a pattern of criminal conduct. The right to refrain from explaining one's sources of income in public is one that deserves recognition and protection"—ABCNY at 48, n. 82. Those assertions are incorrect for several reasons.

First, title X does not require that a defendant desiring to explain his wealth testify in person. The defendant instead can offer other witnesses or documentary evidence, and doing so is not considered self-incrimination.

Second, this provision of title X does not compel a finding that a defendant with unexplained wealth is a professional offender, it does not create an irrebuttable or even a rebuttable presumption to that effect, and it does not even require the court to draw any inference from the unexplained wealth. It is clear, from a careful reading of the face of the provision, that its sole effects are to declare unexplained wealth to be relevant, and to permit the drawing from it of any inference of fact which is logical and persuasive in the circumstances. In this connection, it is like similar permissible inference that follows from the recent possession of stolen property, which has been long upheld. See *Wilson* v. *United States*, 162 U.S. 613, 619—1896. The inference may be very strong in some cases and nonexistent or very weak in others, depending upon the type of wealth, the circumstances of its acquisition, the facts concerning the felony for which the defendant is to be sentenced, and the other circumstances of aggravation. If the sentencing judge draws any such inference, title X requires him to say so on the record, and the court of appeals reviews the issue. It is stretching the fifth amendment beyond reason to suggest that it is violated by a statute which merely permits the drawing of any inference which is persuasive and does not require the drawing of an inference which the facts do not justify. Indeed, it is surprising that the ACLU presses this objection in its statement, and does not mention that the provision was amended by the Senate Judiciary Committee, to read as it now does, in response to the ACLU's complaint that when S. 30 was introduced the provision, which then declared that every person with unexplained wealth automatically was a "professional offender," tended "to draw a conclusive presumption of guilt"—hearings at 472. Obviously, the provision no longer does that, and it no longer threatens the constitutional privilege.

Third, the Marchetti and Grosso cases (*Marchetti* v. *United States*, 390 U.S. 39 (1968); *Grosso* v. *United States*, 390 U.S. 62 (1968)) relied upon by the union shed no light on title X, since the law they invalidated made one's failure to incriminate himself a crime in itself. The ACLU seems to recognize the irrelevance of those cases, since its citation suggests only that the reader "see generally" those decisions. The precedents which are relevant to this provision of title X support its constitutionality, since they permit the use of a defendant's net worth in a tax prosecution—*cf., e.g., Holland* v. *United States*, 348 U.S. 121 (1954)—and an inference of guilt from unexplained possession of stolen property in cases of larceny and receiving stolen goods—*cf., e.g., Wilson* v. *United States, supra*. Title X's provision, which applies such a principle to sentencing criteria, is virtually identical to one in the Model Sentencing Act—section 6—approved by the National Council on Crime and Delinquency's Advisory Council of Judges, while the American Law Institute's model penal code goes still further and permits the inference that a defendant is a professional criminal from the single fact of substantial unexplained wealth—section 7.03, P.O.D., and Comment, page 43, Tent. Draft No. 2, 1954.

The ACLU's criticism of title X's "organized crime offender" definition is less detailed, more emotional, and equally unsound. It attempts to provoke a fear that that definition is overbroad and applies to "civil rights activists or political demonstrators," or to Dr. Spock or the Chicago Seven. A person can be sentenced under title X as an "organized crime offender," however, only if he was convicted of a felony—not a minor offense—and only if all the following facts are true: First. He was a member of a conspiracy to commit not just a single crime, but a pattern of crimes. Second. The conspiracy was closely related to the defendant's felony and therefore was intrinsically an especially serious conspiracy. Third. The conspiracy had at least four members, not just the usual legal minimum of two. Fourth. The defendant, as a part of the conspiracy, either: gave or received a bribe; or used force; or was a leader of the conspiracy.

The city bar committee's assertion that "it is hard to imagine any conspiracy"—ABCNY at 49—in which it will not be true that every participant in the conspiracy managed or directed part of the conspiracy is incorrect. While certain small conspiracies, such as gangs which rob stores or burglarize warehouses for a living, often delegate some aspects of their plan to individual members and involve most members of the conspiracy in the direction of part of the conspiracy, many of the most common and most profitable conspiracies engaged in by organized crime, such as large gambling businesses and schemes for distribution of narcotics, involve more conspirators at the lowest level, having no management or supervisory responsibilities, than at all the upper levels combined.

Not one of the title X criteria for finding one to be an organized crime offender is a requirement for conviction of the defendant's felony itself. Not one of those facts needs be shown in order to impose the maximum sentence which is provided for that felony in ordinary cases. Yet title X requires every one of them to be established before a sentence exceeding the ordinary maximum, however slightly, can be imposed. Those who suggest that so-called civil rights leaders engage in felonious conspiracies to commit patterns of crime must have a very low opinion of the Nation's civil rights movement. The essential point, however, is that any defendant who actually meets every one of those extra criteria of culpability and dangerousness deserves and requires a sentence longer, to some degree, than that of a defendant who meets none of them. Thus, the scope of the "organized crime offender" definition is not only permissible, it is also necessary. The Nation must not let an hysterical fear that some "political activists" will commit crimes of special gravity deter it from setting up sentencing standards which distinguish more grave from less grave offenses.

The definition title X adopts for identifying organized crime offenders is much narrower than that approved by the Model Sentencing Act—section 5. Indeed, the Director of the National Council on Crime and Delinquency, testifying before the Senate subcommittee on S. 30, went so far as to state that S. 30 "defines an 'organized crime offender' in terms that are rather similar to those in the Model Sentencing Act." S. 30's

definition "is more detailed, and perhaps in that respect superior to the corresponding provision in the Model Sentencing Act. This section we think is fine, and desirable, a useful addition in the fight against organized crime—hearings at 251. The changes made in that definition after the National Council's testimony was given have clarified it, and the Council still "fully endorses" it. Statement submitted to House Judiciary Subcommittee No. 5 at 1.

The ACLU also criticizes the provision of title X that a defendant is "dangerous" if a prison term longer than that ordinarily provided for his felony is required for protection of the public from further criminal conduct by him, and further criminal conduct by him, claiming that it contains no standards for determining what sentence is "required" that "such breadth and discretion create grave risks of abuse"—ACLU January 1970 letter at 14.

Once again the ACLU's only attempt to support an objection to title X is a citation of an inapposite Supreme Court decision, which this time is *Minnesota ex rel. Pearson* v. *District Court*, 309 U.S. 270, 276–77 (1940). This case actually supports the adequacy of title X's criteria, as I noted above. The Court sustained the statute challenged there, as elaborated by judicial interpretation, against a charge of vagueness, since it required evidence of "past conduct pointing to probable consequences" as a condition of restraining a person due to his "psychopathic personality." Title X clearly requires proof of a defendant's "past conduct" when it defines recidivists and professional and organized crime offenders, and of the "probable consequences" when it defines the word "dangerous." The title thus satisfies the constitutional requirements laid down by the Supreme Court in that decision.

The ACLU's statement does not mention this fact, but title X's definition of the term "dangerous" was framed in its present language largely in response to prior suggestions by the ACLU. When S. 30 was introduced, it made one prerequisite of an extended prison sentence a finding "because of the dangerousness of such person that a period of confined convictional treatment or custody longer than that provided for the offense for which he is charged is required for the protection of the public." The ACLU informed the subcommittee that it found that language "vague, confusing and lacking in standards" and gave three specific reasons—hearings at 468.

First, the ACLU noted that the bill seemed to require showings of both "dangerousness," which was not defined, and of the need for extended imprisonment. The Judiciary Committee agreed that use of the word "dangerousness" as an operative term was redundant and vague, and cured the defect by eliminating the operative use of the term "dangerous." The bill approved by the Judiciary Committee and passed by the Senate does not, however, as the city bar committee's report implies that it does—ABCNY at 49—eliminate "dangerousness" as a separate element, in addition to the element that a defendant be a "special offender," which is required to be shown before a special sentencing is authorized. The Senate report's statement—at 166—that " 'dangerous' may be inferred, although not necessarily, from the establishment of the requirements of subsection (e)" is simply a recognition of the possibility that the same facts the establishment of which shows the defendant to fall within one or more of the definitions of "special offender" may, in a given case, also demonstrate that the defendant is "dangerous." It is more apparent that the statement in the committee report means only that, and does not eliminate dangerousness as an independent requirement, when the statement is quoted in full, as I have done here, rather than quoted out of context as the city bar committee did when it omitted the statement in the report that dangerousness is "not necessarily" to be inferred from establishment that a defendant is a "special offender."

Second, the ACLU criticized S. 30's failure to say from what the public must need protection, and pointed out the provision of the ABA sentencing standards for a finding that extended custody is necessary "to protect the public from further criminal conduct by the defendant." The Judiciary Committee again agreed, and added the ABA's language verbatim. Third and last, the ACLU said it had difficulty seeing how a judge could determine when a longer term is "required" in a given case, and noted that the Model Sentencing Act, which has a "protection of the public" clause like that found in S. 30 when it was introduced, is amplified by relatively detailed definitions of special offenders. The corresponding definitions in title X have been so amended that they now are, as a group, more specific and narrow than those in the Model Sentencing Act, so the union's third suggestion on the subject of "dangerousness" has, in my view, been accepted as well.

Perhaps the fact that the Senate so completely cured the specific defects on which the ACLU's vagueness objection originally was based accounts for the lack of specificity in its new charge that the dangerousness definition is vague. Actually, that definition now closely follows, or even exceeds in specificity, not only the Model Sentencing Act and ABA standards, but also the model penal code—§ 7.03—and the Minnesota recidivist law—Minn. Stat. Ann. §§ 609.155, 609.16 (1964). Although the bar committee thinks that title X's definition of "dangerousness" provides "no meaningful standards," such standards apparently have meaning to the ABA NCCD, ALI, and Minnesota Legislature.

Considering the definitions used in title X as a group, I find them to be unusually specific and clear for sentencing standards. It must be recalled that the definitions in title X are not substantive criminal prohibitions, defining crimes, and do not establish the question of guilt or innocence. They are legislatively specified criteria for sentencing only. They are not only a great improvement over a situation where sentencing is, at the present, guided by no standards at all—they conform to similar standards developed by professional bodies which have studied the problem of special sentencing most thoroughly, and seem to me to provide excellent guidance and control over the discretion of a sentencing court.

The ACLU's complaints that title X is vague not only are found on study to be groundless—they are made in such a way as to call into question the ACLU's credibility as a commentator on S. 30. Not once in its current attack on S. 30's definitions does the ACLU suggest new phrases which should be used, amendments which should be offered, to improve rather than defeat the bill. Since the ACLU's new statement does not merely emphasize, but actually concentrates exclusively upon, a destructive rather than constructive approach to the legislation, its arguments seem to be based less upon specific objections than upon hostility to the entire concept of special offender sentencing. That is unfortunate, since it reduces the value of the ACLU's comments to a Congress which recognizes the validity of that concept—as have the President's Crime Commission, the American Bar Association, the American Law Institute, and the National Council on Crime and Delinquency.

Mr. President, it would be a grave mistake to restrict dangerous special offender sentencing under title X to sentencing for any list of specified offenses supposedly typical of organized crime, as the Senator from Massachusetts (Mr. KENNEDY) urged during the Senate debate on S. 30. As the title is now written, it will, of course, have its main impact on those engaged in organized crime. As I mentioned earlier, a subcommittee staff study analyzing FBI data on La Cosa Nostra revealed that almost 60 percent of its members, upon new convictions for Federal felonies, would qualify under the provisions of title X as "recidivists." Even higher proportions of organized crime participants would fit the definitions of "organized crime" and "professional" offenders contained in title X.

Of course, it is true that title X will have some application to individuals who are not members of La Cosa Nostra or otherwise engaged in organized crime. However, that is not a reason to cut back its scope, but a natural and proper consequence of the congressional study of the subject. It was the organized crime problem which first prompted us to consider the wisdom of authorizing special sentences, but our study of the measure revealed the broad principle which underlies it: the establishment of special criteria and procedures for sentencing aggravated offenders improves the protection of ordinary offenders, special offenders and society—and that principle applies to recidivists and professional offenders as well as organized criminals. Courts have to decide only one case at a time, of course, but the Congress must remember it is a legislature and should not close its eyes to the inherent scope of a valid proposal.

The scope of title X has been carefully confined by a number of definitions and provisions assuring that it will apply

only to defendants who deserve punishment exceeding that normally provided for their offenses, since the offenses were committed under aggravating circumstances. Title X, in short, will not cover any defendant, a member of La Cosa Nostra or otherwise, unless he is guilty of committing a Federal felony, he is found to be "dangerous," and either he has two prior felony convictions with one imprisonment or he is shown to be a "professional" or "organized crime" offender. Every individual who falls within these definitions deserves to be exposed to some aggravation of the penalty for his latest felony, regardless of whether or not that felony is one commonly committed by participants in organized crime, and society deserves special protection from the special threat he poses.

Nowhere is that more obvious than here, in the Nation's Capital, where we suffer from a notoriously high incidence of crime. The crime crisis is, however, nationwide, and stems from organized criminals, professionals and recidivists alike. As the President's Crime Commission reported in 1967 on the subject of recidivism:

> The most striking fact about offenders who have been convicted of the common serious crimes of violence and theft is how often how many of them continue committing crimes. Arrest, court, and prison records furnish insistent testimony to the fact that these repeated offenders constitute the hard core of the crime problem. (The Challenge of Crime in a Free Society at 45.)

The Commission based that conclusion in part upon its review of studies of recidivism, which it said lead "to the conclusion that despite considerable variation among jurisdiction, roughly a third of the offenders released from prison will be reimprisoned, usually for committing new offenses, within a 5-year period"—report at 45. Further, the Commission pointed out:

> These findings are based on the crimes of released offenders that officials learn about. Undoubtedly many new offenses are not discovered. (Report at 46.)

It is not just the large number of recidivists, or their special proclivity for violence, that concerns our constituents and must influence congressional action on S. 30.

The people at home in our States, who are looking to us to enact effective criminal laws, may not know all the details or statistics, but they know the essence of the crime problem as well as we do. Whether they live in urban centers overrun by organized crime, or in towns and counties raped by recidivists, they know that it is more important to pass laws dealing firmly with all aggravated offenders than to quibble over specific offenses and definitions of organized crime.

Of course, defendants who are not Mafia leaders often will not require the maximum sentence authorized by title X, so the bill confers upon the sentencing court discretion as to the degree of aggravation of offense and sentence, and subjects the exercise of that discretion to appellate review. Thus, title X will affect each defendant only to the extent warranted by his individual conduct. In this day of lawlessness and violence, there can be no objection on grounds of principle to the scope of title X.

Further, Mr. President, it would be unrealistic and impractical to confine the operation of title X entirely to a pat list of so-called "organized crime" offenses. One of the most striking aspects of the logs of FBI electronic surveillance of Simone De Cavalcante and Angelo De Carlo, disclosed by New Jersey Federal judges last year, was the readiness which the logs showed on the part of La Cosa Nostra members to violate any law, any time, any place, as long as there is money in it. If we limit special sentencing to a list of offenses, we will create a loophole that will dwarf the law—a loophole best taken advantage of by the very criminal we want most to imprison, the Mafia leader who can stress one or another illicit activity to reduce his risk.

The many bodies that have recommended, adopted or used special offender sentencing statutes have not found it wise to restrict them to lists of offenses. The first American special offender sentencing statutes, of course, were the State general recidivist laws. At the present time, such laws are found in some 45 States. Defects have been identified in their operation, but there has been no general movement away from the principle embodied and approved in those statutes; and they are not confined in their operation to lists of specified crimes.

In addition, it now has become generally accepted that the concept of special sentencing should be extended beyond recidivists to professional and organized crime. A number of thoughtful bodies have strongly recommended it. First, in 1962, it was recommended by the Model Penal Code, promulgated by the American Law Institute, whose council of some 42 leading lawyers and jurists was chaired by Harrison Tweed and included Judge Henry J. Friendly and Prof. Samuel Williston. In 1963, such a proposal was made in the Model Sentencing Act adopted by the Council of Judges of the National Council on Crime and Delinquency. Among the members of the council of judges were Justice William J. Brennan, Jr., Judge Irving R. Kaufman, Chief Justice Paul C. Reardon, and Justice Joe W. Sanders. The President's Crime Commission, which of course was chaired by Attorney General Katzenbach and included Judge Charles Breitel, William P. Rogers, and Herbert Wechsler, reached the same conclusion in 1967. And the same year, the American Bar Association approved such a proposal on the recommendation of committees chaired by Judges J. Edward Lumbard and Simon E. Sobeloff.

What is most significant at this point is that not one of the proposals made by those distinguished bodies recommended that special sentencing be limited to a list of offenses—on the contrary, each proposal was made to cover all felonies. After thorough subcommittee hearings and study, the Judiciary Committee and the Senate agreed, for good reasons. The inadequacies and defects which title X will correct in our existing law and procedures for sentencing in aggravated cases are common to all Federal felonies. To correct them only for certain crimes would distort the basic concept of special sentencing. It would permit inconsistent, unequal and unfair treatment of defendants who are similarly situated, and it would not get the job done of protecting honest citizens from all unusually dangerous felons. This, Mr. President, is the least we can and must do for the people.

It is fallacious, moreover, to say that title X should be restricted to sentencing for a list of specified offenses, just because there is a list of offenses in one section of title IX, on corrupt commercial organizations. That list was placed in title IX for reasons which no application in the context of sentencing.

The basic provisions of title IX are substantive: They define conduct as prohibited. Those provisions implement economic policy by authorizing the removal of corrupt influences from legitimate commercial organizations, and the commission of an offense listed in title IX subjects one to the remedies of the title only if the offense bears a specified relationship to interstate commercial activity. Since the purpose of title IX is economic, it would be pointless surplusage for it to cover crimes which are not adapted to commercial exploitation—See, for example, 18 U.S.C., section 2032, carnal knowledge of female under 16. This is why the particular offenses which are well suited for use to infiltrate a legitimate organization were listed in a section defining one of the substantive elements of title IX.

Title X, in contrast, is not substantive: It deals solely with the penal disposition of individuals already convicted of substantive crimes. Its purpose is not confined to one sphere, such as economic policy, which can be treated separately from other problems. The activities of organized criminals extend beyond commercial exploitation, such as that treated by title IX, and bring them in violation of every felony in the books. The problem which title X solves is the problem of distinguishing the aggravated offender from the ordinary offender, and that problem is the same whatever felony was committed. It is the definitions of "dangerous special offenders" which appropriately limit the scope of title X, just as it is a list of offenses which limits that of title IX.

For these reasons, title X on sentencing, like title IX on racketeer infiltration, already is so drawn as to apply only in those situations necessarily covered in a consistent application of the purposes of the measure, and title X should not be restricted to a list of specified felonies. The Senate, of course, rejected a motion which would have restricted sentencing under title X to sentencing for the offenses listed in title IX by a vote of 11 to 62. This resolution of the issue was in line not only with the State practice, but also with the recommendations of the expert bodies which have proposed special sentencing, and I believe that it was the right conclusion to reach.

The bar committee also objects that the filing of the notice commencing special sentencing "might well lead to widespread pretrial publicity adverse to the

defendant"—ABCNY, at 49–50. The bar committee, in making that statement, makes no attempt to analyze the countervailing interests requiring the filing of such a notice, ignores the existing law and practice permitting the filing of comparable allegations, and displays its hostility to the purposes of title X by declining to offer suggestions as to how any difficulty as to publicity can be avoided.

Actually, of course, there is nothing to prevent a court in which such a notice is filed from immediately sealing the notice from public inspection—confer, for example, Nev. Rev. Stat., section 200.670–1 (1963), search and seizure application and supporting documents to be confidential except on court order; *United States* v. *Michael*, 180 F. 2d 55, 56–57 (3d Cir.), cert. denied, 339 U.S. 978 (1950), secrecy in records unobjectionable absent prejudice.

On the other hand, the exposure of judicial proceedings to reasonable public scrutiny often serves the interests of defendants by protecting them from arbitrary official action. Even where a dangerous special offender notice is made public, though, its filing as a matter of public record simply does not raise the extreme dilemma suggested by the city bar committee. Neither the case of *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966), nor the "spirit" of court rules such as the Southern District of New York criminal rule cited by the bar committee—ABCNY at 50, note 84—requires that all publicity concerning criminal court proceedings be avoided. The city bar committee actually misuses the Sheppard case, by citing it as teaching that the sort of information to be included in notices filed under title X should not be publicized—Ibid. The decisions and rules dealing with this subject actually prohibit only gratuitous publications, leaving the question whether papers necessarily filed as part of judicial proceedings should be filed publicly or sealed in the discretion of the court.

Of course, the exercise of that discretion sometimes will lead to public filing resulting in some publicity. This often occurs at present with the publication of indictments, search warrants, the affidavits upon which warrants are based, and returns by officers executing search warrants, and with publicity given to a first trial where a reversal results in the necessity of a second trial. For such a case, techniques have been developed for protecting defendants from prejudice, such as voir dire examination of prospective jurors and sequestration of jurors during trial.

Since the dangerous special offender notice, thus, can be sealed, if filed of record may not receive great publicity, and if publicized can be isolated from the jurors who try the case, the dangerous special offender notice presents no problems of publicity not presented by the filing of search papers and other necessary legal documents. There is no sound objection to title X so far as publicity is concerned.

Neither is it correct to argue, as the city bar committee does—at 50—that the filing of a dangerous special offender notice is "highly prejudicial" since the allegations contained in the notice can be read by the trial judge before trial. The city bar committee, in raising this objection, relies upon the case of *Gregg* v. *United States*, 394 U.S. 489, 492 (1969) (dictum) and rule 32(c) of the Federal Rules of Criminal Procedures. Rule 32(c) merely prohibits the submission of the presentence report to the court, and disclosure of its content to anyone, until the defendant has been found guilty. This is a perfectly sound rule, since there is no legitimate reason for the court to examine the presentence report before the defendant's guilt is determined.

The dictum in the Gregg case on which the city bar committee relies was based more upon the impropriety of the conduct by the officer involved, than upon any supposed prejudice in the decision of the judge. The Supreme Court affirmed the conviction in the Gregg case, moreover, since the record did not establish a clear violation of rule 32(c) and since the Court was unable to conclude "that the handling of the presentence report raised any possibility of prejudice to petitioner's rights under rule 32"—394 U.S. at 494. In addition, the Court based its dictum that delivery of the presentence report to the judge prior to the finding of guilt was error on the fact that, as the Court stated:

> There is no reason for him [the judge] to see the document until the occasion to sentence arises. (394 U.S. at 492.)

There is a reason for filing the dangerous special offender notice before the trial of the defendant begins, though the Constitution does not require such early filing, so that the defendant may be on notice before entering his plea that a finding of guilt may subject him to an extended sentence. Thus, the provision of title X which permits the filing of a dangerous special offender notice does not, as the trial court's examination of the presentence report in the Gregg case did, go beyond the necessities of the administration of justice, and is not subject to the objections voiced in the Gregg dictum. Again, there are analogies in existing practice: The judge examines the indictment before trial, and a judge may be aware of a previous guilty verdict while he begins to preside in the retrial of a case after reversal on appeal. In addition, it is common for a judge in a case charging, for example, possession of burglar tools, first to hear virtually all of the Government's evidence when he hears a motion to suppress the burglar tools seized during a search, and then, if he rules that the search and seizure were lawful, to preside at the trial on the merits. His ability to do so is not deemed to have been prejudiced by his having heard the motion to suppress evidence before trial.

The ACLU and bar committee also disapprove of the provision of title X which prevents the placing of limitations upon the information concerning a defendant's background, character and conduct that a Federal court can consider in choosing an appropriate sentence. Although that provision would apply to all Federal criminal cases, the ACLU finds it especially threatening to "dangerous special offenders," since the ACLU believes that sentencing judges are "able" to give them sentences "5 or 10 times as long as would follow a conviction for the underlying felony alone."

The ACLU's statement of that belief is unfair and misleading, since it compares sentencing authority under title X with sentencing practices under existing laws—while maximum sentences are, and should be, exceptional in both instances. In addition, the statement is incorrect. The language of S. 30 itself (sections 3575(b) and 3576) and of the committee report at 91 and 166, makes it clear, as I pointed out earlier in these remarks, that there is no new mandatory minimum prison term and that both the trial court and the court of appeals must measure the "appropriateness" of any sentence to be imposed. Thus, a sentence 10 or even 5 times as long as the ordinary sentence should not be imposed and, if imposed, would be reduced on appellate review.

The ACLU's attack on title X's provision for unlimited information in sentencing is broader, however, than special offender sentencing. The ACLU opposes all the provision's applications, in ordinary as well as special sentencing cases, and urges that sentencing courts be required completely to disregard hearsay, evidence obtained in violation of any law, and information otherwise inadmissible at a trial of guilt or innocence.

The ACLU's position is far more radical and novel than this provision of title X itself, which preserves the traditional principle, approved by the Supreme Court in *Williams* v. *New York*, 337 U.S. 241 (1949), that sentencing proceedings are exempt from the rules of evidence constitutionally required at trial. The Williams case, which was reaffirmed by the Court in 1967 in an opinion by Mr. Justice Douglas, *Specht* v. *Patterson*, 386 U.S. 605, 606, held that a sentencing court, unlike a trial court, can consider hearsay allegations not tested for reliability by the constitutional procedures of confrontation and cross-examination.

In view of that specific holding of the Supreme Court, relied upon by the Judiciary Committee in its report on this provision of S. 30, at 167, the ACLU's treatment of the issue is shallow and unpersuasive. Its original statement on S. 30 branded the provision "clearly unconstitutional"—hearings at 474—and its more recent statement specifically mentions "hearsay" as objectionable in sentencing, despite the Supreme Court's explicit approval of hearsay in the Williams case. Further, the ACLU's discussions of this provision in both statements neither cite a single authority in their support, nor advert to the Williams decision preventing use of trial rules of evidence in ordinary sentencing cases and the Model Penal Code, Model Sentencing Act, and ABA Sentencing Standards applying the Williams principle to increased sentencing of special offenders.

The principles requiring use of hearsay for sentencing also prevent application, in a sentencing proceeding, of other exclusionary rules designed for use at trial. Mr. Justice Black, in the opinion for the Court in Williams, spelled out in these

terms the policies which underlie enlightened sentencing practices and preclude the extension of even constitutional exclusionary rules to sentencing proceedings:

> Highly relevant—if not essential—to his [the sentencing Judge's] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics. And modern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by a requirement of rigis adherence to restrictive rules of evidence properly applicable to the trial.
>
> * * * * *
>
> The due process clause should not be treated as a device for freezing the evidential procedure of sentencing in the mold of trial procedure. . . . (*Williams* v. *New York*, supra at 247–51.)

The ACLU and the bar committee attempt to evade application of those principles to special offender sentencing by saying that sentencing under title X is comparable to a second trial, and the sentencing allegations to a separate "charge" of crime—ABCNY at 96. This is hardly a sound basis for exempting title X from the rule of the Williams case, since the hearsay which was used in sentencing Williams himself related to his commission of many serious crimes other than that for which he was being sentenced. As the Director of the National Council on Crime and Delinquency, whose Model Sentencing Act was one basis for title X, testifies before the Senate subcommittee:

> A sentencing statute certainly does not take the place of new definitions of racketeering crimes, appropriate and specific to the methods of operation in organized crime. The Model Sentencing Act does not define crimes. But if a defendant is convicted of an offense such as tax evasion, assault, criminal coercion, it makes a great deal of difference whether his crime was an individual act, or was part of a racketeering operation. If the latter, the sentence should be a severe one, and we so recommend in our act. (Hearings at 251.)

The sentence is more severe, as the U.S. Supreme Court has made clear regarding extended sentencing of recidivists, not because the defendant is receiving an additional punishment for his previous crimes, but because the fact of his previous conduct aggravates his latest felony and justifies the imposition of a more severe sentence in lieu of the ordidary one. Both the Model Penal Code and the Model Sentencing Act have rejected the notion that special offender sentencing is like a trial and requires application of trial rules of evidence, and the ABA has done likewise after an unusually thorough and scholarly study of the question—ABA sentencing standards at 262–66.

Despite this consensus of scholarly opinion, enactment of this provision of title X is necessary to prevent Federal courts from making the ACLU's error, as at least one court of appeals has done (*Verdugo* v. *United States*, 402 F. 2d 599, 608–13 (9th Cir. 1968)) and refusing to consider information of unquestioned reliability on the ground that it was obtained in violation of law. Such refusal would be inconsistent with the policies expressed in the Williams case, and with its very holding that a constitutional rule for exclusion of evidence at trial, even one—the right of confrontation—designed to guarantee reliability of evidence, does not apply in a sentencing proceeding. Title X would forestall such a refusal and protect the sentencing judge's access to what Williams described as "the fullest information possible"—Williams at 247. In addition, it would prevent sentencing from becoming encumbered by motions, evidentiary hearings on admissibility, interlocutory rulings, and other complexities which are appropriate at trial, but inimical to effective sentencing.

For the apparent purpose of heightening any emotional appeal its objections might have, the ACLU fails to mention that title X preserves the existing right of a sentencing judge to discount information he considers to be of imperfect reliability. For example, as the committee report was careful to point out—report at 167—hearsay information can be "appropriately evaluated" and assigned little or no weight if found unreliable. In view of the report's clarity on this point, it is inexplicable that the ACLU's January 1970 statement persists in referring to "rankest hearsay" and "coerced confession," two obvious examples of information which should be discounted or, depending on the circumstances, even discarded, as unreliable.

Where reliable evidence obtained illegally is concerned, the rule requiring its suppression even at trial is not absolute, as I explained earlier in connection with title VII, on suppression litigation. The exclusionary rule is not an imperfect means to certain ends, as the Supreme Court recently acknowledged when it said:

> The exclusionary rule has its limitations . . . as a tool of judicial control. . . . [I]n some contexts the rule is ineffective as a deterrent.
>
> * * * * *
>
> Proper adjudication of cases in which the exclusionary rule is involved demands a constant awareness of these limitations. . . . [A] rigid and unthinking application of the exclusionary rule, in futile protect against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime. (*Terry* v. *Ohio*, 392 U.S. 1, 13–15 (1968).)

For those reasons, the rules excluding evidence at trial are not extended to other situations unless the additional deterrence of unlawful official conduct would be so great, in the words of the Supreme Court, as to "justify further encroachment upon the public interest in prosecuting those accused of crime and having them acquitted or convicted on the basis of all the evidence which exposes the truth." *Alderman* v. *United States*, 394 U.S. 165, 175 (1969).

Under that test, the suppression rule does not apply to a sentencing proceeding. Since police officers know that suppression of vital evidence at trial prevents a guilty verdict—and that it is futile to prepare a persuasive sentencing presentation against a defendant who cannot be convicted—no substantial increase in deterrence of police would result from a rule of suppression of evidence for sentencing. The same would be true if the suppression rule were extended into proceedings to revoke parole, and, as I noted earlier, the Supreme Court of California and the Court of Appeals for the Second Circuit have concluded that such an extension of the suppression rule is not warranted. The Constitution permits, and sound policy requires, Congress to preserve time-tested and efficient procedures for imposing sentences based upon "the fullest information possible." It is for those reasons, I believe, that the Senate defeated an amendment to impose rules of evidence on sentencing proceedings by a vote of 63 to 11.

One other facet of the ACLU's attack on the provision for unlimited sentencing information bears examination, since it is symptomatic of the ACLU's emotional, irresponsible approach to the sentencing title. The ACLU states that the provision would let a sentencing court hear information "without regard to relevance"—ACLU Jan. 1970 letter at 15. The contrary is true. The provision, on its face, applies only to "information concerning the background, character and conduct" of the defendant—considerations held by the Supreme Court to be relevant to imposition of an appropriate sentence—Williams against New York, supra.

The ACLU and bar committee criticize title X not only for the kind of information on which it permits sentencing, but for its amount as well. The bar committee objected that under title X "the trial court is directed to base its findings upon a 'preponderance of the information,' yet the sentencing decision may be far more critical than the initial determination of guilt or innocence which must be made on the basis of admissible evidence and beyond a reasonable doubt"—ABCNY at 46.

However, it has never been supposed that sentencing in ordinary cases required that facts relevant to the sentence be established "beyond a reasonable doubt." Indeed, the lack of explicit standards for sentencing, and the lack of appellate review of sentences in the Federal system, means that at the present time the sentencing court need not base its sentence on even a preponderance of the sentencing information brought to its attention. Title X follows the well-documented and supported example of the American Bar Association Standards—sentencing section 5.5(b)(iv)—when it requires that facts used for dangerous special offender sentencing be established "by a preponderance" rather than "beyond a reasonable doubt."

The second point made by the bar committee, that the sentencing decision may be more critical under title X than the determination of guilt, also is true under existing statutes, such as the Hobbs Act—18 U.S.C. 1951—prohibiting robbery or extortion in interstate commerce. The Hobbs Act can be applied to a wide variety of offenses, from minor crimes by first offenders to very aggravated felonies, yet every offender is exposed to a single possible maximum of 20 years. The Williams case, itself, illustrates the relative importance of the sentencing decision under existing law,

which regulates that decision and the factual basis on which it can be made little or not at all. In the Williams case, of course, a sentencing judge had discretion to impose life imprisonment or the death penalty—and after reviewing hearsay information, free of any requirement that his decision be based upon a preponderance of anything, the sentencing judge imposed the death penalty and was upheld by the U.S. Supreme Court.

The New York City Bar committee complains also of what it calls "the limited access" which title X grants a defendant to the presentence report upon which his special sentence may, in part, be based. ABCNY at 46–47. Actually, title X requires that a defendant alleged to be a dangerous special offender—

> Shall be informed of the substance of such parts of the presentence report as the court intends to rely upon, except where there are placed in the record compelling reasons for withholding particular information. . . .

Those standards are more favorable to defendants than existing Federal law, which grants a trial court unfettered discretion to disclose all, part, or none of the presentence report to the defendant, and conform generally to standards for presentence report disclosure developed by the Model Penal Code and the American Bar Association. Limitations on presentence report disclosure such as those found in title X, the Model Penal Code, and the A.B.A. Standards are essential for informed sentencing, since identification of the sources of information in those reports would inhibit vital communication from family member, neighbors, social agencies, and others. In addition, portions of some presentence reports contain evaluations and professional opinions regarding the defendant's disclosure of which would interfere with the possibility of their rehabilitation.

In the city bar committee's imagination, the exceptions to presentence report disclosure swallow the rule, so the committee threatens that sentencing judges will impose maximum sentences based upon minimum showings, all supported by facts revealed only in portions of a presentence report withheld from a defendant. While such a result may be possible under present law, where there are no statutory standards to control disclosure and no appellate review of sentences to correct sentences imposed upon insufficient and undisclosed factual data, title X protects against such action both at the trial court level and on appeal.

Read as a whole, the ACLU's attack on title X's provisions for the procedure to be used in sentencing dangerous special offenders is unremittingly hostile and one-sided. This posture is remarkable in view of the changes already made in that procedure at the suggestion of the ACLU, liberalizing and complicating it in an effort to protect defendants. The notice provided to a defendant accused as a dangerous special offender was changed to add the grounds for considering him "dangerous"—hearings at 468. Commencement of special sentencing proceedings was made discretionary with the prosecutor, rather than mandatory—Ibid. Language which arguably might have coerced defendants to waive the right of grand jury indictment or to plead guilty was amended—Id. at 469.

Defendants convicted of misdemeanors but acquitted of related felonies were barred from sentencing as special offenders—Ibid. The period of notice to the parties of the time for the sentencing hearing was expanded from 3 to 10 days—Ibid. The issue of "dangerous" was added to those on which the defendant is given a hearing—Id. at 469–70. Explicit grants to the defendant of rights to submit evidence, cross-examine witnesses, and examine the presentence report were added—Ibid.

It was specified that convictions reversed on appeal, or found invalid in the sentencing proceeding or any other proceeding, are not sufficient for recidivist sentencing—Ibid. The requirement that a dangerous special offender serve at least two-thirds of his sentence was deleted.—Id. at 471. And review of a conviction and the sentence imposed on it were made concurrently—Id. at 474. If acceptance of so many of the ACLU's criticisms of title X leaves it nevertheless unqualifiedly opposed to the title, doubt is cast upon the ACLU's openness to any legislative proposal for effective sentencing of special offenders.

The bar committee, on the other hand, affirms its devotion to the basic concept of special sentencing by stating it would support a "rational and consistent sentencing code" including special sentencing provisions and expressing concern that adoption of title X "might delay or defuse a more widespread sentencing reform."—ABCNY at 44, 45.

The latter concern, however, is not warranted. In addition, the National Commission on Reform of Federal Criminal Laws is developing such a general reform at the present time, and some of the leading advocates of enactment of title X, Senators ERVIN and HRUSKA, Congressman POFF and myself, also serve as members of that Commission, and we are not against general reform.

In addition, the bar committee misleads the reader, perhaps unintentionally, concerning the views of both Associate Dean Peter Low and the Department of Justice on the adequacy of the procedures now required by title X—ABCNY at 45–46, Dean Low; *id.* at 45–46, n. 78, Department of Justice. As to Dean Low, the bar committee quotes a criticism expressed by Dean Low as to S. 30 before the many changes in S. 30's procedures made at the instance of the ACLU and the Justice Department were made, and then states that—

> The conclusions reached by Professor Peter Low on the unfairness of the procedures included in a previous version of Title X are equally applicable to the Title in its present form and require its rejection . . . (ABCNY at 46.)

In fact, Dean Low later examined title X in its present form, with the modified procedures, and stated that if Congress chooses to enact a law authorizing increased sentences for special offenders, before enactment of comprehensive reform sentencing "this is a good one"—letter to chief counsel, Senate Subcommittee on Criminal Laws and Procedures, January 9, 1970.

Similarly, as to the views of the Department of Justice concerning the title X procedure, the bar committee quotes statements made by the Justice Department concerning the initial draft of title X indicating that it was "virtually impossible to predict whether these procedures would survive constitutional challenge" and that "it is not clear what the procedural requirements for extended sentences are."—ABCNY at 45, 46, n. 78. The bar committee fails to point out, however, that the Department examined the revised version of title X, concluded that it was fully constitutional, and decided fully to support it, although the Department still recognizes that there remains no explicit judicial authority indicating the required procedures for extended sentences.—Department of Justice Comments on S. 30 before Subcommittee No. 5 of the House Judiciary Committee, at 56.

Whatever the reason for the bar committee's unwarranted and incorrect assumption that Dean Low and the Justice Department consider their objections to the first draft of title X's procedures "equally applicable"—ABCNY at 46—to the present version, the nature of the bar committee's objections to title X calls into doubt whether it really accepts the basic special sentencing concept. The bar committee emphatically rejects the special sentencing procedures in title X—ABCNY at 8, 45–46—and expressly declines to suggest—

> What constitutional protections are required in a proceeding such as this. . . . (*Id.* at 45.)

It compares the title's definition of an organized crime offender with the substantive crime of conspiracy, and rejects the use of a sentencing hearing to establish the defendant's conduct, considering it a circumvention of the requirement that conspiracy allegations be proved at the trial of guilt—Id. at 49. The bar committee also objects to the power which the dangerous special offender provisions place in the hands of prosecutors to bring pressure to bear upon defendants, to induce guilty pleas—Id. at 45, n. 74. Obviously, though, those objections, if they are valid, could be made to any dangerous special offenders law. It always will be possible to argue, for example, that the criteria aggravating an offense and making one a special offender could have been embodied in a substantive prohibition defining a crime.

The bar committee's view of special sentencing as an evasion of constitutional trial procedures, and its refusal to subordinate the minor risk of abuse contributed by special sentencing to plea bargaining to the benefits to be derived from special sentencing, are not, fortunately, typical of professional authorities. The concept implemented by title X has been endorsed, as I noted previously, by the President's Crime Commission, the American Law Institute, the National Council on Crime and Delinquency, the American Bar Association, and other august associations. By establishing impossibly high—even unspeci-

fied—standards for procedure which a special offender statute must meet in order to obtain the approval of the city bar committee, the committee, in effect, disapproves the concept of special sentencing, and states an implied preference for the existing lack of standards and still more informal procedures. As the commentary to the American Bar Association's standards on sentencing notes—

It would indeed be ironic if procedural due process *required* the absence of legislative guidance in order for the sentencing proceeding to be informal. The Advisory Committee is confident that such a result need not follow. (ABA Standards Relating to Sentencing Alternatives and Procedures at 264.) (Approved Draft, 1968.)

The ACLU approves the concept of appellate review of sentences, but opposes the appellate review provision of title X in the belief that it—

Raises serious Constitutional problems under both the due process clause and the double jeopardy clause of the Fifth Amendment. (ACLU Jan. 1970 letter at 15.)

So far as the double jeopardy clause is concerned, it is true that the question of its consistency with title X was raised in the hearings—for example, hearings at 474—and that the objection that sentence review on motion of the Government constitutes double jeopardy has superficial appeal until it is examined thoroughly. For those reasons, the Judiciary Committee report on S. 30 fully explored the double jeopardy theories, policies, and precedent—report at 93–99—before concluding that they are entirely consistent with title X.

That report was, of course, available to the ACLU over a month before issuance of its January 1970 statement charging that title X authorizes double jeopardy. If it considered the problem as "serious" as its asserts, it could have supported the assertion with a detailed analysis of the public policies underlying the double jeopardy clause and the respects in which they allegedly are violated by title X. It could have specified the alleged relevance of the two court decisions it cites against the title on this issue, and could have attempted to explain away the decisions and other authorities which the report argued support title X's consistency with the double jeopardy clause. Instead, the ACLU backs up its double jeopardy allegation with a paragraph and a half of superficial comment making only two points.

First, the ACLU mentions that "the Supreme Court has never upheld . . . an increase in sentence" on review taken by the government.—Ibid. That is correct, but it is equally true that the Court has never invalidated such an increase in sentence. The comment does not begin to rebut the persuasive case for constitutionality made in the report.

Second, the ACLU notes that the scope of title X review is not limited to the appropriateness of the sentence, but also allows correction of a sentencing judge's error in failing to find a defendant to be a "dangerous special offender." The ACLU claims that such a correction is "in effect" the reversal of an acquittal, so is unconstitutional.—Ibid. The bar committee is somewhat more tentative, but repeats the inflated claim that Government appeal of a trial judge finding that a defendant is not a dangerous special offender arguable constitutes double jeopardy.

The argument, according to the bar committee, would stress the disparity between the maximum sentence permitted for special offenders and the maximum permitted for most ordinary felonies, as well as what the city bar committee calls—

The lack of correlation between the conduct creating the special offender status and the acts which occasioned the current felony conviction. (ABCNY at 52.)

It should be noted, of course, that such a correlation actually is required by the professional offender and organized crime offender provisions of title X, as I explained above. The bar committee goes on, however, to conclude that a finding by a sentencing judge at the trial level that the defendant is not a dangerout special offender so resembles an acquittal that Government appeal of the issue arguably constitutes double jeopardy.

This objection exemplifies the kind of one-way street, in favor of defendants and oblivious to society's needs, which the ACLU and bar committee would make of a criminal proceeding. It was the ACLU which pointed out that S. 30, in the form in which it was introduced, was open to a construction preventing a court of appeals which was reviewing a sentence from including in its review a determination of whether the record supported the finding that the defendant was "dangerous." Now, in its January 1970 statement criticizing title X's scope of sentence review, the ACLU fails to mention that the language on scope of review was broadened at its suggestion, and apparently seeks a broad scope of review for the defendant and a narrow one or none for the Government.

The double jeopardy objection is not a sound one. The only cases cited by the ACLU in its support are *Kepner* v. *United States*, 195 U.S. 100 (1904), and *Trono* v. *United States*, 199 U.S. 521 (1905). The Trono case actually affirmed a conviction and merely approved the Kepner case in dictum, so Kepner is the only judicial holding offered by the ACLU as support for its opinion.

The Kepner case, however, involved not review of a sentence but reversal of an acquittal—the Supreme Court there merely held that the Government cannot appeal for conviction of a defendant whom the lower court found not to have committed a crime at all. The ACLU's attempt to equate the sentencing hearing with the trial of guilt fails here as it does when the ACLU tries to impose trial rules of evidence upon sentencing. The Supreme Court has shown in the Williams case—supra—its full understanding that sentencing need not be equated with a trial simply because both involve determinations that the defendant committed crimes.

Indeed, on the specific subject of the double jeopardy clause itself, the Court has demonstrated the error of the mechanical type of reasoning by which the ACLU equates sentencing with trial and extends the Kepner case to cover sentencing. The Supreme Court has refused to apply the Kepner doctrine itself in situations where logic would seem to require its application. The committee report—at 95—cites two such instances, including the Court's ruling that a defendant can be retired and convicted after obtaining a reversal of a prior conviction on the ground that a verdict of not guilty should have been directed.

Since the Court will not apply Kepner to title X in the ACLU's unthinking manner, the consistency of title X with the double jeopardy clause must be judged in view of the policies underlying the clause. The committee report quotes the Supreme Court's statement of those policies—at 94—explains in practical terms why those policies are not frustrated by title X—at 95—and articulates legal grounds for sustaining title X against the double jeopardy question—at 94–95.

The committee report also discusses at some length—at 95–99—a number of judicial decisions and other authorities offering affirmative support for title X's consistency with the double jeopardy clause. Since they are readily available there and the ACLU and bar committee declined even to attempt to rebut them, there is no need to repeat the arguments and citations at this time. It should be noted, however, that they include rulings that the double jeopardy provision permits sentence increases after reversal of a conviction—*North Carolina* v. *Pearce*, 395 U.S. 711, 719 (1969)—or after failure of a trial court to impose a mandatory minimum sentence—for example, *Bozza* v. *United States*, 330 U.S. 160 (1947). Those rulings are analogous rather than direct authority, but the detailed analysis in the committee report clarifies their significance as strong support for title X against the double jeopardy objection.

Another instructive analogy is the right of the Government, consistently with the double jeopardy cause, to apply to a court of appeals for revocation of bail which a trial court has granted to a defendant pending appeal. Under the Bail Reform Act, bail can be denied by the trial court or appellate court in such a case, on the ground that the defendant is "dangerous." The right of the Government to obtain an appellate court reversal of a finding that a defendant is not dangerous, so needs not be incarcerated pending appeal, reveals the degree to which the rhetoric used by the city bar committee on the double jeopardy issue is inflated.

I submit that, under the existing precedents, there no longer can be any doubt as to the consistency of permitting the Government to appeal and obtain appellate increases of sentences with the double jeopardy clause. Dean Peter Low, who analyzed the issue carefully in the Senate hearings before the Supreme Court decided the case of *North Carolina* v. *Pearce*, 395 U.S. 711, 717 (1969) toyed with that conclusion at that time—hearings at 193–97—and stated after the Pearce decision that the double jeopardy arguments against an increased sentence on appeal had been "weakened if not completely destroyed."—Id. at 544. Even

the city bar committee agrees that Governmental appeal "from the length of a sentence given by a trial judge after finding the defendant to be a dangerous special offender, . . ." followed by the imposition of an increased sentence on appeal does not constitute double jeopardy—ABCNY at 51. Only the Civil Liberties Union persists in the broad assertion that appellate review of sentences at the instance of the Government always constitutes double jeopardy—ACLU January 1970 at 15.

The ACLU's "due process" objection to title X is that "the defendant would be deterred from appealing if he knew that Government could then appeal as well and have his sentence increased"—ibid—and relies entirely upon the Supreme Court case of North Carolina against Pearce, supra. The author of this criticism can hardly have read title X, which takes great pains to prevent exactly the type of deterrence of which the ACLU warns. Since a defendant might be deterred from appealing if the Government, in the ACLU's words, "could then appeal as well," title X require that the Government take any review it desires 5 days before the defendant must do so. By the time the defendant is about to make his decision, the Government already has appealed or lost its chance to do so, so the defendant cannot possibly fear such retaliation. Title X prevents retaliation and deterrence even more effectively than does the Pearce decision itself. Since the Supreme Court, as the bar committee apparently concedes—ABCNY at 51—treated the Pearce ruling only as one means to that end, and not as an inevitable requirement, title X fully satisfies the test of due process.

The city bar committee, however, questions the effectiveness of the 5-day lag time, arguing that it would prevent the penalizing of a defendant for appealing—

> Only if the Government did not appeal routinely, with the intention of proceeding with the appeal only if the defendant also appealed. Some further safeguard may be desirable in this regard. (ABCNY at 51.)

The committee concludes that deterrence and penalizing of appeals remain a "potential problem" under title X—ibid.

The bar committee overlooks the fact that title X already includes such further safeguards. The section of title X dealing with appellate review of sentence—section 3576—provides expressly that when a sentence review is taken by the United States the court of appeals may increase or reduce the sentence, and that "any withdrawal of review taken by the United States shall foreclose change to the disadvantage but not change to the advantage of the defendant." These provisions prevent the taking of routine Government appeals in the manner described by the City Bar Committee's statement, since taking routine appeals would expose the Government to the possibility of sentence reductions, a possibility not foreclosed by Government withdrawal of review. In addition, the sentence review provisions include a provision that "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." These safeguards, coupled with the 5-day lag itself, provide ample protection for a defendant against being penalized for taking an appeal. This conclusion, too, is concurred in by Dean Low, who emphasized the due process problems concerning sentence increases on appeal in his prepared testimony before the Senate subcommittee. He then was asked, during the hearing:

> Could part of your objection to the prosecutor having the right to appeal be obviated by giving him a short period of time to exercise his option, and then allowing the defendant to exercise his option at a later point, but not permitting increase on appeal where the prosecutor did not elect to exercise his option at the earlier point?" (Hearings at 211.)

Dean Low replied:

> I believe that would be very good. I believe it would be very good provision. I think the prosecutor could not then appeal in response to a defendant's appeal. I think that would be an excellent suggestion." (*Ibid.*)

The city bar committee asserts also that appellate review of sentences under title X would not be effective, for three reasons. First, the bar committee finds the criteria determining whether or not one is a "dangerous special offender" to be "so vague as to provide no clear standards for the appellate court on review"—ABCNY at 48. Second, the committee considers that the provision permitting withholding of information found in the presentence report from the defendant in certain cases "makes it highly doubtful that an appeal could be very effective"—Id. at 47. The bar committee buttresses that point by asserting that "another obstacle to adequate review would be presented if all the sections upon which the trial court relied, but which were suppressed, were not transmitted to the appellate court for review. Section 3576 should be modified to make clear that this information is communicated to the court of appeals."—Id. at 47, n. 79. Section 357 is, of course, already clear on that point, since its provisions authorizing the court of appeals to review special sentences state that the court of appeals may take such action "after considering the record, including the presentence report." In addition, the provisions of section 3575 permitting the sentencing court to withhold portions of the presentence report from the defendant for "compelling reasons" require that those reasons be placed in the record, and that section further requires the trial court to "place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed." The committee's third ground for doubting the effectiveness of appellate review of sentences under title X is the supposed difficulty which a court of appeals will have in reviewing the adequacy of heresay to support a sentence.—(ABCNY at 51.)

I discussed in connection with title I some of the many situations other than sentencing in which courts of appeals as well as trial courts already are accustomed to making and reviewing fact determinations based upon hearsay. Let me now simply point out the additional fact that already a number of States permit appellate review of sentences, and that even in the Federal system appellate courts are empowered to review sentences for criminal contempt. The State experience, and the Federal experience with appellate review of contempt sentences, demonstrates that all three points made by the city bar committee on this issue are invalid. Federal criminal contempt sentences, for instance, are reviewed despite the absence of any statutory standards to guide the sentencing court or the court of appeals, and such review is not considered to be impeded by the present rule making presentence report disclosure entirely discretionary. Similarly, the experience with review of Federal contempt sentences and State criminal sentences, both of which can be based upon hearsay, demonstrates again the invalidity of the supposition that hearsay underlying a criminal sentence cannot be effectively reviewed.

The city bar committee complains that "title X makes no effort to determine either the scope of review or the standards which an appellate court is to consider on review" of sentences. ABCNY at 50–51.

The scope of review is, on the contrary, made perfectly clear, both on the face of title X and in the Senate committee report. Title X's section 3576 provides:

> The court of appeals may . . . 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.

The Senate report goes on to specify:

> The scope of review encompasses all factual and legal questions, substantive and procedural, as well as the exercise of discretion. (Report at 166.)

It states further:

> The Government may obtain review of the failure to impose any special sentence or the sentence imposed. Where the sentence is vacated and remanded for new proceedings subsequent review is contemplated. A defendant found to be a dangerous special offender, but given a sentence less than the maximum authorized for ordinary offenders, may take a sentence review. (*Ibid.*)

These passages make it explicit that every issue considered by a trial court imposing sentence—including the procedures followed, the findings made, and the exercise of discretion in selection of a particular sentence—are included in the scope of appellate review.

The standards for reviewing each of the various questions open on appeal from title X sentence are not specified in title X because of the voluminous existing authority on appellate review of analogous question in other contexts. The sentencing court's exercise of discretion in selecting a sentence will be reviewed under the same standard under which such exercises of discretion presently are reviewed in Federal criminal contempt cases. Questions as to whether or not proper procedures were followed by the sentencing court will be reviewed, as they always are, with the appellate court examining the record of the proceedings below and making de novo determinations of questions of law. There is no reason for the City Bar Committee to suppose that the hearing in the court of

appeals, which must be held prior to any increase in sentence, "is to be a de novo evidentiary hearing"—ABCNY at 51 n. 86.

The ACLU properly suggests that some of the affirmative reasons why appellate review of sentences is desirable, which are discussed at length in the committee report—at 92–93 99— apply to ordinary as well as special sentences. However, due to the past absence of general appellate power over sentences, expressions in previous Congresses of concern over the possibility of unduly burdening appellate courts, it might be wise to test the operation of sentence review by first enacting such authority only for a limited class of cases. Later, the decision whether to extend appellate review to all sentences would be made in light of the volume of past sentence reviews taken, the time and money consumed by each review, and the court adjudication of the constitutionality of review by the Government. As the ACLU concedes, the importance of title X cases, the long sentences available under the title, and its unusual procedures make sentence review "particularly apt in that context"—ACLU January 1970 letter at 14—not if review should first be tried in a limited class of cases, title X describes an appropriate one.

Title X should have received more careful consideration than it was given in the ACLU statement, but instead the uncritical acceptance of that statement by other commentators is compounding its inaccurate and unfair analysis of title X. Tom Wicker of the New York Times, for example, declared—Sunday, February 1, 1970, page E12,—that S. 30 "threatens the eighth" amendment, but failed to say what provisions did so, or how, or according to what authority—while the ACLU apparently has dropped its objection to S. 30 on that ground. And the Times' editors charged—Tuesday, February 3, 1970—that title X "substitutes police discretion for court adjudication." That irresponsible complaint is wrong on both counts. Title X never mentions any police authority, and given no authority of any kind, much less any discretion, to any police agency. If the Times meant to say "prosecutorial," but did not, the editors might note that it was the ACLU which urged that the charging of a defendant as a "dangerous special offender" be made discretionary with the government attorney—hearings at 468. Finally, court adjudication is not displaced—it is required as fully in title X as in ordinary sentencing cases.

CONCLUSION

Mr. President, I now have replied to many of the claims that specific provisions of S. 30 threaten fundamental civil liberties and constitutional protections. In addition, of course, many concepts implemented by the bill have been explained and supported by the Crime Commission, and by other bodies whose proposals formed much of the basis for the Organized Crime Control Act. By comparing the criticisms and defense of the provisions found in S. 30, therefore, a legislator or lawyer can form his own opinion concerning the bill's propriety and constitutionality.

A person who studies these materials will find, however, a surprisingly sharp contrast between the views of S. 30's supporters, and the views of its detractors, concerning its civil liberties implications. I would like to assist the student of this legislation is assessing the reasons for that contrast, and in evaluating the validity of the civil liberties objections raised against the bill. For that purpose, I must go beyond my comments on specific complaints about individual provisions, for a time, to discuss the approach and methodology which underlie the objections to S. 30 voiced by the Civil Liberties Union and the City Bar Committee.

First, both the City Bar Committee and the Civil Liberties Union repeatedly make demonstrably inaccurate and misleading statements concerning S. 30. On some occasions, they mislead the reader merely through deceptively biased use and omission of precedents. The result is that their reports have the appearance of impartial analysis, but are in substance briefs against S. 30. Often, however, through carelessness or haste, and occasionally, it seems, through misguided zeal to discredit the bill, both the Union and the Bar Committee actually misstate the plain meaning of S. 30's specific provisions and the state of existing law. It appears that on some of those occasions, the Bar Committee was led into error by the Civil Liberties Union's testimony and statement against the bill, which the Bar Committee obviously used as its guide to the bill and the issues raised by it. The remarkable congruency of organization and analysis between the Civil Liberties Union's January 1970 letter and the City Bar Committee's statement on S. 30 becomes apparent again and again when the two statements are compared. I have drawn attention to a few of the similarities between the two statements at some earlier points in my remarks today, but let me illustrate this point, and the others that I shall make in discussing the approach taken by these two organizations to S. 30, with a few examples.

The Civil Liberties Union falsely stated that title IV, on perjury, would eliminate the requirement that the perjury have been committed "knowingly" where the defendant was found to be guilty of having made two manifestly contradictory statements—ACLU January 1970 letter at 6. As I explained in discussing title IV, careful examination of the precise terms of title IV makes it clear that the Union simply misread the language of the provisions. The City Bar Committee, however, was led by the ACLU's mistake into making the same error themselves, and even expressly suggesting the insertion of the word "knowingly" in title IV—ABCNY at 23 n. 37. The City Bar Committee—at 38—likewise repeated the Union's error—ACLU January 1970 letter at 10—in supposing that the provision of title VIII that proof of operation of a gambling business in a particular way shall be deemed to establish the probability that the business receives gross revenue over $2,000 in a single day was intended to have, or even could have, application in a trial of guilt where probability is not a material issue.

Less important than the sources of the incorrect and misleading statements found in the statements of the Union and City Bar Committee, though, is the frequency with which they are found. I shall not attempt to identify every error and every misleading statement of which the two organizations are guilty, but I consider it worthwhile to mention several, to assist anyone interested in crime control in evaluating the reliability and persuasiveness of the Bar Committee and Union statements as authorities on S. 30.

I described earlier first, the way in which the Civil Liberties Union falsely stated that title V, on protected facilities for housing Government witnesses, left open the possibility that the Attorney General was being authorized to detain witnesses involuntarily—ACLU January 1970 letter at 6; second, the Union's direct misstatement of the holding of Counselman against Hitchcock concerning immunity legislation and the fifth amendment; third the Union's misleading failure even to cite the recent Supreme Court case—Murphy against Waterfront Commission—contradicting the Union's misinterpretation of Counselman—ACLU January 1970 letter at 4; and fourth, the City Bar Committee's false statement that the National Association of Counties urged that title I be rejected in its present form—ABCNY at 9.

Another misstatement of the plain meaning of S. 30, which I have not mentioned earlier in these remarks, is this statement by the Civil Liberties Union concerning title I, on grand juries:

> Though a criticized public employee is given an opportunity to answer before a report is made public, it is doubtful in the extreme that 20 days will be sufficient where the grand jury may have had over three years to investigate and need not reveal the basis for its allegations. (ACLU Jan. 1970 letter at 2.)

This statement clearly implies that a criticized public official has only 20 days in which to answer a report, and the Union fails even to mention the provision of title I that "upon a showing of good cause, the court may grant such public officer or employee an extension of time within which to file such answer." The city bar committee, with somewhat more candor, notes that a public official can obtain an extension for "good cause," but contends:

> The requirement that the public official named in a report show 'good cause' to justify an extension of his time to file an answer beyond twenty days—also a refinement not found in the New York statute—seems unduly burdensome." (ABCNY at 12 n. 11.)

I consider title I's legislative specification that postponements are permissible, a provision not contained in the New York statute, to be an improvement over the New York law, beneficial to the subject of a report. In any case, the bar committee fails to point out that "good cause" is the ordinary standard for

granting postponements of proceedings and delays in filing pleadings and court papers, and that the denial by a district court of the request for a postponement under title I could be reversed by a court of appeals.

The City Bar Committee makes a particularly egregious misstatement of the meaning of S. 30 when it discusses the definition of an organized crime offender subject to extended sentencing under title X—ABCNY at 49. In the course of its attempt to persuade the reader that the definition of an organized crime offender is satisfied even as to participate in small and unimportant conspiracies, the bar committee twice asserts that there need be only three members of the conspiracy in order to bring the conspiracy within the definition of title X. Actually, of course, that definition requires that the conspiracy have had four or more members. Similarly, when the bar committee makes a comparable effort to discredit the recidivist definition in title X by suggesting that title X provides the same sentencing treatment for defendants whose most recent felonies were minor as for defendants whose most recent felonies were the most grave offenses over which the Federal courts have jurisdiction, the committee contrasts a conviction for possessing drugs with a conviction for "murder on the high seas" and asserts that recidivists convicted of those two crimes and sentenced under title X both would be exposed to 30-year maximum terms of imprisonment—ABCNY at 47. In fact, the maximum term of imprisonment for murder on the high seas—18 U.S.C. 1652—is life imprisonment, and would remain so under title X.

Discussing another aspect of the definition of a recidivist in title X, the city bar committee states:

> The term "conviction" should also be more carefully defined to eliminate individual situations which title X should not reach. It should be made clear, for instance, that convictions overturned on collateral attack as well as direct appeal are discounted. The defendant should also be permitted to question the validity of any prior convictions at his sentencing hearing. (ABCNY at 48 n. 81.)

The fact is that title X already contains provisions which do everything requested in that statement by the city bar committee. The relevant language in title X is:

> A conviction shown to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection.

Since the bill places no limitations on the time or forum where the conviction can be "shown to be invalid," that showing can have been made prior to the recidivist proceedings on collateral as well as direct attack, or can be made in the recidivist proceedings itself. This meaning of title X is reemphasized by the citation in the Senate committee report of the case of *Burgett* v. *Texas*, 389 U.S. 109, 115 (1967). (Report at 164.)

These examples of misstatements and misleading language by the union and bar committee, coupled with the examples I mentioned in discussing each of the various titles of S. 30, should be sufficient to make the point: their statements of the meaning of S. 30, and of the state of existing law, have not provided a firm and reliable basis for their legal analysis of the provisions or their arguments regarding the policies involved in the statute.

In addition, they go beyond such misstatements, and beyond positive misuse of existing precedents. The bar committee and Civil Liberties Union have engaged more generally in biased and slanted citation and omission of analogous precedents, and of relevant pronouncements by respected authorities concerning the issues raised by S. 30. This method of treating legal authorities may be acceptable practice in an adversary brief. The objectionable aspect of the use of that technique by the New York City Bar Committee, in particular, and to a lesser degree by the Civil Liberties Union—since the public generally recognizes that the Union is an advocate for a particular point of view—is that their statements purport to be impartial reports of unbiased and representative professional and civic organizations.

The failure of the bar committee's statement to measure up to that standard is illustrated by the fact, which I discussed in the context of the constitutional issues raised by title VII, regulating litigation concerning sources of evidence, that it cites precedents, such as the Mapp and Alderman cases, and even lower court decisions such as the Projanski decision in the southern district of New York, which the bar committee considers authority against the validity of title VII, yet fails entirely to cite the many Supreme Court and other precedents which contradict the absolutist view of the suppression sanction taken by the bar committee.

Another flagrant example of the selective citation of persuasive authorities, or worse, is the city bar committee's citation of the decision by Judge Weinfield in the United Electrical Workers case for his disapproval of grand jury reports containing legislative recommendations or criticisms of specified individuals, and their omission to mention that in the same opinion Judge Weinfield approved grand jury reports concerning general crime conditions.

Where pronouncements by professional bodies and other authorities concerning concepts implemented in S. 30, or concerning aspects of the bill itself, are concerned, the bar committee was similarly one sided. I discussed earlier, today, in the context of title I on grand juries, the bar committee's false statement that the National Association of Counties opposes the present version of title I, and its omission to note that title I is supported also by the Association of Federal Investigators and the International Association of Chiefs of Police. Similarly, the bar committee informed the reader that the Judicial Conference of the United States has recommended that the subject of depositions in criminal cases appropriately falls within the Supreme Court's rulemaking function and has referred title VI of S. 30 to the Federal Rules Advisory Committee for its consideration—ABCNY at 26—and used the Advisory Committee's treatment of the question as a reason to oppose title VI, but the bar committee did not go on to disclose other positions taken by the Judicial Conference concerning S. 30, such as its approval, with two minor reservations, of title IX, on racketeering infiltration of business.

After misstating the meaning of the various provisions of S. 30 and the state of existing law, and assembling almost exclusively the precedents considered adverse to S. 30's provisions, the city bar committee's and the Civil Liberties Union's next step is to raise specious claims that S. 30's provisions infringe upon personal interests, some of them of constitutional dimension, of individual citizens. The inaccuracies and unbalanced authorities, of course, help to make the claims concerning S. 30's impact upon individuals appear sound. In order to add further credibility to the assertion that individual interests are invaded, however, the bar committee and union strain the specific titles of S. 30 to find the most extreme applications of those provisions imaginable, in order to discredit the provisions. Let me, again, give some examples of how the bar committee's and union's reports employ the technique of discrediting proposed legislation by stressing extreme or fanciful applications of its provisions.

As I mentioned earlier in discussing title I, on grand jury reports, existing case law gives reasonably definite content to the term "non-criminal misconduct," upon which a title I special grand jury is permitted to report. The Civil Liberties Union, however, objecting to the failure of title I to define that term on the face of the bill, poses a hypothetical case in which "a jury investigating alleged bribery of police officers reports on whether particular policemen may have breached some noncriminal regulation, such as being improperly uniformed"—ACLU Jan. 1970 letter at 2. I suppose it is conceivable that a grand jury which found a police department to be pervaded by unprofessional and inefficient conduct, such as drinking during working hours, sleeping while on duty, use of abusive language toward minority group members, and—among other things—sloppy and improper uniforms, might mention the improper attire in reporting on the entire intolerable situation, thereby conveying the whole picture of the demoralized state of the police department.

It is, in my view, exactly because it is impossible to predict how complicated and unforeseeable sets of circumstances will interact that a general phrase such as "noncriminal misconduct" is needed in title I, in order to preserve the power of the grand jury to report upon situations of which the public needs knowledge. For the Civil Liberties Union to suggest, however, as it does, that title I should be defeated because of the supposed possibility that a grand jury would use a bribery investigation as a springboard to report simply on the failure of "particular policemen," in the words of the union, to be properly uniformed is ludicrous, and unworthy of the gravity of the subject on which S. 30 legislates.

In the same vein, the New York City Bar Committee attempts to discredit the special offender sentencing provisions of title X by suggesting that a prosecutor, a Federal district judge, and a U.S. court of appeals all might be persuaded that a felony convict's prior history of "littering" established him to be "dangerous" in the sense that he required imprisonment for a term longer than the maximum authorized for his felony—ABCNY at 49. The technique used against title X by the city bar committee in that hypothetical case, and others with which it attempts to frighten the reader, is to pair the bare minimum showing required to be made by the terms of title X—or less—with the maximum term of imprisonment authorized by title X for the most aggravated offense. This is an unrealistic and prejudicial way in which to assess the propriety of adding title X to the existing Federal laws, which, as I pointed out above concerning the Hobbs Act, already permit the imposition of extremely long prison terms on first offenders who sometimes would be rehabilitated by immediate probation. It is not possible for any substantive criminal prohibition, or any sentencing statute, to avoid the possibility of such extreme applications. Title X does all that can be done in that direction, and a great deal more than is done by present law, by providing criteria for use by the sentencing court, a relatively full procedure for determining whether or not the criteria are satisfied before sentence is imposed, and, perhaps most importantly, an avenue of appellate review to correct individual abuses of discretion.

An almost identical rhetorical trick is used by the city bar committee in its assault upon title VIII, dealing with interstate gambling and related corruption. The bar committee stirs fears that title VIII could be used to prosecute small, unimportant "mom and pop" bookmaking setups—without informing the reader that existing Federal gambling statutes are much broader and more inclusive than title VIII, except that they require specific proof in each case of an interstate element of the gambling business. This interstate element can be a very minor one, provided that the Government can obtain evidence of it, such as accepting by telephone a single bet by a close personal friend just across the State line, or the use of numbers taken each day from a newspaper transported in interstate commerce. On balance, title VIII seems less susceptible of application to a "mom and pop" gambling business than existing Federal statutes, since it is carefully restricted to major gambling businesses by its requirement that five or more persons participate and that the business operate over an extended period of time or enjoy a substantial daily gross. Obviously, title VIII, like any criminal statute, could be applied to criminal cases which are so minor that they are better left to State law enforcement. The Justice Department and the other departments and agencies of the Federal Government are accustomed to enforcing such statutes, so they develop guidelines to prevent the waste of Federal money and manpower, and the abuse of Federal authority which would result from deep Federal involvement in petty cases. The Washington Post recently reported, for example, that the Justice Department has just revised its guidelines governing the decision whether a stolen automobile case should be prosecuted under the Federal Dyer Act or by State authorities—Washington Post, Wednesday, May 27, 1970, page A6, column 3. Title VIII presents no special problems in this area.

It simply is an unavoidable fact of life that the Congress cannot anticipate every circumstance which will arise under a statute it considers enacting. We rely to some degree upon the good faith and judgment of prosecuting authorities and courts. The straining by the Civil Liberties Union and the city bar committee for extreme applications not only of title VIII but of all the titles of S. 30, and their demands that specific provisions be written into S. 30 to guard against imagined dangers of abuse, call to mind the observations made by Stephen, the English jurist and legal historian, on the Indian Penal Code:

> The idea by which the whole Code is pervaded, and which was not unnaturally suggested by parts of the history of the English law, is that every one who has anything to do with the administration of the Code will do his utmost to misunderstand it and evade its provisions; this object the authors of the Code have done their utmost to defeat by anticipating all imaginable excuses for refusing to accept the real meaning of its provisions and providing against them beforehand specifically. The object is in itself undoubtedly a good one, and many of the provisions intended to affect it are valuable as they lay down doctrines which may be needed in order to clear up honest doubts or misunderstandings. . . .
>
> I think, however, that to go beyond this, and to try to anticipate captious objections, is a mistake. Human language is not so constructed that it is possible to prevent people from misunderstanding it if they are determined to do so, and over definition for that purpose is like the attempt to rid a house of dust by mere sweeping. You make more dust than you remove. If too fine a point is put upon language you suggest a still greater refinement in quibbling. 3 J. F. Stephen, *History of the Criminal Law of England* 305–306 (1883).

The city bar committee and the Civil Liberties Union, however, do not present their criticisms of S. 30 as quibbling. Relying on their misleading statements of the bill's meaning and of existing law, citing authorities for their position but not against it, placing the most extreme construction possible on each term of S. 30, and then imagining the most palpably unjust application to which Satan himself could put S. 30, the bar committee and union not surprisingly reach the conclusion that S. 30 is a grave threat to fundamental civil liberties.

They state the supposed danger in overblown, hysterical terms, such as the union's reference to the "withdrawal" of the exclusionary rule during its attack on title VII's 5-year period of limitation and minimal criteria for in camera screening—ACLU January 1970 letter, at 9. Using colorful terms like "dragnet"—*id.* at 12—imagining "masses of computer stored and processed information"—ABCNY, at 27—and declaring modifications in existing pretrial procedure "totally inconsistent with our traditional presumption of innocence"—ACLU January 1970 letter, at 9, the bar committee and union paint a picture of repressive legislation deeply intruding upon settled constitutional rights.

Once they have made the argument that a provision invades individual interests, moreover, the bar committee and union often treat the validity and wisdom of the provision in question as settled. They do not proceed to the next step, which should be to measure the degree of the supposed invasion and balance it against the expected benefit to the effectiveness of the administration of justice and to other interests.

An example of this refusal to balance on the part of the Civil Liberties Union is found in its discussion of title VI, on depositions. The union states that title VI's standard for when depositions can be taken is vague, and that cross-examination of a witness at a deposition is not as effective as cross-examination at trial. Simply on the basis of those arguments, the union concludes that title VI is "objectionable," without weighing the relative practical advantages and disadvantages of greater specificity in the standards for taking depositions, and without evaluating the degree to which cross-examination at a deposition is inferior to cross-examination at trial or weighing that disadvantage of a defendant against the interest of society in not having the testimony of an unavailable witness entirely lost to the court.

The city bar committee's treatment of title VII, on litigation concerning sources of evidence, illustrates its refusal to balance society's interests against those of a defendant. In rejecting the title VII authorization of in camera screening of confidential government files under minimal threshold standards, the city bar committee states that—

> We agree with the Supreme Court's conclusion that disclosure and adversary proceedings will protect constitutional rights more effectively than in camera review. (ABCNY at 32.)

The bar committee omits to consider the next question: assuming, for the sake of argument, that full disclosure increases the protection of a defendant, does it increase the protection so greatly as to outweigh the harm done to other interests by indiscriminate disclosure? The bar committee makes its refusal to weigh competing interests even more explicit regarding the 5-year limitation provision of title VII, when it states:

> More basically, however, even if there were an over-all saving of time and energy and the avoidance of dilatory tactics by criminal defendants, we do not believe that such objectives could possibly justify the proposed dilution of constitutional rights contained in title VII." (ABCNY at 29.)

On occasion, the city bar committee does purport to weigh society's interests against individual interests in considering provisions of S. 30. It balances those interests unevenly, however, understating the affirmative reasons for enactment of S. 30 provisions and assigning slight value to the community interests protected by them.

For example, in summarizing its conclusions concerning title IX, on racketeering infiltration of legitimate business, the bar committee positively misstates the effect of title IX and the reasons for its enactment. According to the city bar committee:

> Title IX . . . creates *penalties* for the investment in legitimate businesses of funds earned in criminal activity. The aim of *deterring* organized crime from infiltrating legitimate businesses is one with which we agree. The draftsmen of this bill, however, fail to consider . . . the problem that the proof of such investment requires proof that the funds were obtained by criminal activity. If the original crime can be proved, however, Title IX *does not add more than a higher penalty* to our present laws. (ABCNY at 7–8.)

The words I have emphasized in that quotation from the bar committee's report pinpoint some of the ways in which the Committee misstates the meaning and effect of title X so as to belittle its value. The penalties of fine and imprisonment provided in title IX do, of course, have the "aim of deterring" the prohibited conduct, but deterrence is only one of the legitimate purposes of criminal prohibitions—and where organized crime is involved, most authorities, including the American Bar Association and the National Council on Crime and Delinquency, agree that "incapacitation" is an equally or more important aim. Furthermore, the committee ignores the fact that title IX adds to the existing criminal penalties of fine and imprisonment the further criminal penalty of forfeiture. Criminal forfeiture under title IX serves not only to punish, deter, incapacitate, and so on—it serves directly to remove the corrupting influence from the channels of commerce.

The committee further ignores the important civil remedies established in title IX. Even where the Government has sufficient evidence to prove beyond a reasonable doubt a criminal violation of title IX as well as violations of the specific offenses listed in title IX, the civil remedies provided are automatically available, through collateral estoppel as to the principal elements of the civil cause of action. The civil remedies grant still further power to the Federal district court to make orders appropriate to remove the racketeering influence from the legitimate organization, and to prevent its return. It simply is false for the bar committee to state that title IX's "aim" is deterrence through the creation of "penalties," and that "title IX does not add more than a higher penalty to our present laws." In view of that understatement of the title's purpose and effect, it is hardly surprising that, when the bar committee turns to balance the benefits of title IX to society against the dangers which the bar committee imagines that its provisions pose to individual liberties, the Committee concludes that title IX "will likely have very limited impact on organized crime," "could have the negative effect of encouraging complacency by giving the appearance of dealing with a very real problem while, in fact, failing to do so," and therefore "should not be enacted in its present form"—ABCNY at 39.

The bar committee similarly gives short shrift to the affirmative reasons for authorization of appellate review of sentencing, when it describes such review simply as "a means of insuring equity and consistency in sentencing patterns"—ABCNY at 50.

In addition to that function of sentencing review, of course, such review serves other important purposes which have been well articulated by the American Bar Association study of appellate review of sentences, and which are summarized in the Senate Committee Report on S. 30:

> Sentence review can, moreover, serve important purposes other than that of avoiding disparate and unsound sentences. In addition to correcting excessive or insufficient sentences, appellate review of sentences can contribute to rationality in sentencing by making sentencing decisions more public and promoting the evolution of sentencing principles, enhance respect for our system of justice, relieve pressure on appellate courts now lacking sentence review power to find grounds to reverse convictions on which unconscionable sentences were imposed, and aid rehabilitation of defendants by affording opportunities to object to sentences. (Report at 92–93.)

The bar committee's grave misgivings about the constitutionality and wisdom of enacting S. 30's sentence review provisions are more understandable when one notices the degree to which the committee ignores important aspects of the social utility of sentence review.

In the same way, the bar committee states that "presumably" the purpose of title VI, authorizing the taking of depositions to preserve testimony, is "to safeguard that witness' testimony in the event of mob retaliation"—ABCNY at 7. That obviously is not the sole purpose of expanding the deposition authority now found in rule 15, and I do not understand why the city bar committee found it necessary to "presume" what the purposes of title VI are, since the committee report spells out a number of eventualities against which a deposition can protect a prosecution:

> Whoever brings about the result, the mob's objective will have been realized if the witness dies before trial, or becomes too ill or is too injured to testify, changes his testimony in fear or from favor, or merely refuses to testify or produce evidence on grounds of privilege or "no" grounds at all. What is worse, particularly when the witness disappears or turns his coat at the last minute, the prosecution itself will usually be aborted and, under double jeopardy principles, the mob figure will attain permanent immunity from punishment.
>
> Paralleling the attempt of title V to protect Government witnesses themselves from the mob by affording them physical protection and security, title VI seeks to protect the evidence the witnesses have to offer from corruption or other interference or harm by authorizing the taking of pretrial depositions in a form potentially admissible at trial to preserve this testimony. The primary purpose of title VI, therefore, is to remove the chief incentive the mob has in tampering with witnesses or their testimony and to prevent criminal prosecutions, especially in organized crime cases, from being defeated when Government witnesses are, in fact, prevented through murder, assault, intimidation, bribes or other factor, whatever their source, from testifying truthfully at trial. It may also be used, of course, by witnesses in protective custody to make their release feasible. (Report at 61.)

Since the bar committee conceives title VI as having a purpose so much more limited than it has, the bar committee concludes that even existing law governing the use in evidence at trial of out-of-court statements, previously cross-examined, is too favorable to the Government, and that "* * * absence of a Government witness from the jurisdiction should rarely, if ever, permit the Government to use his deposition at trial"—ABCNY at 26—in spite of the injustice done in cases such as the Bonnano case, which I discussed earlier in my remarks, where the disappearance of a witness deprived a trial jury of the right to hear relevant evidence.

By refusing to balance competing interests where procedural provisions are involved, and by balancing interests unevenly when it attempts to weigh them at all, the bar committee comes to the conclusion that virtually all of the key procedural provisions of S. 30, which are designed to improve the power of the Federal Government to gather and preserve evidence in criminal cases, should be rejected by the Congress. It is ironic, therefore, that the bar committee concludes that the section of title VIII, on gambling, dealing with corruption of local officials "could be extremely useful"—ABCNY at 35.

The bar committee appears to assume that substantive criminal prohibitions like those found in title VIII are self-executing. The truth is that title VIII is a useful but limited extension of the already broad Federal jurisdiction over illegal gambling. Enactment of title VIII will assist the Federal Government, by permitting effective prosecutions in some gambling cases which are interstate in character but as to which it is not now possible to find specific evidence of interstate involvement, but the improvement in the effectiveness of the federal effort against organized crime which this provision of title VIII will cause will be relatively minor, compared to the improvement which would result from enactment of the procedural provisions of S. 30. As the President's Crime Commission found after a comprehensive examination of the defects in State and Federal laws for dealing with organized crime:

> On the Federal level, and in most State jurisdictions where organized crime exists, the major problem relates to matters of proof rather than inadequacy of substantive criminal laws. . . . From a legal standpoint, organized crime continues to grow because of defects in the evidence-gathering process. (Challenge of Crime at 200.)

In view of that fact and the almost unremitting hostility of the bar committee to S. 30's provisions dealing with the gathering of evidence, the committee's endorsement of a portion of title VIII is a hollow victory indeed for law enforcement—or for society. There is a final flaw in the approach of the bar committee and the union to the provisions of S. 30. After using misstatements of fact and law, biased precedents, nightmarish hypothetical applications, and a one-sided view of the relationship be-

tween society's interests and those of each individual, and concluding therefore that a provision of S. 30 creates excessive danger to individual liberty, the bar committee and union typically succumb to a classic fallacy by rejecting, rather than proposing to amend, the proposed legislation. The union applies that fallacy virtually without exception, which the bar committee makes a number of affirmative suggestions for changes in provisions of S. 30—often, however, without suggesting that the proposed changes would make the provisions of the bill acceptable to the committee. The bar committee, too, however, often shows that it prefers defeat of a proposal to enactment of the proposal in a different form, as where the committee endorsed the concept of dangerous special offender sentencing—ABCNY at 44—but found the sentencing procedure in title X unsatisfactory and expressly declined to consider how it could be made acceptable—*Id.* at 45.

I find the approach of the New York City Bar Committee and the ACLU to S. 30, which I have described now at some length, to be unresponsive to the real need for effective crime legislation in America today, and unduly responsive to the imagined risks of marginal impingement upon individual liberties. In preference to the approach taken by those bodies, we should try to implement the approach expressed so well by Dean Rosco Pound when he wrote:

> Civilized society presupposes peace and good order, security of social institutions, security of the general morals, and conservation and intelligent use of social resources. But it demands no less than free individual initiative which is the basis of economic progress, that freedom of criticism without which political progress is impossible, and that free mental activity which is a prerequisite of cultural progress. Above all it demands that the individual be able to live a moral and social life as a human being. These claims, which may be put broadly as a social interest in the individual life, continually trench upon the interest in the security of social institutions, and often, in appearance at least, run counter to the paramount interest in the general security. Compromise of such claims for the purpose of securing as much as we may is peculiarly difficult. [Nevertheless,] . . . in criminal law, as everywhere in law, the problem is one of compromise; of balancing conflicting interests and of securing as much as may be with the least sacrifice of other interests. (Pound, *Criminal Justice in the American City* 18–19 (1922).)

Burke put it this way:

> For that which taken singly and by itself may appear to be wrong, when considered with relation to other things may be perfectly right—or at least such as ought to be patiently endorsed as the means of preventing something that is worse. (Stanlis, *Edmund Burke: Selected Writings and Speeches* 318 (Archor 1963).)

In the long run, that approach to criminal legislation will prove more perceptive of our real civil liberties than a rigid, unthinking rejection of measures to strengthen law enforcement. We must seek that kind of balance now, and achieve a practical reconciliation of the need for effective administration of justice with the need to preserve our substantial rights. S. 30 has been written and amended with the intent to make such a reconciliation while there is time and will, on the part of the public, to do so. I hope that we can join in recognizing the Organized Crime Control Act as that kind of legislation, and that the Congress will move swiftly to enact it. We must reject the false cries of "wolf" by these self-appointed shepherds of civil liberties. Crime has a tyranny of its own. Those who love liberty should seek to overthrow this tyrant, too. The time for obstruction is at an end. We must move now to enact this legislation.

Mr. GRIFFIN. Mr. President, will the Senator from Arkansas yield to me?

Mr. McCLELLAN. I yield the floor.

Mr. GRIFFIN. I wish very briefly to commend the distinguished Senator from Arkansas for that excellent statement, and for the leadership that he has provided in trying to get this legislation passed. The Nation desperately needs it, and I hope he will be successful.

Mr. McCLELLAN. I thank the distinguished Senator from Michigan. I think he recognizes, as I do, that there is now developing an organized attack on this proposed legislation, and it is coming, in some measure, from some sources that I do not think would ever be pleased with any law that was designed to protect society and to deal effectively with, particularly, the organized crime element in this country.

Bear in mind, organized crime is a powerful force in America, Mr. President. It is not just something imaginary. It is a powerful force. They have their influence, too, and they are using that influence today to fight this measure. They do not want it to become a law. I do not suggest that all who oppose S. 30 serve other interests, but I know some do. They do not want society to have the additional weapons that this law would provide to enable the law enforcement agencies and officials to move in on them, find out who they are, expose them to public view, and bring them before the bar of justice.

They do not want it; and these influences are at work in American, I know, today, to prevent the enactment of this law. This is one of the statutes that they would like to prevent being enacted. They do not want it. I hope we will be able to pass it.

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

Mr. McCLELLAN. I yield.

Mr. MANSFIELD. Just for the RECORD, the President, I believe, has sent up about 15 crime measures since he has assumed office. The Senate, I think, has passed something on the order of 13 of those 15 proposals.

Mr. McCLELLAN. Seven or eight of them, I believe, are included in this one bill.

Mr. MANSFIELD. Yes. And, of course, we have the District of Columbia bill to make up the rest.

Mr. McCLELLAN. Yes.

Mr. MANSFIELD. In other words, 13 of 15 have been passed by the Senate, but have not been acted on by the House of Representatives and they are over there now. The two that are held up here now are detained because of the need for research on constitutional questions in connection with them.

What I wish to bring out is that the Senate has faced up to its responsibility and done its best to enact the President's program in relation to crime and drug-related offenses.

Mr. McCLELLAN. The Senator is correct, Mr. President; the Senate has faced up to it. I think we have recognized the danger and the menace present in this country. The Senate has acted. The bills are over there, now, in the House of Representatives, and I hope the House will act, and act soon.

What I am trying to do here is to show the false character of the argument being used against this legislation, and to note that the influence of organized crime is being brought to bear to prevent the enactment of this law. I hope that the Members of the House of Representatives will see what is really at stake, and hear this demand from the public for relief, for protection from this insidious force that is infiltrating into every phase of American society, corrupting the body politic as well as the economic and social channels of our Nation.

Mr. GRIFFIN. Mr. President, I am glad that the distinguished majority leader has pointed out the excellent work of the Senate in regard to these various legislative proposals in the field of crime proposed by President Nixon—some 15 of them in all, as I understand.

While it is inappropriate to direct criticism toward the other body, it is still a fact that, as of now, there has not been one of those bills presented for signature to the President of the United States, despite the fact that the crime rate continues to rise and continues to be a shocking circumstance in our Nation. Not a single one of President Nixon's legislative proposals to combat crime has cleared Congress and been presented to him for signature.

AMENDMENT OF THE FOREIGN MILITARY SALES ACT

The Senate continued with the consideration of the bill (H.R. 15628) to amend the Foreign Military Sales Act.

Mr. SPONG. Mr. President, I should like to commend the Senator from West Virginia (Mr. BYRD) for his presentation in behalf of his perfecting amendment to the pending Cooper-Church amendment. I regret that I was not in the Chamber when Senator BYRD made his thorough and reasoned presentation on last Wednesday, but I have gone over his remarks very carefully.

The Senator from West Virginia seeks to alter the pending amendment to assure that the President as Commander in Chief is not precluded from taking such action as may be necessary to protect the lives of U.S. forces in South Vietnam or to facilitate the withdrawal of U.S. forces from South Vietnam. These are commendable objectives, but I should like to ask a few questions which might clarify the record and establish for the purposes of legislative history what the sponsor of the amendment believes to be those actions which the President as

Commander in Chief might take under the language of his amendment.

I recognize, as the Senator from West Virginia stated in his remarks, that the chances for the Cooper-Church amendment becoming law are remote. Nevertheless, I believe the Senate has an obligation to state, as clearly as possible, its will with regard to our future policy in Cambodia, and that such statement should be within the prerogatives of the legislative branch under our Constitution and consistent with the constitutional prerogatives granted the President as Commander in Chief.

The Senator from West Virginia (Mr. BYRD) has stated that he is opposed to the use of U.S. forces in Cambodia to support Cambodian forces. He has also stated that should his amendment be adopted and subsequently the Cooper-Church language, as amended, adopted, that this would represent a clear voicing of the sentiment of the Senate against American involvement in a war for Cambodia or in support of any Cambodian Government.

Aside from this interpretation by the Senator of the limitation his amendment expresses to the President as Commander in Chief, I should like to know what the sponsor believes is the President's right, as Commander in Chief, under the language of his amendment.

Mr. President, I might say that the Senator from West Virginia has assured me that he will address himself in future debate to these questions, which I am presently placing in the RECORD.

I repeat, I should like to know if the language of the Byrd amendment contemplates the President's right as Commander in Chief to do the following under the language of that amendment:

First. To prevent enemy forces from crossing the border into South Vietnam and to pursue and destroy such forces as they attempt to leave South Vietnam for Cambodia? This contemplates a distance into Cambodia of no more than 2 or 3 miles.

Second. To destroy enemy supplies, staging area, headquarters, and so forth, in a relatively narrow zone along the Cambodian-South Vietnamese border? This contemplates a zone into Cambodia of approximately 20 miles in width.

Third. To attempt to find and engage any enemy troops within the zone just described, irrespective of whether they are on the verge of entering South Vietnam or whether they are just returning from it?

Fourth. To attempt to occupy and hold the zone in question, thus denying it to the enemy?

Fifth. To engage in any or all of the types of activity described in questions 2, 3, and 4, but to do so throughout all of Cambodia, or at least in parts of it beyond the 20-mile zone near the border?

ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. KENNEDY. Mr. President, if there is no further business to come before the Senate, I move, under the order previously entered, that the Senate stand in adjournment until 10:30 a.m. tomorrow.

The motion was agreed to; and (at 5 o'clock and 1 minute p.m.) the Senate adjourned until tomorrow, Wednesday, June 10, 1970, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 9, 1970:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Elliot L. Richardson, of Massachusetts, to be Secretary of Health, Education, and Welfare.

IN THE AIR FORCE

The following officer to be placed on the retired list in the grade indicated under the provisions of section 8962, title 10 of the United States Code:

To be lieutenant general

Lt. Gen. Sam Maddux, Jr. [redacted] FR (major general, Regular Air Force), U.S. Air Force.

The following-named officer to be assigned to positions of importance and responsibility designated by the President in the grade indicated, under the provisions of section 8066, title 10, United States Code:

To be lieutenant general

Maj. Gen. Eugene B. LeBailly, [redacted] FR, Regular Air Force.

IN THE NAVY

The following-named officers of the Navy for temporary promotion to the grade of rear admiral in the staff corps indicated subject to qualification therefor as provided by law:

MEDICAL CORPS

William C. Turville.
Oscar Gray, Jr.
Charles L. Waite.

SUPPLY CORPS

Charles Becker.
Philip Crosby.
Kenneth L. Woodfin.

CIVIL ENGINEER CORPS

Foster M. Lalor, Jr.

DENTAL CORPS

Vernon L. Anderson.

The following-named officers for permanent promotion to the grade of captain in the Navy in accordance with article II, section 2, clause 2 of the Constitution:

Comdr. John W. Young, U.S. Navy.
Comdr. Eugene A. Cernan, U.S. Navy.

HOUSE OF REPRESENTATIVES—*Tuesday, June 9, 1970*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Be doers of the word and not hearers only.—James 1: 22.

O God, our Father, who art the creator of the world and the sustainer of life, into Thine ennobling presence we lift our spirits this day. Awaken in us the realization that Thou hast a purpose for each one of us, that life is filled with meaning, and that Thou dost even now speak to us in a still, small voice. Hushed we stand in Thy presence, seeking Thy guidance, eager to do Thy will, and ready to make our land a safe place in which to live.

Somehow we have failed in many ways. This Nation is not what it ought to be. There is too much violence, too much ill will, too much division. We pray that through the power of Thy spirit we, the representatives of our people, may bring a new unity of purpose to our country, a higher value of true patriotism, a greater conception of what it means to be an American, and a more passionate concern for the welfare of our citizens.

May our example in maturity help bring maturity to those younger than we. In the Redeemer's name we pray. 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 without amendment a bill of the House of the following title:

H.R. 14306. An act to amend the tobacco marketing provisions of the Agricultural Adjustment Act of 1938, as amended.

The message also announced that the Senate agrees 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. 11102) entitled "An act to amend the provisions of the Public Health Service Act relating to the construction and modernization of hospitals and other medical facilities by providing separate authorizations of appropriations for new construction and for modernization of facilities, authorizing Federal guarantees of loans for such construction and modernization and Federal payment of part of the interest thereon, authorizing grants for modernization of emergency rooms of general hospitals, and extending and making other improvements in the program authorized by these provisions."

The message also announced that the Senate agrees to the amendments of the House to a bill of the Senate (S. 1479) entitled "An act to amend chapter 19 of title 38, United States Code, in order to increase from $10,000 to $15,000 the amount of Servicemen's Group Life Insurance for members of the uniformed services," with amendments in which concurrence of the House is requested.

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON PUBLIC WORKS

The SPEAKER laid before the House the following communication from the chairman of the Committee on Public Works; which was read and referred to the Committee on Appropriations: