Standing behind the amendments are Republicans Edward B. Biester Jr. (R-Pa.), James C. Cleveland (R-N.H.), Barber B. Conable Jr. (R-N.Y.), John Dellenback (R-Ore.), John N. Erlenborn (R-Ill.), Charles S. Gubser (R-Calif.), Paul N. McCloskey Jr. (R-Calif.), Thomas F. Railsback (R-Ill.), Donald W. Riegle Jr. (R-Mich.), William A. Steiger (R-Wis.), and Robert Taft Jr. (R-Ohio).

Members of the Democratic Party supporting the amendments are Jonathan B. Bingham (D-N.Y.), John Brademas (D-Ind.), James C. Corman (D-Calif.), Donald M. Fraser (D-Minn.), Sam M. Gibbons (D-Fla.), Ken Hechler (D-W. Va.), Abner J. Mikva (D-Ill.), James G. O'Hara (D-Mich.), Thomas M. Rees (D-Calif.), Henry S. Reuss (D-Wis.), and Morris K. Udall (D-Ariz.).

We can think of nothing more important to the American public than a free flow of accurate information by which Members of Congress can be judged accordingly.

As it is today, the House rules and procedures allow a system which is confusing, unnecessarily secret and, therefore, in violation of the time-honored principle, "The public has a right to know what its government is doing."

We believe the amendments offered by the 22 bi-partisan Members of Congress, if accepted, will add teeth to the Legislative Reorganization Act of 1970.

The public should waste no time in urging their congressmen to support the series of anti-secrecy amendments. Write your representatives today and tell them you back an open government in a democratic society.

[From the Evening Star, July 13, 1970]

ON THE RECORD

One of the cherished traditions of the House of Representatives is the secrecy that cloaks many of that body's most important operations. Approximately half the committee hearings and meetings are closed to the press and the public. Committee votes are, for the most part, never made public. Committee reports are customarily kept from the view of everyone—including members of Congress—until hours before a floor vote. And votes on vital amendments are hidden from the prying eyes of newsmen and constituents by the parliamentary maneuver of the non-record vote.

Observers of Congress and handfuls of idealistic congressmen have long viewed this passion for secrecy as an odd manifestation of democracy in action. And now, as the Legislative Reorganization bill heads for the floor of Congress, there are strong indications that at least a part of the veil will be lifted.

The bill—the first congressional reorganization measure in 24 years—provides that most committee hearings will be open and that some will be televised. Some 50 planned amendments will, for the most part, attempt to open more of the operations of the House to public inspection. The secret vote has drawn the particular attention of the reformers.

The Democratic Study Group, a collection of some 100 House liberals, has launched an all-out attack on the practice of non-record voting. They have, somewhat surprisingly, picked up significant support from the conservative outposts of both parties.

There is no real question as to why the secret vote originated and why it has been continued to this day. The purpose is to keep the voters back home from knowing for certain how their man in Congress voted on a particular bill.

That is, to be sure, not the reason usually cited by the defenders of congressional secrecy. They argue that roll-call votes take too much time. Or they claim that keeping constituents in the dark permits a representative to vote according to the dictates of his conscience rather than the dictates of political expedience. Some defenders, in desperation, have been known to cite the historical precedent of the British Parliament and the Continental Congress.

Taking these one at a time:

The reform-pushers point out that the time-consuming roll call is not the only alternative to secrecy. A teller vote, which is one of the methods now favored by the secrecy lobby, could be employed. The only change required would be the recording—and the publication—of the individual votes, instead of the counting of numbers of ayes and nays and letting it go at that. Or, should the House decide to enter the 20th Century completely, electronic voting devices could be installed that would provide a record vote in a matter of seconds.

As for the contention that consciences are freer if the voters are kept in the dark, it is necessary only to note that a representative's first duty is to represent the collective conscience and the will of his district.

Finally, the historical argument falls apart with the realization that the secrecy of Parliament and the Continental Congress arose out of a wholesome respect for the wrath of the King of England.

Today, the Congress of the United States has scant cause to fear the wrath of the British monarch. As for the M.P.'s, they decided 138 years ago that there wasn't too much a threat from the throne, and they dropped the unrecorded teller vote from their rules of order.

It's time for the House to go fully on the record, too.

[From the Oshkosh (Wis.) the Paper, July 14, 1970]

HOUSE SHOULD END ITS SECRECY

A bipartisan group of Congressmen is leading a reform movement to do away with much of the secrecy in the House of Representatives.

The group includes two Wisconsin Congressmen, William A. Steiger, an Oshkosh Republican and Henry Reuss, a Milwaukee Democrat.

In a statement, the group said, "We believe secrecy undermines the democratic process and saps public confidence in the House as a responsive and legislative body. We think the public has a right to know what is happening in Congress and how Members vote on major national issues. Indeed, the democratic process cannot function without the free flow of such information."

This reform is long overdue.

Due to archaic House Rules, many which have been in effect since the First Congress, recorded votes are not taken on many major issues. By meeting as a Committee of the Whole, for example, the House can and does avoid a recorded vote on issues that may be of vital concern to the voters back home.

Many issues are decided by voice or standing votes, counted by Representatives acting as tellers. No printed record is kept.

Votes were taken with no records kept, for example, on such issues as funds for American forces in Cambodia, Laos and Thailand, the supersonic transport, and the safeguard missile system.

Through the use of teller votes, Congressmen can avoid taking a public stand on controversial issues. They also can talk one way and vote another. There have been cases where votes are known to have changed when the matter happened to come up again on a roll call vote.

To change things, Steiger and the other reformers are proposing that the teller votes be recorded and made public. Certainly, the Members of the House should be willing to let the people back home know how they voted. After all, a Congressman's voting record should be the main criterion by which the voter judges his Congressman.

Steiger, who has been a leading advocate of House reform, is willing to stand on his record. He is to be complimented for this position. On the same note, other Congressmen also should be willing to be judged.

In its simplest form, it's known as being honest with the voters.

There also is another major part to the reform proposal. This would limit the common practice of secret committee and subcommittee meetings. About half of this business is done in secret by the House, including the powerful House Appropriations Committee which does all of its business behind closed doors.

This is in contrast to the Senate, which does most of its work in session open to the public.

Of main concern in these matters is the public's right to know what their Representatives are doing or not doing, as the case may be.

Another bad part about the House's secrecy is that it increases absenteeism. Not only don't people know how their Representative voted, they also don't know if he was present. Many times, where no record is kept, Representatives don't make it a point to be present for a vital vote.

These matters and others are scheduled for action this week. Let us hope that enough Congressmen follow the lead of Steiger, Reuss, and other reformers. Unfortunately, we will learn only the outcome. The vote on reform, also, will be taken secretly.

SENATE—*Wednesday, July 15, 1970*

The Senate met at 10 a.m. and was called to order by the Vice President.

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

God of our fathers and our God, who hast made and preserved us a nation, make us a people mindful of Thy favor, obedient to Thy laws and glad to do Thy will.

Create in us clean hearts and pure minds, that we may be, in this age, heroes of the spirit, as our fathers were in days past.

Make us great enough and good enough and strong enough for the times in which we live.

As we undertake our tasks this day, may goodness and mercy follow us. May we be the beneficiaries of Thy higher wisdom, to the end that Thy kingdom may come and Thy will may be done on earth.

In the Redeemer's name we pray. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, July 14, 1970, be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, at the conclu-

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sion of the remarks of the distinguished Senator from Ohio (Mr. YOUNG) and the distinguished Senator from New York (Mr. JAVITS), there be a period for the transaction of routine morning business, with a time limitation of 3 minutes therein.

The VICE PRESIDENT. 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 VICE PRESIDENT. Without objection, it is so ordered.

AMENDMENT OF THE CANAL ZONE CODE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1019, H.R. 7517.

The VICE PRESIDENT. The bill will be stated by title.

The LEGISLATIVE CLERK. H.R. 7517, to amend the Canal Zone Code to provide cost-of-living adjustments in cash relief payments to certain former employees of the Canal Zone Government, and for other purposes.

The VICE PRESIDENT. Is there objection to consideration of the bill?

There being no objection, the bill was considered, ordered to a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-1015), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The bill which will result at no cost to the Government and to be paid from Canal tolls is designed to adjust cash relief payments to noncitizen former employees of the Canal Zone Government whose services terminated prior to 1958 by providing for adjustment of future payments on the basis of cost-of-living under the provisions of section 8340(b) of title 5, United States Code, pertaining to civil service retirement annuities.

The bill would also extend the eligibility for cash relief payments to surviving widows of such former employees.

JUSTIFICATION

The origin of cash relief payments stems from legislation enacted in 1937 to provide annuities mainly for West Indian laborers who were employed in the construction of the original canal in Panama and who remained as aliens in the Republic of Panama. Cash relief payments have been adjusted over the years to the current average rate of $58 per month.

Having assumed the responsibility for these aging former employees periodic legislation has become necessary to adjust the cash relief payments upward to keep pace with continuously rising prices in Panama. To avoid recurring legislation, the committee agrees with the House that relating the cash relief payments to civil service retirement annuity cost-of-living adjustments is the more desirable solution. At the same time those entitled to cash relief payments are better enabled to defray expenses as the cost-of-living index rises.

The bill as proposed would also include the widows of these former employees and the committee agrees that this be done. Having displaced these families initially we should accept the responsibility of providing for their welfare to the extent proposed in the bill. Payment to the widows would be in the amount of not greater than 50 percent of the cash relief their spouses would receive if they were still living.

The term "widows" is defined in the bill and is designed to conform with local matrimonial customs. The bill further excludes those widows who have remarried or assumed a common-law relationship with another person since the death of the former employee.

ORDER OF BUSINESS

The VICE PRESIDENT. Under the previous order, the distinguished Senator from Ohio (Mr. YOUNG) is now recognized for 20 minutes.

LET US CORRECT A COLOSSAL MISTAKE—LET US RECOGNIZE COMMUNIST CHINA—AMERICAN PRODUCERS AND CONSUMERS WOULD BENEFIT

Mr. YOUNG of Ohio. Mr. President, during the past months on a number of occasions in the Senate I have urged that our Government open diplomatic relations with Communist China and that we offer to reopen the U.S. Embassy in Peking fully staffed and invite the government of mainland China or Communist China to be represented in Washington by an ambassador and an embassy staff.

Very definitely, Mr. President, we Americans should engage in commercial relations with Communist China. Our neighbor, Canada, has been selling hundreds of millions of bushels of wheat over recent years to Communist China. Not only Canada but the United Kingdom, West Germany, and other European nations have maintained commercial and diplomatic relations with Communist China.

American people should know that in 1968 Canada sold and shipped to Communist China 78,893,000 bushels of wheat for which Canadian wheatgrowers received nearly $158 million in gold—cash on the barrelhead. In 1969 Canada exported 61,586,000 bushels of wheat for which Canadian wheatgrowers received $119,776,000 in cash. During this same period—1968 and 1969—West German Republic had freighters going back and forth to ports in Communist China exporting $335 million of West German products receiving payment in gold and during this same period the exports to West Germany from Communist China were but a small fraction of this amount so the West Germans profited while a shortsighted policy denied profitable trade to Americans. Other nations who are our friends and allies likewise profited. For example, during this same 2-year period the United Kingdom exported to Communist China products for which the Chinese Government paid in gold more than $200 million.

Over the years since the end of World War II we Americans have been at a disadvantage in every respect due to the shortsighted policy of withholding diplomatic relations with Communist China. Furthermore, we have deprived ourselves of a listening post at Peking. We have been forced to observe what is going on in Communist China through our consul at Hong Kong. There is no valid reason we should continue this shortsighted policy while those lunatic fringe extremists who desire to return to the witch-hunting, Communist fearing days of Joe McCarthy still send out utterly false propaganda of a monolithic international communist conspiracy on the part of the two great Communist nations, China and the Soviet Union. Time and events have proven how wrong these witchhunters have been and are.

The rulers of the Kremlin and the rulers at Peking have been denouncing one another for many months now. With those two huge Communist nations on the outs we have much to gain and nothing to lose by maintaining regular diplomatic and commercial relations with China. The wheat growers of rural America in the Midwest and in the wheatlands of the West would greatly profit by selling and shipping millions of bushels of wheat to Chinese ports and in return all Americans would profit as the handicraft products from China would be shipped into this country. It has been apparent to officials in all of the capitals of the world that for many months now there have been warlike confrontations between the armed forces of the Soviet Union and Communist China along that 6,500-mile common border separating these two great Communist nations. It is well known that sporadic fighting has occurred along the common border in many places and that the Soviet Union has in recent months withdrawn from Eastern Europe many divisions of its armed forces and presently 45 divisions of Soviet soldiers have been brought to the east and are deployed along the Chinese border. That is a total of nine armies of Soviet soldiers—infantry, cavalry, artillery, and air forces—on the borders of Communist China, running for 6,500 miles, where fighting has been going on for months and many Chinese and Russians have been killed and wounded.

Mr. President, there can be no valid argument against opening regular diplomatic relations with Communist China and initiating commercial relations which will bring in hundreds of millions of dollars in gold for American wheat and other products of our farmers and factories and further enriching our country with the import of handicraft, furs, and other products from the Chinese. Doing all this would also be another small step forward toward permanent peace.

Mr. President, the establishment of a workable relationship with the government of mainland China is one of the most important problems facing our Nation today. The facts are that from late 1965 to this good hour I have advocated that the United States follow the example of Mexico, the United Kingdom, France, and other nations, and recognize the Government of Communist China, instead of relying on Hong Kong as a listening post and observatory into the vast area of mainland China with its popula-

tion of one-quarter of the inhabitants of the entire world. Following recognition, we should invite that nation to open an embassy in Washington and we then open and maintain an embassy in Peking. The time for such diplomatic exchange is long past due.

Nations, like individuals, should not ignore the facts of life. Recognition of one Nation by another never means approval of the ruling regime of that country. For example, early in the first term of the administration of Franklin D. Roosevelt the United States recognized the Government of the Soviet Union. It was stated at that time and well understood that our recognition of the Soviet Government would not imply any approval of the political structure of that nation. Our acknowledgment by official action that the Peking government exists and has been for many years the government of China is only a matter of stating the obvious. It does not imply our approval of that regime any more than our recognition of the Soviet Union, Spain, Greece, or any one of a number of nations ruled by Communist or Fascist dictatorships or military juntas indicates our approval of these regimes or their ideological bases.

Our Embassy in the Soviet Union provided a valuable listening post and furnished us with much information during the Stalin regime when Russia was a closed society. Yet there were, and are, stupid right-wing extremists including members of the John Birch Society or "Birchsaps," who all along denounced our recognition of the Soviet Union.

With Red China exploding crude nuclear weapons and engaging in serious border fighting with the Soviet Union along their 6,500-mile common border, a U.S. Embassy in Red China would undoubtedly be of great value to us. If the administration is seriously interested in normalizing relations with China—and I believe the administration is seriously interested—it should take steps toward entering into meaningful diplomatic and economic relations with the Peking government. Should the arrogant Communist dictators of China rebuff that effort, their refusal would result in a propaganda victory for the United States.

The Peking government has been the duly constituted and permanent government of mainland China for more than 20 years—in fact at least 25 years. It has governing authority over some 750 million men, women, and children—nearly one-fourth of the world's population. Red China unquestionably exists and just as unquestionably it will exist, immensely more powerful, 5 years from now. In spite of this fact, we continue to pretend that Red China is not there and that perchance some miracle will happen to solve this perplexing problem.

Furthermore, it is folly to believe that mainland China is ever going to be conquered by Chiang Kai-shek's little army of many generals and no combat experience, in virtual exile on Formosa, protected by our airpower and 7th Fleet. I have been in Taiwan, and I know the facts there. We have for 19 years been supporting that corrupt and boastful old warlord, Chiang Kai-shek. When he was driven from the Chinese mainland in the civil war, he sought a haven in Formosa for himself and his beaten army. Almost immediately his army massacred some 17,000 unarmed people. With our help he then established himself in power. His government is a puppet government of the United States.

Despite the boasts in the mid-1950's of Secretary of State John Foster Dulles and those in the China lobby about unleashing Chiang Kai-shek to reconquer the mainland, it has been and is our 7th Fleet and airpower and more than $20 billion of American taxpayers' money that has maintained this Nationalist Chinese government, so-called, on the island of Taiwan. Ardent supporters of Chiang Kai-shek remind one of Mississippi extremists who are still waving the Confederate flag a century after the Civil War ended.

Chiang is a tiger without any teeth. He has an over-age army of 600,000 at Taiwan. Over the years he has boasted of invading the Chinese mainland. This, of course, with the proviso, and he does not mention this, that the United States furnish all-out support from our Air Force and 7th Fleet, and that our warships and warplanes protect the convoy of American transports necessary to transport this invasion force. The time is long past due that we should withdraw all support from Chiang Kai-shek and cease pretending that the small island he dominates is a nation deserving of our support and of any prominence whatsoever in the United Nations. It is true that he has an army of 600,000 which is capable of parading in competition with the Shriners and would probably be about as good in combat.

Leaders of Communist China have in the past expressed disinterest in joining the United Nations. However, the United States should urge the chiefs of state of those nations which have heretofore recognized Red China and are presently enjoying lucrative trade with that huge nation to join with us in offering a place in the United Nations to this huge nation which we have been so myopic as to disregard altogether or treat as an outlaw.

Ambassador Edwin Reischauer, former Ambassador to Japan and one of our great Asiatic experts, has been proposing for some years that our Government accord recognition to Communist China and sponsor its admission to the United Nations.

American producers and consumers suffer due to failure to trade with Communist China. Why stand alone in refusing to recognize a stable government in existence a quarter of a century ruling one quarter of the people of the world?

KEY ISSUES IN UNITED STATES-EUROPEAN RELATIONS

Mr. JAVITS. Mr. President, in Brussels on July 2–3, I chaired the spring meeting of the Political Committee of the North Atlantic Assembly—the organization of the parliamentarians of the 15 NATO nations. I also met with NATO Secretary General Brosio. Thereafter, during a visit to four western European countries in the period July 3–8, I discussed the key issues in U.S.-European relations with a wide spectrum of European leaders.

In Rome, I met with Gov. Guido Carli, of the Bank of Italy and a leading figure in international monetary and financial matters. In London, I spoke with Home Secretary Maudling of the new conservative government, as well as with Opposition leader Harold Wilson and other members of the Labor and Conservative parties. In Bonn, I had extensive discussions with Defense Minister Schmidt, Foreign Minister Scheele, Minister of the Chancellor's Office Emkhe, and former Chancellor and Opposition leader Dr. Kiesinger.

There are four key issues now under active negotiation which will, in my judgment, determine the basis for U.S. relations with Western Europe in the decades ahead. The issues of overriding importance are: First, Chancellor Brandt's Ostpolitik and the search for East-West detente in Europe; second, the challenge to western security from the Soviet Union's expansionist moves in the Mediterranean and Mideast; third, the United States military deployment in Europe, especially as this involves U.S. troop levels in West Germany and includes the problem of balance-of-payments offsets; and fourth, the expansion of the European Economic Community to include Britain and the other applicant nations and the relationship of an expanded EEC to the United States.

Chancellor Brandt's Ostpolitik—or, eastern policy—is a diplomatic initiative of potentially far-reaching consequences which seeks a normalization of West Germany's relations with its East European neighbors and the Soviet Union. Through a series of four simultaneous negotiations—between Bonn and Moscow, Bonn and Prague, Bonn and Warsaw, Bonn and East Germany, and including also Four Power negotiations over Berlin in which the U.S. is engaged—Ostpolitik, in essence, seeks to achieve a comprehensive, postwar "German settlement" through means other than a German Peace Treaty which has been stalled and refused by the Soviet Union.

There appears to be broad support for the concept of Ostpolitik, as explained by the Council of Ministers of NATO, throughout Western Europe, and the desire for "detente" is widespread. Strong criticism of Ostpolitik, contained in a draft Rapporteur's report considered by the Political Committee meeting, was rejected overwhelmingly by the committee in favor of the NATO Minister's formulation endorsing Ostpolitik, and this is reflected by the attached resolution of the Political Committee.

Within the Federal Republic of Germany itself, I found opinion to be more closely divided on the question of Ostpolitik. The opposition CDU/CSU is mounting a forceful challenge to certain important aspects of Ostpolitik, which its leaders charge could compromise basic German and Western interests in Berlin and the GDR. The proponents of Ostpolitik on the other hand, believe that the fruits of "normalization," if achieved through the Ostpolitik, would be of

major, long-term benefit to Western interest and to the evolution of Eastern Europe out of its present Soviet "satellite" posture.

The issues are subtle but of vast importance. Whether a normalization—or legitimization—of the present division of Europe—between the FRG, the GDR, Poland and Czechoslovakia—would redound to the greater advantage of the non-Communist or the Communist worlds is a matter which is debatable. I believe that the ingenuity and determination of the free people of Western Europe, in partnership with North America, are sufficient to protect and enhance Western interests in the new form of competition with the Soviet system which could ensue from normalization based on the Ostpolitik initiative. It is neither vital nor necessary, that the right peacefully to bring East and West Germany together ultimately be sacrificed, for the cost in German irridentism could be high indeed.

The issue still lies in the balance, however, for it is apparent to me that Western Europe has yet to find its bearings. Despite its enormous economic growth over the past two decades, Western Europe continues to be psychologically and politically unable to find its place. It has not yet psychologically "grown into" the great political and economic power potentiality of an expanded EEC and a politically united Western Europe. The leadership of Western Europe still thinks and feels "small." It has yet to grasp the potentiality of its own strength in geopolitical and economic terms.

This psychological reality is of direct importance to U.S. security interests which are closely tied to the question of U.S. troops in Germany. Our NATO allies, particularly West Germany, are haunted by a fear of a U.S. troop pull-out which they believe would leave them naked before the coercive power of the Soviet Union. There is a strong current of opinion in high positions in Western Europe which believes there would be swift and silent unravelling of NATO if the United States made significant substantive cuts in the level of troops it maintains in West Germany. The next stage, according to this view, would be the imposition of a Finnish-type relationship by the U.S.S.R. on Western Europe.

This is a situation which may not be congenial to the desires of the United States, but I am convinced that it is a reality which must be accepted in considering U.S. policy. Its implications, in the bluntest terms, mean that the maintenance of substantially current U.S. troop levels in Europe is necessary to protect U.S. security interests in Europe. The United States could deal itself out of a major role in shaping a comprehensive European settlement by a premature draw down of our troops. The threat to our security interests in Europe today are not that of direct military attack. Rather, they are rooted in the psychology and history of Western Europe.

While I can fully understand the reasoning—as seen from the American vantage point—behind the resolution pending, which calls for substantial reductions in U.S. troops in Europe, I deeply believe that such a move at this time could gravely compromise vital U.S. security interests, by precipitating a disintegration of NATO. The effect of substantial U.S. troop reductions at this time would be determined by the current psychological realities of Western Europe, which are characterized by a pervasive sense of weakness in relation to the U.S.S.R. Whether this psychological reality is justified from an objective American perspective, is not the question. In my judgment, we must base our policy on the political and psychological realities as we find them, rather than as we might wish them to be.

I could see no greater irony than for the United States to prejudice its vital security interests in Europe through an impatient withdrawal from Europe now, especially as our withdrawal from the peripheral fringes of the Asian mainland continues to be slow, so divisive, and so indecisive. Our security interests in Europe are paramount. They demand first priority. It is a price we must be prepared to continue to pay.

This, of course, does not mean that the United States should not insist on a more equitable distribution of the burden sharing as respects the military posture of NATO and the cost of maintaining over 300,000 troops in Europe. I believe that the United States must continue to take a firm line in negotiations on this question of offsets and I wish to commend the able work done by my colleague Senator PERCY in focusing attention in Europe on many facets of this important issue. I am guardedly optimistic that a new arrangement will emerge, which is much more satisfactory to the United States. The new concept of budget support payments—as distinct from purchase and loans—as a means of ameliorating balance-of-payments costs to the United States appears to be gaining acceptance in Europe. It probably must be multilateral to be acceptable to Bonn but I believe that at least token participation by other NATO members is possible and should be persistently sought by the United States through negotiation.

In my judgment, the stage has now been reached when overt pressures on West Germany could be counterproductive. I would like to suggest a Senate moratorium on this matter, while the United States and the FRG wrestle with the issue through appropriate diplomatic channels.

The third issue preoccupying the attention of Europe—and which directly affects U.S. interests—is the negotiations to expand the EEC to include Britain, Denmark, Norway, and Ireland. In discussions with European leaders I expressed my view that the interest of the United States continues to be strongly in favor of an expanded EEC but that the ultimate attitude of the United States would be molded by the implications of terms offered to Britain, and by the kind of trade, monetary and fiscal posture, vis-a-vis the United States of a larger EEC. In my judgment, the balance between cupidity and statesmanship, as regards the terms set for British entry into the EEC, has not yet been decided. Nor, in my judgment, has Europe yet reached the moment of truth within its own councils as to its trade posture. If the EEC expands, and chooses to pursue a protectionist course, it could set in motion a major and debilitating trade war which could weaken Europe and North America. Such a development undoubtedly would also stimulate protectionist tendencies in the United States and, with respect to the issue of U.S. troop levels, it could be a major factor in bringing about what Europeans profess to fear the most—a rapid U.S. withdrawal from Western Europe which would leave the Soviet Union in a dominant psychological and geopolitical position.

I am nonetheless optimistic that statesmanship will prevail. My conversations in Europe indicated a new sense of realism and determination—as well as optimism—on the fundamental issues of EEC expansion and renewed progress toward European political unity. As Europe grows psychologically into the full dimensions of its new potentiality I believe that a more statesmanlike attitude will prevail on the broad issues of political and economic partnership and interdependence.

The fourth key issue which will shape United States-European relations in the coming decade—and which is closely interrelated with the other issues including U.S. troop strength in Europe—is the challenge of Soviet expansion in the Mideast and the Eastern Mediterranean. I found acceptance—though in given cases, grudging—of the fact that Soviet activities in the Mideast, and especially recent ominous assumption of a combat role by Soviet military personnel in Egypt, represents a direct challenge to Western Europe's security. There is an awareness that NATO could be effectively outflanked by the consolidation of Soviet power in the eastern and southern Mediterranean littoral areas. There is also an awareness of European industrial dependence upon Mideast oil.

My suggestion that the Mideast ought to be an important agenda item of any European Security Conference also was received with general agreement.

However, Western Europe's awareness of the stakes in the Middle East appear to be of a theoretical nature, not actively involving Western Europe—in its view—in any of the diplomatic and security measures now required to protect Western interests. There seems to be a widespread feeling that there is little Europe can or needs to do, and that the fate of the Mideast will be decided by the Soviet Union and the United States and Western Europe can really do little about it.

During my discussions in Western Europe I expressed the strong view that U.S. attitudes on other issues of great interest to Europe—troop levels, trade and monetary questions—will be deeply influenced by Western Europe's policy and attitude with respect to the Mideast. If the United States is accorded the same conspicuous lack of aid and comfort in the Mideast—where it is confronting the Soviet Union in an area of vital and direct economic and security interest to Europe—that has been accorded to U.S. policy in Vietnam, there must inevitably be a psychological backlash in the United States against Western Europe.

Western Europe simply cannot stand aloof from the Mideast.

In concluding, I wish to emphasize that issues of the highest importance to the United States are now being negotiated in Europe. The issues now under negotiation are of transcendent importance as they could determine the fate of Europe for the remainder of the century. The massive ice pack which has frozen Western and Eastern European affairs for the past 25 years is cracking and a glacial flow has commenced. In my judgment, it is essential that the United States be alert to the possibilities as well as the dangers inherent in the present situation of flux and that we be prepared to invest the energy, attention and resources necessary to enable us to join effectively in the shape of the future of Europe now beginning to emerge.

I ask unanimous consent to have printed in the RECORD a communique issued by the Political Committee.

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

NORTH ATLANTIC ASSEMBLY, JULY 3, 1970

The officers of the Committee are: Senator Javits, Chairman; Mr. van der Stool, Vice-Chairman; and, Mr. Blumenfeld, General Rapporteur.

At the meeting in Brussels on 2 July 1970, the Political Committee of the North Atlantic Assembly considered an interim report on Atlantic Political Problems prepared by Mr. Erik Blumenfeld (Federal Republic of Germany) its general Rapporteur, and directed its Chairman to issue the following statements agreed by the Political Committee at this meeting.

The Committee requested its Chairman to express the views of its members concerning the chapter of Mr. Blumenfeld's report dealing with East-West relations. It was the sense of the Committee that they wished to emphasize that their views concerning the attempts of the Government of the Federal Republic of Germany to establish better relations with the GDR, Poland and the USSR differ from those of the General Rapporteur and that they did not share the fears expressed in the report, and they further wished to underline their support of the policy implied in the following extract from the Communiqué published by the North Atlantic Council following its Ministerial meeting in Rome on 26 and 27 May 1970:

"With the support and understanding of its Allies, the Federal Republic of Germany has initiated talks with the Soviet Union, Poland and GDR in order to improve the situation in Central Europe. The Allies consider this to be encouraging. They express the hope that these talks will yield results and will not be compromised by the presentation of unacceptable demands. The efforts being made to solve outstanding problems and to achieve a modus vivendi in Germany which would take account of the special features of the German situation, represent an important contribution to security and co-operation in Europe. The Ministers express the hope that all governments desiring to contribute to a policy of relaxation of tension in Europe will, to the extent possible, facilitate a negotiated settlement of the relationship between the two parts of Germany and the development of communications between the populations."

The Committee instructed its General Rapporteur to revise his report to be submitted to its next meeting in November in the light of those views expressed by its members. The Committee also instructed its General Rapporteur to comment, in his revised report, on the need to strengthen the South-Eastern flank of NATO and to facilitate a NATO presence in that area.

Members of the Committee also emphasized that their views on the section concerned with possible U.S. force withdrawals from Europe in the Rapporteur's interim report were not necessarily those of the Rapporteur, and that, as a Committee, they generally looked forward to continued and effective co-operation and arrangements between the U.S. and the other NATO countries and would deal with the whole question definitively at their meeting in November in preparation for submission of an appropriate resolution to the plenary session.

TRANSACTION OF ROUTINE MORNING BUSINESS

The VICE PRESIDENT. Under the previous order, the Senate will now transact routine morning business, under a 3-minute limitation.

MORE PRISON ATROCITIES REVEALED

Mr. YOUNG of Ohio. Mr. President, yesterday in this Chamber I reported sadly that horrible incidents of brutality toward inmates were taking place in the old Ohio penitentiary located in Columbus, the capital city of my State. At that time I introduced Senate Resolution 429, to authorize an investigation by the Senate Judiciary Committee of alleged acts of brutality committed against prisoners by prison personnel at prisons in the State of Ohio.

Further reason for an intensive investigation of Ohio penal institutions are the sadistic and brutal atrocities at the Chillicothe Correctional Institute in Chillicothe, Ohio, recently exposed in the Washington Merry-Go-Round, written and published by Jack Anderson. In his column printed July 8 in the Washington Post and other newspapers, there were reported killings, beatings, and tortures. The victims of these atrocities included inmates of the Chillicothe Reformatory. The column also related the horrible sadistic killing of 21 small cats and recently born kittens whose heads were bashed in by prison guards and officials of this institution solely because these small cats were pets of inmates.

Mr. President, Jack Anderson is absolutely correct when he states that "a number of prison officials are on the wrong side of the bars."

Maury Koblentz who is the head of the Ohio Division of Corrections, and William Salisbury who is the warden at Chillicothe, are blamable and must be held responsible for the mistreatment of inmates at Chillicothe. These men should—and no doubt will—be summoned to appear before some congressional investigating subcommittee and face witnesses who will testify to the horrible mistreatment of inmates. Furthermore, I hope and believe that the next Governor of Ohio and the General Assembly of Ohio, which convenes next January, will deal in a forthright and adequate manner with all officials and employees guilty of such cruel and unlawful acts and misconduct.

Mr. President, I ask unanimous consent that the column by Jack Anderson entitled "More Prison Atrocities Revealed," published in the Washington Post of Wednesday, July 8, 1970, be printed in the RECORD at this point.

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

MORE PRISON ATROCITIES REVEALED

(By Jack Anderson)

If half the stories are true that have been smuggled to this column from inside America's prisons, a number of prison officials are on the wrong side of the bars.

A horrifying nightmare of prison sadism and brutality is taking form from the official documents, letters, and telephone calls we have received since our recent column on prison atrocities in Florida.

Not only have helpless prisoners been killed, beaten, tortured, and seduced, but at the Chillicothe Correctional Institute in Ohio, 21 small cats had their heads bashed in by prison officials in front of convicts as a lesson, apparently, that convicts weren't supposed to keep cats as pets. Canaries are permitted, but not cats.

Warden William Salisbury denied the kitten massacre to this column. He said only one cat was killed because it was suspected of rabies, though the tests showed no trace of the disease. A different story is told, however, in an official statement for the Senate Juvenile Delinquency Subcommittee of Sen. Tom Dodd (D-Conn.).

Declares the document: "Between the hours of 6 and 7 p.m., two security officers—one a captain and one a sergeant—went about the compound collecting the cats and putting them into a white laundry bag.

"These they took to the ramp in front of the chapel where, one at a time, the captain held up the cats, and the sergeant beat their skulls in with a broomstick. Just to make a clean sweep, they killed six 4-day-old kittens, leaving one to whine on its dead mother. One hundred and fifty grieving convicts witnessed this slaughter."

The statement goes on: "James Bray had absolutely no history of heart trouble. He was 26 and . . . a very healthy specimen. He had for some time been the object of midnight sexual attacks by an inmate/nurse. . . .

THREAT TO KILL

"Although he was kept heavily tranquilized with doses of Thorazine, he complained of this (sexual) abuse so loudly that the inmate/nurse threatened to kill him. Alarmed, Bray sent a letter to a friend saying he was to be killed that night. Unfortunately, his friend did not read the message until 6:30 the next morning when he rushed to Bray's cell and found him dead.

"Those who were present the night he died said it was a beating, followed by a massive injection of (pharmaceuticals) administered by the man who said he was going to kill him . . . nor was this the nurse's first victim. He once had to be blackjacked off a patient he was sexually assaulting. . . . Less than a week before he killed Bray, the same inmate/nurse, together with several others, beat a patient so badly he had to be hospitalized."

Both Warden Salisbury and the autopsy report claim Bray died of coronary thrombosis. There are no beatings at Chillicothe, said the warden.

But there is more testimony: "David Warfield was sent to the Criminal Psychiatric Unit at Chillicothe. There, because he had become so disturbed, he was strapped hand and foot to the bed. While he was thus helpless, he was sexually assaulted by a guard.

"His mother found him so altered when she went to visit that she did not recognize him. He was in a wheelchair . . . On her next visit, he appeared to be dying." Yet authorities said he only "feigned illness."

Warfield wound up on intravenous feedings and was subsequently sent to the Lima State Hospital for the Criminally Insane.

57 VICTIMS

This column has the names of 57 Ohio prisoners, dead and alive, whose mistreatments have been reported in official documents. In addition, 41 prison guards, ranging in rank up to major, are listed as having "participated in attacks on inmates."

We asked Ohio Division of Corrections head Maury Koblentz for permission to question individual prisoners at Ohio Penitentiary and Chillicothe who allegedly have been mistreated from 1968 to 1970. Koblentz refused our request, saying it was against prison policy.

Footnote: Florida's Health and Rehabilitative head, Dr. James Bax, has attacked our column on prison atrocities, though acknowledging that "we've got some problems." As the man at the top, Bax also concedes, he may not know everything that is going on. He invited this column to visit any inmate in the Florida system with any guide we chose, provided only that we give accused guards and officials a chance to respond. He vowed he would "summarily fire" any guards who have abused inmates. This column will accept Bax's invitation.

SUPPRESSED RECORDS

The federal government is refusing to give a missile scientist it drummed out of his job for "mental disability" his own medical records so he can fight the retirement in court.

This column has obtained a copy of one of the suppressed records on the scientist, Kenneth Cook, and it is small wonder the government does not want them to get out in the open.

In it, Lt. Col. Paul Grissom, as the Air Force's top psychiatrist, said that the 56-year-old civilian Air Force weapons analyst's files give no "sound medical basis" for his retirement.

BLUEPRINT FOR YOUTH

Mr. YOUNG of Ohio. Mr. President, America's restless youth, the most aware, aroused generation in our history, needs a set of blueprints if they are to reform the ills of our society. Fiercely idealistic, some of our young people seem to believe we can end the war and eliminate social problems with talk of love, but many escape by copping out, taking drugs and living in a psychedelic dreamworld. All our young people would do well to follow the example of Mormon teenagers in Salt Lake City who recently mowed lawns, washed cars, and did other chores to raise more than $35,000 to help build a Negro church. This college generation should understand there are no simple solutions and that tearing down our society as urged by a minority without an idea of how to reconstruct it would bring anarchy and chaos. Adults should advise our youth to exchange rhetoric for practical solutions. Why not roll up their sleeves, pitch in and do something worthwhile? Most encouraging has been the youth lobby crusading against our deepening involvement in Indochina by making their views known to Congress. Our youth should know they cannot expect to enjoy the blessings of our Republic without active involvement and serious efforts to substitute deeds for dreams and words.

The VICE PRESIDENT. Is there further morning business?

CAMBODIA: RIGHT OR WRONG

Mr. GRIFFIN. Mr. President, last week on July 9, the Senator from Colorado (Mr. DOMINICK), the Senator from Iowa (Mr. HUGHES), and the Senator from Missouri (Mr. EAGLETON) appeared with Gen. Maxwell Taylor and news correspondent Bill Monroe on an ABC News special program entitled "Cambodia: Right or Wrong." I ask unanimous consent that the full text of the program be printed in the RECORD.

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

[From an NBC News Special, July 9, 1970]

CAMBODIA: RIGHT OR WRONG

Announcer: NBC News presents "Cambodia: Right or Wrong," a discussion on the merits and the legality of the U.S. incursion into Cambodia.

Here is NBC News correspondent, Bill Monroe.

Bill Monroe: Exactly ten weeks ago tonight President Nixon announced on television that American troops were going into Cambodia to clean out communist sanctuaries. In this hour three United States senators and a distinguished soldier-diplomat will discuss the results of that decision.

Did the President abide by the Constitution in not consulting Congress? Has the Cambodian operation improved our military position in Vietnam?

Our guest tonight to lead discussion on the military results, General Maxwell Taylor, former Chairman of the Joint Chiefs of Staff and former Ambassador to Vietnam.

General Maxwell Taylor: Well based on the facts as I know them, I would say that the military operation against the sanctuaries has been an important military success. And, furthermore, it has carried with it important political and psychological effects also of considerable value to us.

In combination, I would think it's reasonable to hope that the operations will have contributed to the shortening of the war.

Monroe: Also discussing the military results, Senator Harold Hughes, Democrat, former governor of Iowa.

Senator Harold Hughes: I believe the overall invasion of Cambodia has been probably a tragedy to the United States. And the policy in the long run will be felt in this country as one of the great mistakes of this war.

Monroe: Now just to argue the Constitutional issue, Senator Peter Dominick, Republican of Colorado, member of the Armed Services Committee.

Senator Peter Dominick: I think that the President had every right under both international law and also under our Constitution to attack and destroy the North Vietnamese bases within Cambodia.

Monroe: And Senator Thomas Eagleton, Democrat, former Attorney General and former Lieutenant Governor of Missouri.

Senator Thomas Eagleton: Bill, in my judgment the invasion into Cambodia by President Nixon was unconstitutional because is was designed to buttress the Lon Nol government, and not designed to meet any new threat to American forces in South Vietnam.

My judgment is that it has expanded the war.

Monroe: Thank you, gentlemen.

The last American troops got out of Cambodia early last week. But as we can see from the opening statements of our guests, the debate continues. Cambodia touched off a new convulsion on the campus: student strikes, four deaths at Kent State.

Two congressional delegations visited Indochina. They came back saying that Cambodia made sense. The Senate talked for seven weeks; then passed a measure aiming at requiring congressional consultation before another Cambodia. President Nixon delcared the operation an important success. But critics said the Vietnam War had been widened into another country with no end in sight.

First, tonight, we'll ask General Taylor and Senator Hughes to discuss the military-political results of Cambodia. Then we'll ask Senators Dominick and Eagleton for their comments on that issue. In the second part of the hour, Senators Dominick and Eagleton will open discussion on the constitutional problem.

So to start off, has the Cambodian operation improved our overall position in Vietnam?

General Maxwell Taylor.

General Taylor: Yes, I would say that it has. Because the results in a strictly military sense have been the destruction of very large supply dumps, depots, in Cambodia. It represents most of the war reserves for the continuation and support of the war in South Vietnam.

There have been thousands of enemy soldiers who have lost their lives in this. So clearly, this is a reduction in the aggregate of power available to the other side to conduct the war in the South.

Now, those are the direct advantages, I would say. There are others. The question, the point that the logistic system, which has been put together so painfully, with such effort over many years, has now been disrupted to the point that the other side must commit enormous reserves of manpower and of effort to replace them clearly is a military asset. The fact that the offensive plans which have been put together based on the availability of these supplies and this manpower—these plans cannot be carried out under the present conditions—I would say clearly is an advantage to us.

Then the fact that the other side is faced with a dispersion of strength—how to face the fact they have a third front opened for this little country in the north in a twenty-six war, I believe is the correct time: these facts certainly present serious problems to the enemy and, conversely, important advantages to us.

They're the points that I'd like to pass to my colleague.

Monroe: Senator Hughes.

Senator Hughes: Well, I would agree with General Taylor that certainly the invasion of Cambodia was a limited tactical success with the destruction of the materials and supplies of the enemy.

I think as I listened to the President describe the reasons we were going into Cambodia the night of the invasion that he said that within the last ten days there had been an important change along the Cambodia border in the Parrot's Beak and the Fish Hook area, and that tonight American boys were attacking to destroy the COSVN, the enemy headquarters, and the major troops commitments in that area. It was well evident in the aftermath that the Vietnamese, the North Vietnamese and the Viet Cong, had been well aware of our tactics and that the withdrawal had already begun.

I think the enemy also, as I followed the writers, had adopted a rather low profile in the several months preceding that to the extent that most of the generals that I had read comments of in Vietnam had said that the enemy was actually going back to guerrilla tactical warfare in South Vietnam, and that there had not been major threat to Saigon or attack, I believe, in over two years.

So the immediate statement of why we were going into Cambodia seems to have dissipated in the aftermath of that strike.

I would also point out in the beginning that contrary to the fact that we now have two vital sanctuaries, which the President pointed out, over half of Cambodia is in the hands of the enemy; that they actually seem to be in control of the border all the way from the Parrot's Beak to Laos.

And as a result of that, though the supply lines have been disrupted, we have also another front, a very wide front, which our allies, the ARVN or the South Vietnamese, are continually going to be faced with policing an area almost twice as large as they previously had in South Vietnam alone.

Monroe: General Taylor, I notice you've taken a note or two. Would you like to respond?

General Taylor: Yes, some of these points I think I would like to comment on.

First, I think the (word unintelligible) should be what we've actually done, not what we might have done.

Personally, I never had any feeling we had any chance of catching COSVN. We'd been talking about this operation so long in advance—we have a great way of talking about everything we're going to do and hence alerting the enemy. Hence a mobile headquarters, such as COSVN, could never have been caught.

But the main thing is that supply bases can't be moved. They weren't moved. And my only concern, frankly, is that we didn't stay long enough to do a complete job. Whether that's the case or not, I'm not positive.

I wouldn't agree that the other side controls a half of Cambodia. I don't see any evidence that any serious fighting yet has occurred inside of Cambodia except in the actual sanctuaries. The evidences from the press are very, very uncertain. The difficulties in the collection of information is very, very difficult. And certainly, there's nothing that suggests that the capital of Phnom Penh has really been threatened thus far.

Monroe: Senator.

Senator Hughes: I think, General, as we review this over the course of years when you were Chief of Staff, certainly the consideration of the invasion of these sanctuaries must have come up repeatedly over that course of years, and must have been tabled over that course of years.

When we were actively engaged in some of the heaviest fighting of the war, we decided not to make that invasion for one reason or another. And the President did imply, contrary, I believe, to the implications afterwards, that we were going to strike COSVN, that we were going to find the headquarters; and that we were going to destroy the enemy's structure of command in that strike.

Now, contrary to what happened, this was the reason stated that he gave to the nation. And as a result of that, I concede large amounts of enemy supplies were captured and destroyed; Sihanoukville was disrupted, and supply lines were disrupted.

But I still maintain that although the enemy faces a widening front, we also face a widening front. And I think also we face a tragedy of what our allies in Cambodia have been doing: the fact that they have been destroying villages, looting villages, raping the women—the South Vietnamese.

And though sometimes we say we're not responsible for that, they are our allies. We pay and supply their troops. And I think when we cry out against American troops in cases of atrocities, that certainly we must demand of our allies that they not be guilty of similar things.

General Taylor: First, let me get back to the point of why didn't we do this before.

I would have opposed it had I had the authority to take a position on the invasion of the sanctuaries, say, two or three years ago simply because we didn't have the strength. The situation in South Vietnam was too precarious.

Now thanks to the enormous defeat we imposed upon the North Vietnamese in 1968 and '69, points that many of our American citizens still are not aware of, we do have this excess of strength which allows us to go into these sanctuaries, and furthermore allows us the luxury of our allies staying there and cleaning up a job which we left, I'm afraid, not entirely finished. So that's one point I would like to make.

The other is the question of the conduct of our allies. I don't know if they are any worse than troops in ordinary operations. I can't feel too sympathetic for the Cambodians who have lent their soil to the enemy, provided the bases upon which troops and weapons and munitions have come to fight the war in South Vietnam, to kill our soldiers and also the people in South Vietnam. Don't expect under those circumstances that soldiers are going to be too sympathetic with the Cambodians.

Senator Hughes: Well, I think these bitter hatreds of many, many years, General, between the Cambodians and the Vietnamese have certainly surfaced again and that we have aroused old antagonisms. And certainly women and children have been victims in all wars, but not as openly apparently as the reporters are reporting in this particular situation and these particular series of incidents.

And I think it behooves us, particularly those in command and those in places of responsibility, to be concerned about the ravaging of women, the destruction of villages and the leaving of homes senselessly, regardless of what the circumstances are or what people may feel. I also descry the fact that there has been no rseponse, you know, in trying to deny sanctuary to the enemy on those borders.

But that does not mean that we condone savagery on our own in response to it, most certainly. And I'm sure that you would agree with that.

Monroe: Continuing this. . . .

General Taylor: I will indeed. But the point is, what is our national interest in this incident? Is this, indeed, not an action to our national interest, apart from the humanitarian considerations which you have very properly raised?

Monroe: Continuing with discussion on the military aspects of the Cambodian situation, could I ask each of you gentlemen to address yourselves to whether the Cambodian operation will enhance the possibilities of Vietnamization working and an eventual takeover of combat operations by the South Vietnamese? And will it enhance the possibility of peace through the Paris Peace Talks?

General.

General Taylor: I would certainly think that it's bound to assist the Vietnamization program simply because it has reduced the offensive capability of the enemy. They can't come in with the same strength they could have had this not occurred since the pressure is off Vietnamization, the pressure is off pacification, the pressure is off the nation building operation which takes place behind the barrier of military security.

It's bound to have a favorable effect in that way. How much, one can't weigh. This is not a tangible thing that you can get ten percent or fifty percent.

With regard to the Paris Peace Talks, I have no idea. We'll never get anything from the Paris Peace Talks until the other side is convinced that it's to their interest to negotiate on a reciprocal basis. They're not convinced yet. And I'm afraid that our American attitude at home contributes to that resistance to honest negotiations.

Monroe: Senator Hughes.

Senator Hughes: Well, I think quite contrary to what the General says that the invasion of Cambodia actually increased the difficulties of Vietnamization, if you accept Vietnamization as a policy at all.

I happen to believe that Vietnamization will be a perpetuation of the war rather than an end to the war in Vietnam.

As a result of that, I think the use of many thousands of South Vietnamese troops in Cambodia and the continuing going back and forth of these troops to keep the highways open, to make sure that supply lines are not reinstated, to take care of some of the outlying territories, if necessary, where enemy buildups come up, the continuing involvement of our support planes in bombing missions and perhaps in close support of fighting troops means that it is going to slow down the Vietnamization program in South Vietnam, which we had not been ready to agree had reached the point where they were able to do it anyway.

And as a result of that, I think it's going to lengthen the war. It's going to increase the problems and make it far more difficult for us to continue this program, if that is to be our national policy.

Monroe: What about possible effects at Paris, Senator?

Senator Hughes: Well in Paris I think that we have been at a stalemate certainly since January of 1969. I'm encouraged to see that the President has appointed a new ambassador to those peace talks. I thought it should have been done long ago.

Now that it has been done, though I think the hazards are greater as a result of the invasion of Cambodia, I think at least there has been a national indication that we do want to pick up the peace talks, that we do want to negotiate, and that we do want to find a way of resolving that conflict.

So I'm encouraged by the appointment of Ambassador Bruce. But I don't see in sight—I would agree with the General—I don't see in sight at the present time any improvement in the talks. And I think the Cambodian situation probably made it more difficult.

Monroe: General.

General Taylor: Well, I would not agree to the latter.

I think it may be that the disarray into which the Cambodian operation has thrown the Hanoi high command, the tremendous problems they're faced with in the III Corps that you mentioned before, the problem with the protection of their communications in the Panhandle of Laos; the danger that this kind of surprise attack might take place elsewhere: this could, indeed, be a factor to bring them to the table because I'm sure they'll never negotiate except from self-interest; not for a love of peace, not for any other consideration except the fact that the table offers them their only hope for an outlet.

Until we get there we won't get negotiations.

Monroe: In going into Cambodia have we incurred an obligation, moral or military, to the Lon Nol government? And if we have, is that good or bad?

Senator Hughes.

Senator Hughes: Well, it seems to me that the Lon Nol government was really the precipitant factor in our going into the so-called sanctuaries.

Until the Lon Nol government had taken over in Cambodia, we had displayed no interest whatsoever in going into these sanctuaries in Cambodia. But suddenly we were told by the President of the United States that strange things were happening in these sanctuaries that threatened our troops in the area of Saigon and our Vietnamization program totally; and we had to take this action.

Obviously, it was the weakness, in my opinion, of the Lon Nol government which precipitated this factor.

I think we did assume a moral obligation. We, in fact, in the Senate were discussing, if not debating, the fact of what sort of support we should give the Lon Nol regime. I think it was quite evident that the President gave no notice whatsoever to any member of the Senate that I'm aware of—certainly not to the Senate Foreign Relations Committee—this imminent proceeding. Though the enemy obviously, as the General pointed out, had some advance notice of it, the United States Senate did not.

And I think that as we have done this we've now incurred a liability there that publicly will mean that we're going to feel some responsibility for continuing, at the very least, an extensive military support and supplies to the Lon Nol government.

Monroe: You believe we have incurred an obligation and that it's a disadvantage?

Senator Hughes: Well, I'm not in favor of the obligation except on the basis of limited supplies to the Lon Nol government to support and fight for themselves.

But I am afraid that that liability may arise after this particular response we have made.

Monroe: General Taylor.

General Taylor: It certainly was a favorable development when Sihanouk was thrown out and Lon Nol came in. For the first time, we had a friendly head of state, weak though he may be, weak though his government is. Hence, I would say there's no question to what it was to our advantage to have this take place.

Now what occurs from here on out would have happened whether we had gone into the sanctuaries or not. The Lon Nol issue is entirely independent, as I see it, of the sanctuary question. You would still have the question which is being debated: should we help Lon Nol or not?

I don't have enough information myself to say. I would say we have no obligations, no moral obligation, no military obligation. But we have an obligation to our national interest. And we should sit down very coolly and coldly and analyze this, and conduct ourselves accordingly.

Monroe: General Taylor, one of the factors in the whole Vietnam situation is the matter of U.S. credibility; whether other parts of the world believe that the U.S. would be firm in maintaining its commitments.

Do you believe that this has been enhanced by the Cambodian operation?

General Taylor: I think it's been terribly damaged by behavior in Vietnam. I don't think that Cambodia has had any effect on this in relation to the tremendous damage that has been taking place to our standing in the world, the credibility of (word unintelligible) because of our conduct here in the United States.

Monroe: What part of our policy in Vietnam do you believe has damaged our credibility?

General Taylor: The fact that we are showing signs of willingness to accept defeat in a situation where victory is in our hands: victory not in the military success, as is always being thrown around; but in a sense of achieving our objective of leaving a country which is viable, which has a government of its own choice, with a military threat which has been reduced to a point where it can be controlled by the people within its own borders.

Monroe: Strictly through Vietnamization, turning the war over to the South Vietnamese?

General Taylor: That's an important part of it. That's not the whole story.

The end product is that you do what five presidents said we set out to do: an independent South Vietnam with a government of its own choosing and no military threat from the outside.

Monroe: Senator Hughes, what about U.S. credibility, and what about the possiblity of victory in Vietnam?

Senator Hughes: Well, I think we've kept our promises in spades to the South Vietnamese people and to the people of the world. And I think we need not be ashamed of being called a pitiful giant that is unable to meet its commitments. We have met our commitments, totally.

I think when the General talks about a victory, he talks about one of the great problems that we have; that we're talking about a negotiated peace settlement. And when we negotiate, certainly we're not talking about a victory. And the General pointed out that he was not talking about a military victory, but he was talking about a victory at the peace table under our circumstances and totally under our terms.

I believe that as we view what now has happened in South Vietnam totally, over the course of the last seven years particularly, since combat has picked up and large devastation has been wrought to the people—and the General made the statement that we now have a government in South Vietnam that's a choice of the people— I'd like to point that in that election in 1967 the Thieu-Ky regime got a little over thirty-five percent of the total vote. And about sixty percent of that total vote was for peace candidates.

I think the Vietnamese people did express their opinions. And their opinion was for peace at that particular time. We have not been able to get a determination even by that government to agree in the beginning to negotiate or to settle their differences at the peace table.

When we went into Cambodia they said to the United States that only foolish people talk about coming out of Cambodia after our President had indicated that they were coming out at the same time we were coming out.

I think continuously the Thieu-Ky regime has displayed contempt really toward the United States of America and toward its own people. I think that it does not represent the people of South Vietnam fairly. I think the most recent expose of the political prisoners in South Vietnam in the last three days is an indication. The indications are, according to reports, upwards of fifty thousand political prisoners being held without trial.

When the State Department briefed me and Senator Eagleton some two months ago they indicated to us that to their knowledge there were only two political prisoners being held by the government of South Vietnam. And I think the indications of torture and damage there are certainly ones that we should not condone in a government that we support.

I agree that the enemy uses those tactics. We deplore it; we cry out against it in the treatment of our own prisoners of war. And we hope for their negotiated early return, and certainly humane treatment for them as soon as possible.

But for us to support a government that adopts and uses the same tactics I think is deplorable.

Monroe: Senators Dominick and Eagleton, you gentlemen will lead off the discussion on the constitutional issues in a few minutes. But you have been listening to what General Taylor and Senator Hughes have had to say about the military-political aspects. And we would like to bring you into this part of the discussion on that subject.

Senator Dominick.

Senator Dominick: Well, I'll be fairly brief. But I think I should make some comment on some of the things that Senator Hughes said. He's talking in a humanitarian way for all mankind. This is great. If everything was fair, as President Kennedy said, in a fair world, it would be wonderful. But this isn't a fair world. Maybe we can try and make it so.

But I think it's important to point out to the viewing audience here that it is not the United States which has been invading these countries: it's the North Vietnamese. They're the ones who have put the troops into South Vietnam. They're the ones who have over sixty thousand troops in Laos. They're the ones that have forty thousand troops in Cambodia and who are desirous of taking over all of Indochina.

Now faced with that kind of a situation, I think you have to balance the equities and decide whether other people have the right to live. I think this is extremely important because where the North Vietnamese have (sic) the other people have not been given the right to live.

Monroe: Senator Eagleton.

Senator Thomas Eagleton: Well, like Senator Dominick, I'll try to be a bit brief and respond to some of the points that I think were made by General Taylor. I think two or three of them deserve some specific comment.

I think implicit in the General's remarks was the fact that this war has been widened. He says on the plus side that the North Vietnamese now are further dispersing their troops; they're getting more thinly scattered.

To me to use that as a justification for widening the war is reminiscent of the major who in referring to a village, you know, in South Vietnam said we had to destroy it in order to preserve it, or in order to save it.

It's a non sequitur. If the North Vietnamese are further dispersed, how about the ARVN. And Senator Hughes has mentioned, of course, that Thieu and Ky are going to stay there as long as they darn well please. They told us they were going to do that even though President Nixon in his April 30th announcement said that they would be coming out when we came out. President Thieu, or was it Vice President Ky, their great outspoken spokesman, who said anybody who says that is silly.

Secondly, General Taylor talks about the supplies that have been destroyed. Well, I think the total aggregate market value of it is about 30 million dollars, which is about the cost of half a day in terms of what we invest in the war now in Indochina. Most of these supplies, I think, could be brought back on one boat load.

And very importantly, General, I'd point to you that since this action has been taken both the Soviet Union and Red China have escalated their commitments in terms of materiel, supplies and weaponry, to North Vietnam. And I think that we're in deeper than ever.

Finally, I find this statement very curious in the General. He says they now have, and I'm quoting him directly—I wrote it down—an excess of strength in South Vietnam. And we now have, quote, "the luxury of going into new places."

Well, I ask, if we've got that excess of strength, and if the Nixon policy is to bring our boys back home as soon as the ARVN is ready to take over, then why didn't we bring that excess strength back home in conformance with the Nixon policies? Why are we going into new areas with this excess of strength that gives us this luxury of reckless abandonment in terms of going wherever we please in Southeast Asia.

Bear in mind, Cambodia is a neutral state. Was. We've now (word unintelligible) into a total war. It was a neutral state. And we decided to go in, not even at the request of the Cambodian government.

And lastly, but by no means leastly, he said it's a great plus to have Lon Nol over there; a friendly, he says, but weak head of state. Since when is it an asset to have a friendly but weak head of state? Then you asked whether it was a liability. I think Lon Nol and Cambodia is a millstone.

Monroe: General Taylor.

General Taylor: Yes, I'd like to answer many of those questions, Senator, because I don't follow you, frankly.

You've said that the war has widened. I would say that the war has three dimensions. It has a geographical dimension. It has an intensity dimension. And it has an objective dimension.

I would say, yes, indeed, the military operation is going on in more square miles than before. That has been done in order to reduce the intensity of action where our troops are, where our interests are. And that's what we accomplished.

Secondly, it was also reducing the time

factor, the prolongation of this war. I would think everyone of us—we all differ somewhat—we ought to join together in saying we're united on the following statement. We would like to end this war honorably and as rapidly as possible. Do we all agree on that? Does anyone disagree?

I would say Cambodia is doing exactly that. It's contributing to that factor. And I can't understand how anyone could say otherwise. And that being the case I would think we should get together.

And this question of the head of state. I would certainly rather have a weak, friendly head of state in Cambodia than a hostile, either weak or strong, head of state. Certainly that man Sihanouk turned his country over to the enemy. He brought the war into Cambodia. We didn't. And he's paying the price—his poor people are paying the price for the kind of leadership that they accepted.

Monroe: Senavor Hughes.

Senator Hughes. I'd like to point out, Mr. Monroe, a fact that we haven't discussed here at all that I think is a byproduct of this invasion of Cambodia, one of the most devastating that happened.

And that's what happened internally in America as a result of this so-called strike, the surgical instrument use that we were taking into Cambodia (sic). We saw almost five hundred colleges and universities closed in America at one time, not by totally radical students and bearded, drug injected individuals. We saw hundreds of thousands of young people who immediately reacted to this type of thing.

I think the length of this war, the totality of it, and now the adoption by our own nation of similar tactics in many instances to that used by our enemy has resulted in the scaring of the souls of millions of Americans. It has forced us to a point with many young Americans to where they have been forced to make decisions that—and I do not doubt that they would defend their country in an instance where they felt that their country was endangered—but we know that thousands of them have fled the country; thousands of them have taken other avenues to try and avoid the draft into the armed services.

I think when we see fifteen hundred attorneys in New York City coming down, thousands of representatives from the medical profession; when we see other business interests organizing and campaigning against the war in this country that we must realize the internal political effects on this country of this invasion of Cambodia also.

I won't go into the years of neglect, the programs that have been diminished by our economic ability that also is striking at the very fiber of this country. But I think it's all a part of the discussion that we're involved in.

Monroe: Thank you, Senator, and gentlemen. Our time is up for this part of the discussion. Next we'll talk about: did the President enter Cambodia legally and constitutionally?

We'll resume our discussion in a moment after this message.

Monroe: We have heard General Maxwell Taylor and Senator Harold Hughes of Iowa open up our discussion on the military-political results of Cambodia. At this point, we'll ask Senators Peter Dominick of Colorado and Thomas Eagleton of Missouri to lead off discussion of the constitutional issue.

There has been a debate going on in this country about the President's war-making powers and the Congress' war-making powers. It's been going on, and promises to continue going on. And it started with the question: did President Nixon abide by, or did he flaunt, the Constitution when he sent American troops into Cambodia?

Senator Dominick.

Senator Dominick: I can say frankly that this is the point that bothered I think most of the people in the United States when it was first raised. The question, coming by surprise, as to what he could do in Cambodia, what he shouldn't do, not only bothered a lot of people who are civilians; it also bothered a lot of lawyers. And we've done quite a lot of work on it.

And I gave a speech that lasted about an hour and a half on comparable instances which had happened in the United States in the use by the President of our armed forces to take action which had not previously been authorized by the President—not by Congress, I should say.

There isn't any doubt in my mind after having done this review and studied it carefully and written (sic) the opinions of prominent lawyers and professors from all over the country that the President had every right to do what he did, both constitutionally and under international law.

I suppose that the first thing that you have to remember is that he came faced with a situation where we had over five hundred thousand troops already in Vietnam. He has been trying to decrease this American force level in Vietnam. And by so doing, he is trying to get our country out of the actual engagement as rapidly as he can and still leave a viable country with its own government.

Now in that position, he is in command of troops over there where they have the right, of he has the responsibility really to determine how best to use them to accomplish the goals and to preserve their safety.

Let me just give you a brief quote here. And this is from Chief Justice Tanney in 1850. It goes way back beyond that, but this is a good one. "As Commander-in-Chief, the President is authorized to direct the movements of the naval and military forces placed by law at his command and to employ them in a manner he may deem most effectual to harass and conquer and subdue the enemy.

"He may invade the hostile country and subject it to the sovereignty and authority of the United States." So obviously he could have gone even further than he went.

Now, what he did, in fact, was simply to go into the areas where the same enemy was using the bases on so-called neutral soil to kill our people and to kill the South Vietnamese. And what he did was to extend the battlelines by about twenty-one miles in order to eliminate this threat so that he could then withdraw our people more rapidly than he has already declared he is going to do.

Practically, it's being highly successful. And it seems to me that the next question is, did he have a right under international law to cross over that borderline. Now, we all know that the borderline is there. It isn't readily distinguishable in the II Corps area, but it is most of the way in the IV Corps area in the Delta.

And the answer to that from everybody I can find in the State Department is very clear. Where the neutrality of a country has already been destroyed by an enemy force, and that enemy force is attacking our own troops, that you have the right to make a limited incision into that country and eliminate that threat to your forces.

It's happened over and over and over again. I think the most recent thing that we could say is that's what would have happened if we'd had hostilities in Cuba under President Kennedy. Would he, or would he not, have been accused of using troops unconstitutionally to eliminate that threat. And I think you can use the same thing with the Dominican Republic. Fortunately, we didn't have hostilities in '62, but we came very close to it.

Monroe: Senator Eagleton.

Senator Eagleton: Well, Bill, lawyers can disagree. And in this instance, Senator Dominick and I, both lawyers, do disagree.

Monroe: Even judges disagree.

Senator Eagleton: Even judges disagree. Many opinions of the Supreme Court are five to four opinions, only decided by a margin of one.

I don't agree with Senator Dominick's analysis of either constitutional or international law as it applies to this situation. I would say this. If there were North Vietnamese troops, or VC troops, poised on that border, on the Cambodian side, posing a clear and present danger of imminent peril by reason of potential attack on American troops, the doctrine of rescue or the doctrine of the preservation of American troops would permit a sharp, brief wiping out of that operation.

But those weren't the facts. And that's what's obscured. The facts are that these alleged sanctuaries, this alleged locale of COSVN, had been there, by General Taylor's own statements earlier, at least five years. There was no clear and present danger of imminent attack. It had been well known. Bombing raids had already been done for many years along the Ho Chi Minh. There was nothing new about the presence of the Vietnamese over the Cambodian border.

I don't know what happened between April 20th when the President told the nation that a hundred and fifty thousand troops were going to be withdrawn and April 30th when he announced his quiet invasion of Cambodia without consultation of Congress. I would suspect—I would suspect that reports came in, intelligence reports, that Lon Nol was about to crumble. And a decision was then made to go in to rescue Lon Nol. That is moving into a sovereign, neutral nation without their request that violates international law, that violates the U.S. Constitution, which gives Congress the right and the opportunity and the duty to declare war.

I would like to quote you just what the President said on the night of April 30th with respect to the operation.

He said, "let's look at the map." Remember, he had a big map with those tiny little sanctuaries along the border, four or five of them. Now of course about fifty percent of the country—I still dispute the General's statement—is now under communist hands. He said, "let's look at the map. Here's South Vietnam." He pointed it out. And he said, "here's North Vietnam." And he said, "North Vietnam"—I'm quoting—"already occupies this part of Laos."

Then he goes on to say: "If North Vietnam also occupied this whole band in Cambodia"—and he pointed his finger down the six hundred mile border—"or the entire country, it would mean that South Vietnam was completely outflanked and the forces of Americans in this area, as well as the South Vietnamese, would be in an untenable military position."

That points out to me that the reason he went in was to save Lon Nol, and no other. Vice Admiral Smedburg said in an interview—he had been at the White House two days before—and the President told him, quote, "I'm not going to let Cambodia go down the drain as some of my advisors want me to do." End of quote.

This window dressing about COSVN, which never was found—you know, they play hide and go seek with COSVN; this window dressing about how many army rifles they captured (sic). I noticed the other day four thousand of them they captured happened to be Cambodian army rifles of 1920 vintage. And they found no use for them and had to burn them. This is part of the great loot that they captured.

All of this window dressing was subterfuge. It covers up the fact that they went into Cambodia to rescue Lon Nol. And when you go into a sovereign nation with American military men you must go to Congress either for an official declaration of war or congressional authorization by statute. You can do it in any of two ways.

Monroe: Senator, are you saying that the

constitutionality of our entry into Cambodia depended on the motivation of the President, whether he was going in there for the purpose of rescuing Lon Nol, or whether he was going in to wipe out communist sanctuaries?

Senator Eagleton: It depends on the actual facts and what triggered him to go in there.

Of course, it is well established that under given facts when the enemy is poised on foot beyond the border ready to attack your fighting men and to come in at them, you can, as Senator Hughes used the pharse, trigger a surgical strike. That is a doctrine, an accepted doctrine; and there is precedent for it.

I'm trying to point out that those weren't the facts. COSVN, or the sanctuaries, had been there five years at least—well known that they were there. So well known that they were there that they could draw maps about where they were, and where COSVN might be, etc. This was not a question of any clear and present danger of imminent peril to American fighting men. It was used as an excuse, a handy excuse.

Because something happened between April 20th and April 30th. I think it was the intelligence reports that we better get Americans in here quick or Lon Nol is down the drain.

Monroe: Senator Dominick.

Senator Dominick: Well. I find some of the statements made by my colleague really quite amazing.

First of all, he says that if the whole of South Vietnam—the southern half of it anyhow—were totally outflanked so that the North could come in through Sihanoukville at any time, that our efforts to try to prevent that was a defense of Lon Nol and not a defense of South Vietnam and America.

I don't understand that at all because the whole purpose of the North Vietnamese in going around that way would be to be able to invade South Vietnam, free of having the interdiction attacks and the difficulty of getting it down through the Ho Chi Minh Trail.

So it seems to me perfectly obvious that if they're going to be outflanked to that degree that you're going to have to take some action about it. Now that's one thing that I think ought to be pointed out.

The other thing that I think should be pointed out is that these sanctuaries have provided the base structure for the Tet offensive, for most of the major attacks that have gone on in South Vietnam since the Tet offensive in February '68.

Now, I've only been in Vietnam twice. But I was there in May of '67; I was there in January of this year. The degree of security within South Vietnam now compared to what it was then is really quite extraordinary. That doesn't mean that the danger is all over. But the point that I'm trying to make here is that that degree of security is still dependent upon how much weaponry, material, men and arms there are in the Cambodian sanctuaries which can pour in at the triggering of the North Vietnamese.

So if we are trying to complete our Vietnamization program and to get our men out—and I might point out that this President is bringing them out whereas we haven't been doing that before—if we're trying to continue that program, which I personally think is a good one, then it is important for us to excise those areas. I think it's not only important, but I think the President really almost has a duty to do it.

Senator Eagleton: And is it important to do it without consulting Congress, etc.?

Now, let me pose this question. . . .

Senator Dominick: Oh, it would have been very nice if he could have come up and said something without having (confusion of voices) . . .

Senator Eagleton: It's not a question of being nicey-nice or goody-goody. It's a question of doing that which the United States Constitution requires.

The basic reason for the constitutional separation of powers insofar as war is concerned dates back for a very good reason. We were struggling for our freedom against George the Third. And the founding fathers, as we call them—Hamilton, Madison and others—did not want to repose into any one person's hands and judgment the decision as to when this country went to war.

So the war making power, the war declaring power was given to Congress. After the war was declared, then the commander-in-chief, the president, can wage it.

Senator Dominick: But we were at war. We were at war. This is the point that you're not dealing with (confusion of voices). . . .

Senator Eagleton: We were at war in South Vietnam. No one had ever said we were at war with Cambodia. We maintained a delegation in Pnompenh . . .

Senator Dominick: No.

Senator Eagleton: . . . We have a minister in Pnompenh. We did.

Senator Dominick: Sihanouk threw us out in case you've forgotten that.

Senator Eagleton: Well, but we had relations indirectly with Cambodia. No one ever claimed that we were at war with Cambodia.

Senator Dominick: We're not at war with Cambodia now. We weren't at war with Cambodia then. We were attacking the North Vietnamese. . . .

Senator Eagleton: That's the very point.

Senator Dominick: . . . who had invaded the Cambodian neutrality. And that's all we have done.

(Confusion of voices.)

Senator Eagleton: We're not at war with Cambodia. We're mightily at war within Cambodia to their self-detriment and ours.

What the Senator is really saying is that in this day and age the President has the right of preemptive strike. That's what it boils down to, what he's saying. The Constitution is a little outmoded, and it's nice to consult Congress but you don't have to. The President has the right to preemptive strike.

I'd like to ask this question of Senator Dominick.

Senator Dominick: Well, I haven't said that. I'm glad to have you put words in my mouth. But I didn't say that.

(Confusion of voices.)

Senator Eagleton: But that's the sum and substance of what you're saying. You said we had the right to make this preemptive strike.

Senator Dominick: No, because the preemptive—and you know it as well as I do—is a catch phrase that everybody thinks of in terms of a massive nuclear attack by an enemy force.

Senator Eagleton: Well, the preemptive strike can be . . .

Senator Dominick: . . . and I'm not talking about that. I'm talking about twenty-one miles of ground where you eliminate sanctuaries which have been used as bases to attack our people.

Senator Eagleton: All right. Well . . .

Senator Dominick: I don't want to be caught in that . . .

Senator Eagleton: . . . twenty-one miles is like being a little pregnant under an unconstitutional operation.

Let me ask this question of Senator Dominick, because he raised this by indirection. He referred to President Kennedy in Cuba.

The COSVN of Saigon here was Miami. It was COSVN insofar as Cuban refugees were concerned. That's where they were being supplied; that's where they had their launching operation, etc. Under the Dominick theory, I take it, then Castro would have had every right for a surgical strike at Miami to knock out the Cuban refugees who had their materiel, weaponry and manpower in the Miami area before they went into the Bay of Pigs.

Would that have been permissible and understandable and legitimate, as you've . . .

Senator Dominick: That depends upon whether you think that Castro was the legitimate government of Cuba.

(Confusion of voices.)

Monroe: Before we get too far . . .

Senator Dominick: (Words unintelligible) . . . that it was. And I don't think we want to get into that.

Monroe: Before we get too far . . .

Senator Eagleton: You raised Cuba.

Monroe: Before we get too far into the constitutionality of a strike at Miami, let me see if I could widen the polite hostilities at this table a little bit by asking whether there's a question about the constitutionality of some of the "end the war" amendments that are now pending in the Senate, such as the Hatfield-McGovern Amendment, which I believe would cut off funds for the President's use in Vietnam at the end of December, except for the withdrawal of troops.

What about the proprieties, the legality, of the constitutionality of that if the Congress wants to assert its power to try to end the war?

Senator Dominick.

Senator Dominick: Well, I have a letter from the former dean of the Yale Law School and now the Sterling professor of law there, Mr. Rostow, Gene Rostow, who I've known for many years and for whom I have great respect.

And he doesn't say that it's unconstitutional. What he does say is that it raises serious constitutional questions; that the problem is the question whether or not Congress can stop a conflict completely.

Obviously, I think that he feels that they can. The problem is not that. The question is can you put the President, who has responsibility to these troops, in a position at any time where he is unable to provide the mechanism by which he can preserve their safety.

And if you do that, it seems to me that you're exercising a degree of responsibility in Congress which infringes directly upon the responsibility of the President as is spelled out in the Constitution.

So I've thought for a long period of time that this has very doubtful validity as a practical maneuver. And I've been concerned about the psychological effects around the world.

But over and beyond that, there is pretty good evidence that there are strong constitutional questions about it.

Monroe: Senator Eagleton.

Senator Eagleton: Well, I think it is unquestionably constitutional. Senator Dominick cited the dean of Yale Law School, Mr. Rostow. The dean of Harvard and the dean of Columbia (sic). So that makes it two to one disagree (sic).

But that doesn't determine it. Congress can end the war. It can end it by the appropriation process insofar as the refusal to grant other funds. And it would specifically do this (sic)—would do it if the McGovern-Hatfield-Hughes Resolution were to become law, as I hope it does.

I don't think we have to get caught up in worrying about the mechanism to preserve the troop safety—words used by Senator Dominick—because if you'll take the statement of General Taylor earlier in the program, we have, in the General's words, an excess of strength in South Vietnam and we now have the luxury of going into new areas.

So that I don't think that apparently the safety of American troops is at all involved if the Congress decides . . .

General Taylor: (Remark unintelligible.)

Senator Eagleton: . . . if the Congress decides . . .

General Taylor: The Senator used this twice. I'd like to come up at him.

Senator Eagleton: No. We quoted it. The Congress decides to terminate the war by the funding process, giving ample notice

I think our troops are well protected under the so-called excess of strength doctrine.

Monroe: General Taylor, I think it's time to ask you and Senator Hughes for your comments any way.

General Taylor: Yes, I'm sorry. Do you want my rebuttal . . .

Monroe: Go ahead.

General Taylor: . . . or my surrebuttal?

Monroe: Well, one or both.

General Taylor: Look, Senator, my statement was very clear. Several years ago—this has always been a desirable thing to do. But up until the present time we never had enough strength that was not tied down to the day-to-day battle in the South that we could afford to go across and do this job which would make a major contribution to the suppression of the war in South Vietnam. It's as simple as that.

The obvious thing to do when you have a little extra strength to hurt the enemy—use it. And we did.

Monroe: What would you like to say about the matter of constitutionality, which we've been listening to Senator Dominick and Senator Eagleton discuss.

General Taylor: This is out of my field, Mr. Chairman, as you know. I would wonder, though, why this didn't come up when we invaved France on D–Day. No one objected to our going in there under those circumstances. What are the differences there, if that's pertinent to the discussion?

Monroe: Senator Hughes, would you like to answer that and comment on the previous discussion on constitutionality?

Senator Hughes: Well, I think I'd like to comment on the previous discussion of constitutionality. I'm not interested in discussing France any more than Senator Dominick is in discussing Cuba in that light. Then I assume Cuba is pertinent, and Miami also . . .

General Taylor: But they didn't form up in Miami. He's wrong about his information.

Senator Hughes: But the constitutionality question of Amendment 609, of the Hatfield-McGovern Amendment, as it might be, I think there is a clear indication in the Constitution, in the formation of the Constitution, the discussion and everything else, that the Congress of the United States through the funding process has a right to bring the war to an end if the people of the United States determine that they want to.

I think that's one of the reasons that it was determined to elect a House of Representatives every two years for an immediate reflection of public sentiment so that there could be change. It was also a reason to elect senators every six years to maintain some stability so that the pendulum swinging back and forth, the public emotion couldn't clearly unstabilize the total government (words unintelligible).

I think in this instance we've seen a war—a rather small war geographically; a large war in the measures and tons of weapons used and lives lost—that has really split not only our country asunder internally, but certainly has raised many questions that must be brought out in public debate.

I rather resented, though I'm sure that the General did not mean it that way, his statement that the discussion in this country had lent much comfort to the enemy. And I'm sure that the General believes in the freedom of speech rights of Americans, the right to disagree with the governmental processes, the right to question and the right to go on, just as we're doing here tonight, and participating openly and freely.

But the constitutional question—I'm not an attorney either. Certainly I'm not in a position to argue the constitutional question with the President. I believe that the Constitution gives the President certain unique powers. I don't think any act of law of the Congress can take that away from him. I think no senator would want to take that away from him. And I doubt that that's the question that we're talking about here.

Monroe: General Taylor, unless you want to say a word for freedom of speech, we'll go back to these gentlemen for some comments.

General Taylor: I don't think I have to record my position on freedom of speech.

Monroe: Senator Dominick.

Senator Dominick: I think what Senator Hughes said at the end there was extremely important.

What we're doing at the moment is to try and decrease the involvement of the United States in Southeast Asia. This has been the statement made by the President; it is the fact that he has carried out. He's been withdrawing American troops, and he has promised to withdraw even more. And he has fulfilled every commitment he's made to the American people about what he's going to do.

Now, with that kind of a situation where you're involved in hostilities and where you're trying to disengage, every military man, I would think General—excuse me—would also indicate that conducting a withdrawal of this kind is difficult, whether you're looking at Dunkirk or whether you're looking at Napoleon getting out of Moscow, or whatever you are. And you better protect your rear.

And in that process, it seems to me, the President had every right to excise the danger which threatened from the rear.

Monroe: Senator Eagleton.

Senator Eagleton: Well, if it were just as simple as all that with no collateral consequences, perhaps in terms of logistics, not constitutionality, we might agree. But it isn't that simple.

The inevitable consequences that is flowing from this incursion, as the President calls it—invasion, as Senator Hughes and I call it—is the fact that the war has been widened. There is now a total war in Indochina. It's no longer just a war in South Vietnam. It's a war in Cambodia, and the subject of another show, it's also the war in Laos. The consequences of what's happened is that we're in a wider involvement. And I just don't see the logic of widening an involvement, of expanding an involvement, using that and paying lip service then to withdrawal.

In my judgment, this present policy pursued to its ultimate will mean that we'll be in Indochina for untold years to come, with thousands of lives yet to be given.

Monroe: We haven't said much here tonight about the power of Congress to declare war. Is that not a factor in this matter of constitutionality?

Senator Dominick: Yes, of course it is.

But the fact of the matter is that practically no one in any country in the world has declared war until after they're actually at war, and certainly not since World War II. And even then we'd already been attacked when war was declared.

So as a practical method of exercising Congress's right to determine what we're going to do, I don't think that the war declaring power, as such, is as important as is the appropriation process, which is what Senator Hughes and Senator Eagleton and others are trying to use.

Now, I have no doubt that the Congress should exercise some voice in determining where men are going to be put into hostile action. I've said this for years. But it doesn't seem to me that it is up to us to be tacticians when we're already in. And where the United States through Congress has already by authorization, by the Tonkin Gulf Resolution and by the appropriations that we've made, recognized the fact of the war over and over and over again, it would seem to me at this point that there's not much point to try to say that we ought to declare or shouldn't declare war.

Monroe: Senator, I have to interrupt at this point.

We would appreciate, gentlemen, having a brief summary from each of you on these issues stemming from the Cambodian operation in just a moment after this message.

Monroe: General Taylor, would you sum up please the military results of Cambodia?

General Taylor: Well, I think I've probably said all I should on the military subject. I've heard no—I don't believe any response to suggest that it's not generally accepted but that it's a desirable thing to take weapons from the enemy, to impose losses on him that prevent him from conducting offensive operations against our own troops, against the South Vietnamese, and so on.

I should like to revert, though, to a very important point. I've listened to these arguments. I can't understand why the four of us can leave the table really divided because We still want the same things. We're arguing somewhat about history, what the constitutional historians will say. But what should the President do tomorrow?

Monroe: Thank you, General.

Senator Hughes.

Senator Hughes: I'd like to point out somewhat in the same vein as General Taylor has that I'm not in any way blaming the military establishment for our involvement in Vietnam and as so many people in the country attempted to blame the generals for that.

We got into Vietnam by diplomatic and political decisions. We'll get out the same way. And I'm encouraging that type of activity.

Monroe: Senator Dominick, may we have a final say from you on the constitutional issue?

Senator Dominick: Yes. I think that the President as Commander-in-chief in a war from which he's trying to disengage has the right to use his troops under the Constitution and under international law to protect his rear and to make sure that he can get the men out on time and in accordance with his schedule.

It doesn't seem to me to make sense to say that he can't do it when Congress has already had authorizations and appropriations in support of his moves.

Monroe: Senator Eagleton.

Senator Eagleton: The invasion of a neutral country—in this instance, Cambodia—by the President without the request of that government and without authorization of Congress is, per se, unconstitutional, the result of which is, I think, disastrous, both politically, constitutionally, and economically.

The war has been expanded and the cost of which we can't even estimate in terms of loss of lives and dollars.

Monroe: Thank you very much, gentlemen, Senator Dominick of Colorado, Senator Eagleton of Missouri, Senator Hughes of Iowa, and General Maxwell Taylor for your presence tonight to discuss the U. S. entry into Cambodia and its implications, legal and military.

This is Bill Monroe. Good night for NBC News.

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

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The VICE PRESIDENT. Without objection, it is so ordered.

THAT COED TERRORIST?

Mr. YOUNG of Ohio. Mr. President, at Lexington, Ky., somebody burned down the ROTC building.

I want it known that I despise anyone—any student or any other person—who burns down an ROTC building. It is

my belief that such persons should be not only expelled from any university, but they should also be prosecuted. I know a number of lawyers in Cleveland who could not have made it except for the ROTC. So I do not defend anyone who burns an ROTC building.

But when this ROTC building in Kentucky was burned, National Guardsmen and local police swarmed all over the place arresting suspicious persons. One overzealous officer learned that a young coed had been seen approaching the ROTC building with a bottle of liquid in her hand. This was in the late afternoon some hours before the fire. This "Sherlock Holmes" a few hours later traced the girl to her room, arrested her and took her to jail. In jail she was searched for weapons, not by a matron, but by a policeman. He refused to permit her to telephone her parents or a lawyer.

Her father, a physician, the next day secured her release on bail and employed a lawyer. This young girl was placed on trial. Fortunately, in fact, almost providentially, on that late afternoon just before the ROTC building was burned she was short of cash. Due to that, the proprietor of the store remembered he trusted her to the extent of a dime when she purchased a bottle of ginger ale. That was the Molotov cocktail in her hand when she walked past the ROTC building.

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

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

MESSAGES FROM THE PRESIDENT—APPROVAL OF A BILL

Messages in writing from the President of the United States were communicated to the Senate by Mr. Geisler, one of his secretaries, and he announced that on July 10, 1970, the President had approved and signed the act (S. 4012) to extend the Clean Air Act, as amended, and the Solid Waste Disposal Act, as amended, for a period of 60 days.

REPORT ON A STUDY OF THE EXTENT TO WHICH PORTIONS OF UPPER NEW YORK STATE SHOULD BE INCLUDED IN EITHER THE NEW ENGLAND OR THE APPALACHIAN REGION—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 91–367)

The VICE PRESIDENT laid before the Senate the following message from the President of the United States, which, with the accompanying papers, was referred to the Committee on Public Works:

To the Congress of the United States:

Enclosed is a report to the Congress: A Study, with Recommendations, of the Extent to which Portions of Upper New York State Should be Included in either the New England or the Appalachian Region. This report is submitted in accordance with section 110 of Public Law 91–123, amending section 403 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 403).

RICHARD M. NIXON.

THE WHITE HOUSE, *July 15, 1970.*

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer (Mr. ALLEN) laid before the Senate a message from the President of the United States submitting the nomination of Emory C. Swank, of the District of Columbia, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary to Cambodia, which was referred to the Committee on Foreign Relations.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

FEDERAL NATIONAL MORTGAGE ASSOCIATION OFFICERS ARE NOT FEDERAL OFFICERS

A letter from the President, Federal National Mortgage Association, transmitting, for the information of the Senate, an opinion from the Department of Justice which affirms that the directors and officers of FNMA are not Federal officers (with an accompanying opinion); to the Committee on Banking and Currency.

REPORT ON THE WORK INCENTIVE PLAN

A letter from the Secretary of Labor, transmitting, pursuant to law, a report on the work incentive program dated June, 1970 (with an accompanying report); to the Committee on Finance.

REPORT ON THE LEAD AND ZINC STABILIZATION PROGRAM

A letter from the Secretary of the Interior, transmitting, pursuant to law, a report on the lead and zinc stabilization program for the year ended December 31, 1969 (with an accompanying report); to the Committee on Interior and Insular Affairs.

THIRD PREFERENCE AND SIXTH PREFERENCE CLASSIFICATIONS FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports relating to third preference and sixth preference classifications for certain aliens (with accompanying papers); to the Committee on the Judiciary.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the VICE PRESIDENT:

A resolution adopted by the Reynoldsville Grante No. 1825, Inc., of Reynoldsville, Pa., praying for a review of the general agricultural situation; to the Committee on Agriculture and Forestry.

The petition of Gordon B. Dickinson, Sr., of Silsbee, Tex., praying for a redress of grievances; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BURDICK, from the Committee on the Judiciary, without amendment:

S. 878. A bill for the relief of James E. Miller (Rept. No. 91–1017);

S. 1422. A bill for the relief of Donal E. McGonegal (Rept. No. 91–1018);

S. 1804. A bill for the relief of William H. Morning (Rept. No. 91–1019);

S. 2104. A bill for the relief of Milton Kyhos (Rept. No. 91–1020); and

S. 3138. A bill for the relief of Ruthe E. Calvert (Rept. No. 91–1021).

By Mr. BURDICK, from the Committee on the Judiciary, with an amendment:

S. 2755. A bill for the relief of Donal N. O'Callaghan (Rept. No. 91–1022); and

S. 2834. A bill for the relief of John Borbridge, Jr. (Rept. No. 91–1023).

By MR. BURDICK, for the Committee on the Judiciary, with amendments:

S. 311. A bill for the relief of James Glen Ramsay (Rept. No. 91–1024).

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

H.R. 14452. An act to provide for the designation of special policemen at the Government Printing Office, and for other purposes (Rept. No. 91–1026);

H.R. 14453. An act to authorize the Public Printer to grant time off as compensation for overtime worked by certain employees of the Government Printing Office, and for other purposes (Rept. No. 91–1027);

S. Res. 421. Resolution to print as a Senate document the report of the Secretary of Health, Education, and Welfare, entitled, "Air Pollution Abatement by Federal Facilities" (Rept. No. 91–1028); and

S. Res. 427. Resolution to print as a Senate document the report of the Secretary of Transportation, "The 1970 Annual Report on Urban Area Traffic Operations Improvement Programs" (Rept. No. 91–1029).

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

S. 734. A bill to revise the Federal election laws, and for other purposes (Rept. No. 91–1025).

By Mr. PELL, from the Committee on Rules and Administration, with an amendment:

S. 209. A bill to amend the act of August 22, 1949 (63 Stat. 623), so as to authorize the Board of Regents of the Smithsonian Institution to plan and construct museum support and depository facilities (Rept. No. 91–1030).

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

H.R. 14213. An act to amend section 5580 and 5581 of the Revised Statutes to provide for additional members of the Board of Regents of the Smithsonian Institution (Rept. No. 91–1031).

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. ALLOTT (for himself, Mr. PROUTY, Mr. HATFIELD, Mr. PASTORE, Mr. KENNEDY, and Mr. NELSON):

S. 4085. A bill to establish an Office of Technology Assessment for the Congress as an aid in the identification and consideration of existing and probable impacts of technological application; to amend the National Science Foundation Act of 1950; and for other purposes; to the Committee on Rules and Administration.

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

By Mr. BROOKE (for himself, Mr. GOODELL, and Mr. CRANSTON):

S. 4086. A bill to provide decent and suit-

able living accommodations for low-income families;

S. 4087. A bill to address the growing problem of abandoned properties and neighborhoods; and

S. 4088. A bill to provide on an experimental basis, a housing allowance program; to the Committee on Banking and Currency.

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

By Mr. MOSS:

S. 4089. A bill to amend the Internal Revenue Code of 1954 to clarify the status of certain oil well service equipment under subchapter D of chapter 36 of such Code (relating to tax on the use of certain vehicles); to the Committee on Finance.

By Mr. TOWER:

S.J. Res. 220. A joint resolution to establish a commission on labor law reform; to the Committee on Labor and Public Welfare.

(The remarks of Mr. TOWER when he introduced the joint resolution appear later in the RECORD under the appropriate heading.)

S. 4085—INTRODUCTION OF TECHNOLOGY ASSESSMENT ACT OF 1970

Mr. ALLOTT. Mr. President, on behalf of Senators PASTORE, KENNEDY, NELSON, HATFIELD, PROUTY, and myself, I introduce for appropriate reference a bill to establish an Office of Technology Assessment for the Congress as an aid in the identification and consideration of existing and probable impact of technological application.

The bill I am introducing today is identical in form and substance to the provisions of proposed legislation introduced by Congressmen DADDARIO and MOSHER on April 16. This companion Senate bill is intended to lend credence to the sense of urgency which many of us feel exists with regard to providing Congress with increased capability for evaluating scientific technology and its uses. Each of the cosponsors of this measure has either authorizing or appropriations responsibilities for making judgments and evaluating the impact of existing, new, and developing scientific technology upon society.

The underlying feature of this bill, entitled "The Technology Assessment Act of 1970," is to equip the Congress with a new office in the Library of Congress to assist in formulating judgments on matters relating to scientific developments. I must say, Mr. President, that not in the 170 years since the Library of Congress was founded has the Congress created a significant new entity to provide up-to-date information—other than the fiscal information provided by GAO—and no significant innovations have been made within the Library itself to provide this kind of information since the founding of the Legislative Reference Service in 1915.

Mr. President, this bill basically outlines certain fundamental duties which would be the responsibility of the Office of Technology Assessment within and responsible to the legislative branch of the Government. These are:

The identification of existing or probable impacts of technology or technological programs.

The determination of alternative technological methods of implementing specific programs.

The determination of alternative programs for achieving important technological goals.

The presentation of findings of completed analyses to appropriate legislative committees within the Congress.

The preparation of additional research whenever requested by appropriate congressional authorities.

The basic structure of the organization required for the Office of Technology Assessment is spelled out clearly in the bill, and $5 million is authorized for the initial establishment of the OTA for the fiscal year ending June 30, 1971.

Mr. President, as one who has consistently advocated reasonable Federal support of this Nation's scientific effort, I believe this measure will help strengthen the capacity of Congress to make intelligent decisions relating to priorities of scientific endeavor. Adoption of the procedures provided in this bill will also help dispel the suspicion, within Congress and without, that the Government is operating blindly in an area demanding special knowledge.

This is a point I developed in a letter which appeared in Science magazine some time ago. I stated at that time, in part:

> For some time, I have been warning members of the scientific community that unless some adequate means is developed so that the taxpayers and their elected representatives know what they are buying with their research dollars, a reaction would set in one day which would cause a severe cutback in funds allocated for research. Congress and the taxpayer have a right to expect that their research program has some strong overall direction and control. Now that it is evident there are not sufficient dollars to fund every research program regardless of merit or priority, our government-financed research program is left without any machinery or method of allocating available funds to the best advantage. Consequently, across-the-board cuts were almost inevitable. With so many other problems facing us today which require immediate attention and the expenditure of huge sums of money, it is a bit unrealistic to ask the taxpayer to continue to finance and support an annual $17 billion or more R & D budget almost on faith alone. It was in anticipation of these developments that I have introduced legislation to establish a Joint Congressional Committee on Science and Technology. Unfortunately, with very few exceptions, my proposals have been received rather cooly by the scientific community. That cool reception has been reflected in Congress, and it is my belief that it has come about as a result of a misunderstanding as to what was really intended by the legislation. Perhaps this present situation will serve as an illustration of the need for the establishment of an appropriate organ of Congress to deal with overall objectives and directions of Federally-financed research.

The problem of anticipating the direction of the growth of knowledge is one of the problems discussed in an important new book that has aroused considerable interest in Government circles and in the scientific community, "The Age of Discontinuities," by Professor Peter Drucker. One of his interesting observations about the nature of modern science is this:

> It is fashionable today to assert that knowledge is being converted into technology much faster than in the past. The evidence, however, fails to support this assertion. On the contrary, the lead time for the conversion of knowledge into technology seems to have lengthened. There is nothing today that is compared to the speed with which, for instance, Heinrich Hertz's scientific discoveries in wave physics were translated into Marconi's new wireless telegraphy is less than two decades. The lead time between new knowledge and new technology today is much more likely to be thirty to forty years. In addition, the time it takes to develop new technology into marketable products and processes seems to have lengthened, too.

If Professor Drucker is right—and many informed people think he is—then he is stating one reason why it is becoming increasingly important for us to refine our methods of reviewing our national science effort, and the processes whereby that effort is translated into technological advances. Technology assessment is an important part of rational long-range planning for the long-range benefits of our current science effort.

Professor Drucker makes another interesting—but perhaps less accurate—observation about science. He says:

> We face an unprecedented situation in which we will have to set priorities in the search for new knowledge.

I do not think our situation is quite as unprecedented as Drucker suggests. In 1862, long before the space program, and long before the Manhattan project, the Morrill Act was passed to launch land-grant colleges. A primary purpose of this act was to encourage the growth of scientific agriculture. The result was so spectacular that, as Drucker himself writes:

> Agriculture in the developed countries has become the most productive, the most capital-intensive, the most highly mechanized, and altogether the most "industrial" of all modern industries. It is an "industry" with a very high input of scientific knowledge per unit of production.

There is a lesson to be drawn from this. We are not strangers to the task of setting national priorities for the organized pursuit of knowledge. Technology assessment will be a new tool for a traditional task.

Of course, it is important to realize that, although this is a traditional task, the dimensions and complexity of the task are growing. They are growing because of our Government policies that have made our science community so robust. And they are growing because, here as elsewhere, the complexity of the Government complicates the task of dealing with complex issues. This is a point I discussed when, on March 6, 1967, I proposed in the Senate the establishment of a Joint Committee on Science and Technology. At that time I said this:

> Concomitant with the growth of Federal support has been a great expansion on the body of related knowledge and information. However, because of our highly compartmentalized Congressional committee structure, with its dispersed legislative authorities and jurisdiction, I find it difficult to obtain the comprehensive information de-

scribing the total Federal scientific and technical effort. And, although the Appropriations Committees of both Houses review all Federal spending, I have found it impossible, even as a member of the Senate Appropriations Committee, to gain an overall picture of our research and development programs because the enormity of the Federal budget necessitates its apportionment among the various appropriations subcommittees.

In the Congress as a whole, scientific and technical programs are reviewed in a fragmented manner by various committees and subcommittees, according to their judisdiction over specific departments or agencies. As revealed in a survey made in 1965 by the Science Policy Research Division of the Legislative Reference Service, there are in the House and Senate combined a total of 32 committees and 109 subcommittees having jurisdictional interest in scientific and technological activities. These include a number of subcommittees in each House which exercise oversight of the government's research and development activities. The problem is not, therefore, one of a lack of review, but a lack of coordination of reviews.

In that speech in 1967 I emphasized that the desire to strengthen the congressional review process did not reflect any desire to hinder the science community. I said this:

Certainly we of the Congress do not wish to hamper our national scientific progress in any way, but I consider it our duty to see to it that our Federal scientific programs are more thoroughly coordinated, systematically prosecuted, and economically administered; to help formulate national goals and objectives; and to clarify the scope of government involvement in scientific activities.

More specifically, we shall have to consider such problems as the establishment of priorities in terms of our national goals for support of programs in space, agriculture, health services, education, oceanography, and so forth. We shall have to determine how best to allocate our resources in terms of scientific manpower, money, facilities, and natural resources. These are not unlimited and choices will have to be made as to how best they are to be utilized for maximum public benefit.

In that same speech in the first session of the 90th Congress I raised another point that is essentially relevant today. I suggested that the Congress must equip itself with a science evaluation capacity in order to meet the executive branch on a level of equal knowledge. This is what I said:

It is frequently said in the Congress that too much power has shifted to the executive branch of our government. I believe that we have been somewhat at fault, because in the past we have been prone to accept programs which are conceived in and proposed by the executive branch with too little question, and this is especially true of programs having major scientific and technical content. Furthermore, we must realize that the executive branch perhaps responded to the challenge of modern science and technology with more foresight than we. Within the Executive Office of the President, there is a Special Assistant for Science and Technology, the President's Science Advisory Committee, the Office of Science and Technology, and the Federal Council for Science and Technology. Through these bodies the Executive has immeasurably strengthened its hand both with respect to shaping national science policy and to drafting legislation designed to implement that policy.

Mr. President, if the Congress is going to provide rational support of science, it must be fully equipped to comprehend and justify its generosity.

The Office of Technology Assessment will enable us to spend wisely on behalf of science, and to convince the public, whose money we are spending, that our spending is done intelligently and conscientiously.

It may be that, in a sense, Herbert Spencer was correct in defining science as "organized knowledge." The only trouble is that there are many sciences, and many forms of knowledge relevant to the social impact of the various sciences, and all these forms of knowledge do not organize themselves. Technology assessment will help those of us in Government and those in the science community to organize our science knowledge better. Technology assessment will be a sensible response to an immutable condition. That is, it will enable us to understand the complex connections between the various facets of our science effort. As Professor Drucker writes:

All through history, human knowledge, no matter how much the "experts" might departmentalize it, has been like fluid in a set of communicating vessels: an advance in one of them will result in a higher level in other areas.

Mr. President, so that we may cope more intelligently with the conditions of modern research, I urge prompt and favorable action on the proposal to establish an Office of Technology Assessment for the Congress.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a copy of this bill.

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

The bill (S. 4085) to establish an Office of Technology Assessment for the Congress as an aid in the identification and consideration of existing and probable impacts of technological application; to amend the National Science Foundation Act of 1950; and for other purpose, introduced by Mr. ALLOTT (for himself and other Senators), was received, read twice by its title, referred to the Committee on Rules and Administration and ordered to be printed in the RECORD, as follows:

S. 4085

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 "Technology Assessment Act of 1970".

DECLARATION OF PURPOSE

SEC. 2. The Congress hereby finds and declare that:

(a) Emergent national problems, physical, biological, and social, are of such a nature and are developing at such an unprecedented rate as to constitue a major threat to the security and general welfare of the United States.

(b) Such problems are largely the result of and are allied to—

(1) the increasing pressures of population;

(2) the rapid consumption of natural resources; and

(3) the deterioration of the human environment, natural and social,

though not necessarily limited to or by these factors.

(c) The growth in scale and extent of technological application is a crucial element in such problems and either is or can be a pivotal influence with respect both to their cause and to their solution.

(d) The present mechanisms of the Congress do not provide the legislative branch with adequate independent and timely information concerning the potential application or impact of such technology, particularly in those instances where the Federal Government may be called upon to consider support, management, or regulation of technological applications.

(c) It is therefore, imperative that the Congress equip itself with new and effective means for securing competent unbiased information concerning the effects, physical, economic, social, and political, of the applications of technology, and that such information be utilized whenever appropriate as one element in the legislative assessment of matters pending before the Congress.

ESTABLISHMENT OF THE OFFICE OF TECHNOLOGY ASSESSMENT

SEC. 3. (a) In accordance with the rational enunciated in section 2, there is hereby created the Office of Technology Assessment (hereinafter referred to as the "Office") which shall be within and responsible to the legislative branch of the Government.

(b) The Office shall consist of a Technology Assessment Board (hereinafter referred to as the "Board") which shall formulate and promulgate the policies of the Office, and a Director who shall carry out such policies and administer the operations of the Office.

(c) The basic responsibilities and duties of the Office shall be to provide an early warning of the probable impacts, positive and negative, of the applications of technology and to develop other coordinate information which may assist the Congress in determining the relative priorities of programs before it. In carrying out such function, the Office shall—

(1) identify existing or probable impacts of technology or technological programs;

(2) where possible establish cause and effect relationships;

(3) determine alternative technological methods of implementing specific programs;

(4) determine alternative programs for achieving requisite goals;

(5) make estimates and comparisons of the impacts of alternative methods and programs;

(6) present findings of completed analyses to the appropriate legislative authorities;

(7) identify areas where additional research or data collection is required to provide adequate support for the assessments and estimates described in paragraphs (1) through (5); and

(8) undertake such additional associated tasks as the appropriate authorities specified under subsection (d) may direct.

(d) Activities undertaken by the Office may be initiated by—

(1) the chairman of any standing, special, select, or joint committee of the Congress;

(2) the Board; or

(3) the Director.

(c) Information, surveys, studies, reports, and findings produced by the Office shall be made freely available to the public except where (1) to do so would violate security statutes, or (2) the information or other matter involved could be withheld from the public, notwithstanding subsection (a) of section 552 of title 5, United States Code, under one or more of the numbered paragraphs in subsection (b) of such section.

(f) In undertaking the duties set out in subsection (c), full use shall be made of competent personnel and organizations outside the Office, public or private; and special ad

hoc task forces or other arrangements may be formed by the Director when appropriate.

TECHNOLOGY ASSESSMENT BOARD

SEC. 4 (a) The Board shall consist of thirteen members as follows:

(1) two Members of the Senate who shall not be members of the same political party, to be appointed by the President of the Senate;

(2) two Members of the House of Representatives who shall not be members of the same political party, to be appointed by the Speaker of the House of Representatives;

(3) the Comptroller General of the United States;

(4) the Director of the Legislative Reference Service of the Library of Congress;

(5) six members from the public, appointed by the President, by and with the advice and consent of the Senate, who shall be persons eminent in one or more fields of science or engineering or experienced in the administration of technological activities, or who may be judged qualified on the basis of contributions made to educational or public activities; and

(6) the Director (except that he shall not be considered a voting member for purposes of appointment or removal under the first sentence of section 5(a)).

(b) The Board, by majority vote, shall elect from among its members appointed under subsection (a)(5) a Chairman and a Vice Chairman, who shall serve for such time and under such conditions as the Board may prescribe. In the absence of the Chairman, or in the event of his incapacity, the Vice Chairman shall fulfill the duties and functions of the Chairman.

(c) The Board shall meet upon the call of the Chairman or upon the petition of five or more of its members, but it shall meet not less than twice each year.

(d) Seven members of the Board shall constitute a quorum.

(e) Any vacancy in the Board shall not affect its powers, but shall be filled in the manner in which the vacant position was originally filled.

(f) The term of office of each member of the Board appointed under subsection (a)(5) shall be six years, except that (1) any such member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of such members first taking office after the enactment of this Act shall expire, as designated by the President at the time of appointment, two at the end of two years, two at the end of four years, and two at the end of six years, after the date of the enactment of this Act. No person shall be appointed a member of the Board under subsection (a)(5) more than twice.

(g)(1) The members of the Board other than those appointed under subsection (a)(5) shall receive no compensation for their services as members of the Board, but shall be allowed necessary travel expenses (or, in the alternative, mileage for use of privately owned vehicles and a per diem in lieu of subsistence not to exceed the rates prescribed in sections 5702 and 5704 of title 5, United States Code), and other necessary expenses incurred by them in the performance of duties vested in the Board, without regard to the provisions of subchapter I of chapter 57 of title 5, United States Code, the Standardized Government Travel Regulations, or section 5731 of title 5, United States Code.

(2) The members of the Board appointed under subsection (a)(5) shall each receive compensation at the rate of $100 for each day engaged in the actual performance of duties vested in the Board, and in addition shall be reimbursed for travel, subsistence, and other necessary expenses in the manner provided in paragraph (1) of this subsection.

DIRECTOR AND DEPUTY DIRECTOR

SEC. 5. (a) The Director of the Office of Technology Assessment shall be appointed by the Board and shall serve for a term of six years unless sooner removed by the Board. He shall receive basic pay at the rate provided for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(b) In addition to the powers and duties vested in him by this Act, the Director shall exercise such powers and duties as may be delegated to him by the Board.

(c) The Director may appoint, with the approval of the Board, a Deputy Director who shall perform such functions as the Director may prescribe and who shall be Acting Director during the absence or incapacity of the Director or in the event of a vacancy in the office of Director. The Deputy Director shall receive basic pay at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(d) Neither the Director nor the Deputy Director shall engage in any other business, vocation, or employment than that of serving as such Director or Deputy Director, as the case may be; nor shall the Director or Deputy Director, except with the approval of the Board, hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other arrangement under this Act.

AUTHORITY OF THE OFFICE

SEC. 6. (a) The Office shall have the authority, within the limits of available appropriations, to do all things necessary to carry out the provisions of this Act, including, but without being limited to, the authority to—

(1) prescribe such rules and regulations as it deems necessary governing the manner of its operation and its organization and personnel;

(2) make such expenditures as may be necessary for administering the provisions of this Act;

(3) enter into contracts or other arrangements as may be necessary for the conduct of its work with any agency or instrumentality of the United States, with any foreign country or international agency, with any State, territory, or possession or any political subdivision thereof, or with any person, firm, association, corporation, or educational institution, with or without reimbursement, without performance or other bonds, and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5);

(4) make advance, progress, and other payments which relate to technology assessment without regard to the provisions of section 3648 of the Revised Statutes (31 U.S.C. 529);

(5) acquire by purchase, lease, loan, or gift, and hold and dispose of by sale, lease, or loan, real and personal property of all kinds necessary for, or resulting from, the exercise of authority granted by this Act; and

(6) accept and utilize the services of voluntary and uncompensated personnel and provide transportation and subsistence as authorized by section 5703 of title 5, United States Code, for persons serving without compensation.

(b) The Director shall, in accordance with such policies as the Board shall prescribe, appoint and fix the compensations of such personnel as may be necessary to carry out the provisions of this Act. Such appointments shall be made and such compensation shall be fixed in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; except that the Director may, in accordance with such policies as the Board shall prescribe, employ such technical and professional personnel and fix their compensation without regard to such provisions as he may deem necessary for the discharge of the responsibilities of the Office under this Act.

(c) The Office shall not, itself, operate any laboratories, pilot plants, or test facilities in the pursuit of its mission.

(d)(1) The Office or (on the authorization of the Office) any of its duly constituted officers may, for the purpose of carrying out the provisions of this Act, hold such hearings, take such testimony, and sit and act at such times and places as the Office deems advisable. For this purpose the Office is authorized to require the attendance of such persons and the production of such books, records, documents, or data, by subpena or otherwise, and to take such testimony and records, as it deems necessary. Subpenas may be issued by the Director or by any person designated by him. If compliance with such a subpena by the person to whom it is issued or upon whom it is served would (in such person's judgment) require the disclosure of trade secrets or other commercial, financial, or proprietary information which is privileged or confidential, or constitute a clearly unwarranted invasion of privacy, such person may petition the United States district court for the district in which he resides or has his principal place of business, or in which the books, records, documents, or data involved are situated, and such court (after inspecting such books, records, documents, or data in camera) may excise and release from the subpena any portion thereof which it determines would require such disclosure or constitute such invasion. Where the subpena or such portion thereof would require such disclosure or constitute such invasion but the books, records, documents, or data involved are shown to be germane to the matters under consideration and necessary for the effective conduct by the Office of its proceedings or deliberations with respect thereto, the court may require that such books, records, documents, or data be produced or made available to the Office in accordance with the subpena but subject to such conditions and limitations of access as will prevent their public disclosure and protect their confidentiality.

(2) In case of contumacy or disobedience to a subpena issued under paragraph (1) the Attorney General, at the request of the Office, shall invoke the aid of the United States district court for the district in which the person to whom the subpena was issued or upon whom it was served resides or has his principal place of business, or in which the books, records, documents, or data involved are situated, or the aid of any other United States district court within the jurisdiction of which the Office's proceedings are being carried on, in requiring the production of such books, records, documents, or data or the attendance and testimony of such person in accordance with the subpena (subject to any conditions or limitations of access which may have been imposed by such court or any other court under the last sentence of paragraph (1)). Such court may issue an order requiring the person to whom the subpena was issued or upon whom it was served to produce the books, records, documents, or data involved, or to appear and testify, or both, in accordance with the subpena (subject to any such conditions or limitations of access); and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(e) Each department, agency, or instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Office, upon request by the Director, such information as the Office deems necessary to carry out its functions under this Act.

(f) Contractors and other parties entering into contracts and other arrangements under this section which involve costs to the Government shall maintain such books and related records as will facilitate an effective audit in such detail and in such manner as shall be prescribed by the Director, and such books and records (and related documents and papers) shall be available to the Director and the Comptroller General or any of their duly authorized representatives for the purpose of audit and examination.

UTILIZATION OF THE LIBRARY OF CONGRESS

SEC. 7. (a) Pursuant to the objectives of this Act the Librarian of Congress is authorized to make available to the Office such services and assistance by the Legislative Reference Service as may be appropriate and feasible.

(b) The foregoing services and assistance to the Office shall include all of the services and assistance which the Legislative Reference Service is presently authorized to provide to the Congress, and shall particularly include, without being limited to, the following:

(1) maintaining a monitoring indicator system with respect to the natural and social environments which might reveal early impacts of technological change, but any such system shall be coordinated with other assessment activities which may exist in the departments and agencies of the executive branch of the Government;

(2) making surveys of ongoing and proposed programs of government with a high or novel technology content, together with timetables of applied science showing promising developments;

(3) publishing, from time to time, anticipatory reports and forecasts;

(4) recording the activities and responsibilities of Federal agencies in affecting or being affected by technological change;

(5) when warranted, recommending full-scale assessments;

(6) preparing background reports to aid in receiving and using the assessments;

(7) providing staff assistance in preparing for or holding committee hearings to consider the findings of the assessments;

(8) reviewing the findings of any assessment made by or for the Office; and

(9) assisting the office in the maintenance of liaison with executive agencies involved in technology assessments.

(c) Nothing in this section shall alter or modify any services or responsibilities other than those performed for the Office, which the Legislative Reference Service under law performs for or on behalf of the Congress. The Librarian is, however, authorized to establish within the Legislative Reference Service such additional divisions, groups, or other organizational entities as may be necessary to carry out the objectives of this Act, including the functions enumerated in this section.

(d) Services and assistance made available to the Office by the Legislative Reference Service in accordance with this section may be provided with or without reimbursement from funds of the Office, as agreed upon by the Chairman of the Board and the Libranian of Congress.

COORDINATION WITH THE NATIONAL SCIENCE FOUNDATION

SEC. 8. (a) The Office shall maintain a continuing liaison with the National Science Foundation with respect to—

(1) grants and contracts formulated or activated by the Foundation which are for purposes of technology assessment, and

(2) the promotion of coordination in areas of technology assessment, and the avoidance of unnecessary duplication or overlapping of research activities in the development of technology assessment techniques and programs.

(b) Section 3(b) of the National Science Foundation Act of 1950, as amended, is hereby amended to read as follows:

"(b) The Foundation is authorized to initiate and support specific scientific activities in connection with matters relating to international cooperation, national security and the effects of scientific application upon society by making contracts or other arrangements (including grants, loans, and other forms of assistance) for the conduct of such activities. When initiated or supported pursuant to requests made by any other Federal department or agency, including the Office of Technology Assessment, such activities shall be financed whenever feasible from funds transferred to the Foundation by the requesting official as provided in section 14(g), and any such activities shall be unclassified and shall be identified by the Foundation as being undertaken at the request of the appropriate official."

ANNUAL REPORT

SEC. 9. The Office shall submit to the Congress and to the President an annual report which shall, among other things, evaluate the existing state of the art with regard to technology assessment techniques and forecast, insofar as may be feasible, technological areas requiring future attention. The report shall be submitted not later than March 15 each year.

FINANCIAL AND ADMINISTRATIVE SERVICES

SEC. 10. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Office by the General Accounting Office, with or without reimbursement from funds of the Office, as may be agreed upon by the Chairman of the Board and the Comptroller General of the United States. The regulations of the General Accounting Office for the collection of indebtedness of personnel resulting from erroneous payments (under section 5514(b) of title 5, United States Code) shall apply to the collection of erroneous payments made to or on behalf of an Office employee, and the regulations of the Comptroller General for the administrative control of funds (under section 3679(g) of the Revised Statutes (31 U.S.C. 665(g)) shall apply to appropriations of the Office; and the Office shall not be required to prescribe such regulations.

APPROPRIATIONS

SEC. 11. (a) To enable the Office to carry out its powers and duties, there is hereby authorized to be appropriated to the Office, out of any money in the Treasury not otherwise appropriated, not to exceed $5,000,000 for the fiscal year ending June 30, 1971, and thereafter such sums as may be necessary.

(b) Appropriations made pursuant to the authority provided in subsection (a) shall remain available for obligation, for expenditure, or for obligation and expenditure for such period or periods as may be specified in the Act making such appropriations.

S. 4086, S. 4087, AND S. 4088—INTRODUCTION OF BILLS RELATING TO AID FOR LOW-INCOME FAMILIES

Mr. BROOKE. Mr. President, I introduce for appropriate reference three bills—cosponsored by the distinguished Senators from New York (Mr. GOODELL), and California (Mr. CRANSTON)—dealing in part with the housing crisis which prevails in this country. The first bill consists of a number of technical amendments designed to clarify and improve existing programs; the second bill contains provisions which address the growing problem of abandoned properties and neighborhoods; and the third bill would introduce, on an experimental basis, a housing allowance program.

Last year, the Senator from Alabama (Mr. SPARKMAN) and I introduced legislation designed to alleviate intolerable conditions which have been allowed to exist far too long in public housing projects throughout the Nation. The Sparkman amendment made it clear that Federal assistance to local public housing authorities was not limited to debt service requirements, but could be extended to cover operating needs as well. While many knowledgeable onlookers believed that the Department of Housing and Urban Development possessed such authority, Congress obliged departmental officials by restating the limits of HUD authority.

At the same time, I introduced legislation which authorized the Department of Housing and Urban Development to contract with local housing authorities to make payments for three purposes: first, to eliminate operating deficits which existed in public housing authorities when the Housing and Urban Development Act of 1969 was signed into law; second, to assure that local housing authorities have sufficient funds to maintain adequate operating and maintenance services and reserve funds; and third, to make up the loss in rental revenue caused by reducing tenants' rents to 25 percent of their incomes. At the same time, the 1969 act placed a ceiling equal to 25 percent of their incomes on the rent which public housing tenants pay.

Seventy-five million dollars in contract authority was authorized for these three purposes; however, congressional intent was clear as to HUD's ability to provide funding in excess of this amount—up to the annual statutory maximum as specified in the Housing Act of 1937, as amended—if the newly authorized funds were insufficient to meet the urgent needs which existed. It was also clear that Congress committed itself indefinitely to fund the three activities specified and did not place time constraints on the assistance program embodied therein.

Thus, sufficient funds were provided to make public housing authorities "whole" by eliminating past operating deficits; to insure that public housing tenants were not forced to pay a disproportionate share of their incomes for rent at a time when inflationary pressures were driving the operating costs of public housing projects higher each month; and to insure that, in the future, public housing authorities would have sufficient funds to provide those services, repairs, and training programs which are essential if we are to honor the commitment of "a decent home and a suitable living environment for every American family."

These two pieces of legislation hold the promise for reversing serious trends which have been occurring in the field of public housing in recent years. I am saddened to say that these provisions have not been implemented in the vigorous manner Congress intended. Bureaucratic machinations have undermined much of the hope and confidence which these provisions gave tenants and housing authorities.

Despite the provision for $75 million in new authorizations—specifically earmarked for the three purposes enumerated above—the administration requested only $33 million in appropriations for fiscal year 1971, even though administration figures indicated that operating deficits alone stood at the $100 million level. In addition, the Department saddled these provisions with a restrictive interpretation which ignores specific language in the Senate-House conference report as well as statements made by members of the Senate and House Banking and Currency Committees at the time this legislation was enacted. At this point in the RECORD, I would like to insert a legal memorandum prepared by the National Housing and Development Law Project at the University of California, Berkeley, which discusses the interpretation given to this legislation by HUD as well as the legislative history pertaining thereto.

I am introducing a provision today which restates congressional intent as embodied in sections 212 and 213 of last year's Housing Act. It is unfortunate that we must codify language contained in last year's Senate-House conference report on this subject; however, there appears to be no alternative. I call upon the Department of Housing and Urban Development, however, to review its policies prior to hearings on this subject which are scheduled before the Senate Banking and Currency Committee on July 24, 1970. The Department certainly shares our interest in correcting the misinformation which permeates the public housing community with respect to the implementation of this provision.

Let me address a few points directly. Last year's act withheld rent reduction benefits if such would result in reductions in welfare—or public assistance—payments. This provision was designed to insure that the payment of HUD subsidies did not enable local welfare agencies to cut back on their commitments. At the same time, the Secretaries of Housing and Urban Development and of Health, Education, and Welfare were charged with the responsibility of establishing policies within their respective departments which would aid the implementation of this provision. To date, confusion reigns at the local level with respect to the ability of welfare tenants to benefit from the provisions of the 1969 act.

I am therefore introducing a provision today which is designed to prevent local welfare agencies from reducing public assistance payments as a result of the payment of HUD subsidies. I further urge the Secretaries of Housing and Urban Development and Health, Education, and Welfare to report to the Senate Banking and Currency Committee concerning actions taken by their departments to agree on common policies regarding public housing rents paid by welfare recipients and to effectuate congressional intent regarding this subject.

Misinformation also exists with respect to which tenants will be eligible in computing the rent reduction subsidy benefits. Congressional intent is clear that no family residing in public housing after March 24, 1970, is required to pay more than 25 percent of its income for rent. It is also clear that any deficiency arising in a public housing authority's operating revenues as a result of this statutory ceiling will be covered fully by Federal subsidies.

Thus, the Federal Government was to pay local housing authorities for the loss in rental income due to the reduction of tenants' rents to 25 percent of their incomes. It was envisioned that Federal assistance would be provided based on a local housing authority's annual budget of estimated cost, in relation to the anticipated income. Local housing authorities should have been requested to submit an amendment to their fiscal year 1970 budgets to reflect the loss of rental revenue due to the rent reduction; however, they continue to complain about the absence of information concerning the availability of funds to meet deficiencies arising as a result of the rent reduction.

With respect to "adequate operating and maintenance services and reserve funds," it was contemplated that reserve funds should be restored to adequate levels and additional operating and maintenance services should be provided to insure that a sound physical and social environment is maintained. Clearly, neither tenants nor housing authorities could be expected to provide sufficient revenues to attain these goals—given the present state of public housing. Therefore, Federal subsidies were contemplated.

Among the operating and maintenance services which would be eligible for Federal subsidies if tenant rent payments were insufficient to cover their costs are the following: tenant counseling on family budgets and on care and upkeep of property; guard and other costs relating to the physical security of project residents; tenant access to available community services relating to employment, health, welfare, education, and personal counseling; effective management-tenant liaison on all aspects of housing administration, management, and maintenance; recreational equipment and facilities; and adequate and timely repairs to structures, including the removal of all code violations pertaining thereto. HUD has failed entirely to implement this aspect of last year's legislation and, therefore, legislative action is required to reaffirm congressional intent on this subject.

I am also introducing a provision which clarifies the fact that the determination of tenant incomes must reside with local housing authorities, subject only to HUD oversight with a view toward correcting abusive practices. The Department already possesses the latter authority and, therefore, statutory changes are unnecessary.

Income determination regulations recently promulgated by HUD served as a vehicle for altering longstanding policies concerning local autonomy and, therefore, further contributed to local confusion on this subject. We must not reverse time-tested practices of providing local flexibility to meet individual needs and circumstances.

In defining income pursuant to the 1969 act, HUD has taken a very narrow view of possible deductions. Thus, if a four-person family includes a husband who earns $4,000 per year and yet is temporarily disabled because of medical reasons and incurs substantial hospital bills in the process, the latter expenses are not deductible. This inequitable solution also arises with respect to other deductions which are not allowed. Rather than seeking the enactment of a provision which increases the burden on low-income families, I urge the retention of authority at the local level to determine income and deductions.

The provisions which I introduce today—designed to codify congressional intent concerning sections 212 and 213 of the 1969 Housing Act—specify that the Secretary of Housing and Urban Development is required to amend annual contributions contracts to provide payments up to the statutory maximum allowable contribution for three purposes: to assure the low-rent character of the projects involved; to achieve and maintain adequate operating and maintenance services and reserve funds; and to cover any public housing agency's operating deficit, including deficiencies in reserve funds, for the fiscal year which includes December 24, 1969.

The provision authorizing payments "to assure the low-rent character of the projects involved" does not mean that public housing tenants should be required to pay 25 percent of their incomes for rent. It does mean, however, that payments in excess of 25 percent represent a disproportionate share of their incomes which cannot be tolerated and which are prohibited since the enactment of the Housing and Urban Development Act of 1969.

The Department of Housing and Urban Development has requested a total of $19.5 million in fiscal years 1970 and 1971 to satisfy partially the requirement in last year's act that funds be provided to cover operating deficits, including deficiencies in reserve funds, for the public housing authorities' fiscal year which included December 24, 1969. As previously mentioned, the need for such funds approximates $100 million. In light of the fact that HUD has indicated its willingness to discharge this obligation at the earliest possible date, I am hopeful that this can be accomplished by the end of the next fiscal year.

With respect to the provision for a continuing flow of funds to public housing authorities designed to achieve and maintain adequate operating and maintenance services and reserve funds, I believe this aspect of last year's provision represents potentially the greatest hope for improving the quality of living in public housing. Specifically, I foresee the channeling of Federal funds to public housing authorities designed to enable them to increase maintenance services where such services are often absent or simply lacking in scope; to increase the scope of services to include recreational facilities where none hitherto existed, guard services where vandalism cannot be prevented by local law-enforcement agencies without taxing their already-limited resources, and

tenant counseling and participation programs; and to maintain adequate reserve funds.

Despite congressional intent to the contrary, HUD regulations promulgated concerning this legislation conditioned the payment of funds on "satisfactory standards of management and tenant responsibility." While I certainly agree with the need for management and tenants to act responsibly, I do not believe the payment of funds for improving the quality of tenants' living accommodations can or should be made dependent on the performance of absentee managers or that vague and possibly unconstitutional standards should be allowed to govern or possibly intimidate legitimate actions on the part of tenants.

I have given thought to the rent payment provisions contained in the administration's proposed 1970 Housing Act; however, I have concluded that these provisions are not workable in their present form. This legislation would require public housing tenants to pay 20 percent of their incomes under $3,500 for rent and 25 percent of their earnings above that dollar amount for rent. The HUD proposal would result in substantial rent increases for many low-income families, particularly families with children. These results are intolerable.

I am also introducing proposals whereby the Secretary of Housing and Urban Development would be required to file as part of his annual report on housing goals a documented statement of the current effectiveness of statutory construction cost limits for public housing and statutory mortgage limits for insured programs authorized under title II of the National Housing Act, plus a recommendation as to the appropriate cost and mortgage limits for the insuring 12-month period. These cost and mortgage limits would automatically become effective unless Congress acted within 60 days. Recent experience has shown that the failure of cost ceilings to keep pace with rising costs has curtailed much-needed construction.

Another feature of this bill deals with the section 23 leasing program. Clear authority would be given to HUD to extend the program to newly constructed housing as well as to existing units. The evidence indicates that the section 23 leasing program has been highly successful and deserves broad Congressional support. Its effectiveness can be expanded still further by confirming its coverage of units which are planned or in the process of construction, as well as those which currently exist. I propose to extend the term of the lease to 10 years with an option to renew for an additional 10 years. Another provision would remove the requirement for local governing body approval prior to undertaking a leasing program. The latter provision has merely served to inhibit the expansion of this worthwhile program.

I am also introducing a proposal which is designed to clarify any uncertainty as to the right of tenants to serve as commissioners of local housing authorities. Certainly those residing in public housing are in the best position to understand the needs and concerns of local residents and to respond accordingly. Any inhibition on such practices merely prevents participation on the part of those persons whose well-being is being decided.

The subject of abandoned buildings has become particularly acute in many of our larger cities. In New York City, for example, block after block of buildings sit empty—the victims of spiraling costs, the inability of low-income families to respond to such increases, changing neighborhood growth patterns, obsolete construction, inadequate services, rent control, rent strikes, vandalism, and frustration. It has been estimated that New York City has suffered a loss of 130,000 apartment units in the past 4 years; that Washington, D.C., has approximately 7,500 boarded-up residential units; and that Boston has at least 1,000 vacant structures.

At a time when this Nation's housing supply is falling far short of existing needs and we have not begun to honor the goal of 26 million new units by 1978, we cannot permit the abandonment of usable structures to take place. These conditions are further aggravated by the reluctance of traditional lending institutions to provide sufficient funds to rehabilitate usable structures and hence forestall further deterioration in individual neighborhoods.

The problem of abandoned buildings is extremely complex and must be studied in considerable detail. We cannot, however, postpone efforts to arrive at a solution to this problem and, therefore, we must draw on techniques which are presently available. Accordingly, I am introducing a second bill which contains a series of proposals designed to accomplish the following objectives: to "hold" neighborhoods where abandonment has not yet occurred, but where deterioration is present or imminent; to rehabilitate declining or abandoned buildings and restore neighborhood services and facilities to adequate levels; and to provide sufficient rental income to permit owners of rental properties to maintain them at decent levels of repair, with adequate operating and maintenance services being provided.

With respect to holding neighborhoods where abandonment is imminent, I am introducing a program of "improvement assistance for neighborhoods with abandoned properties" which provides up to $200 million each fiscal year in grant funds to cities, counties or municipalities for the purpose of assisting in carrying out programs to alleviate harmful conditions and prevent deterioration in neighborhoods where abandonment is a problem. Such grants will require matching local funds to the extent of one-third of the cost where the city or other entity involved has a population of more than 50,000 persons or one-fourth in the case of any local entity having a population of 50,000 or less.

These grant funds will be available for a number of programs designed to forestall the deterioration of neighborhoods and improve those which have declined, including the repair of streets, sidewalks, parks and playgrounds; the improvement of private properties held by local governmental agencies to the extent necessary to eliminate harmful effects to public health and safety or the physical or social environment of the community involved; the demolition or closing of structurally unsound buildings; and the establishment or improvement of neighborhood services.

I am also introducing additional provisions which enable the section 312 rehabilitation loan program and the section 115 rehabilitation grant program to be used with respect to abandoned or deteriorating structures. I would also anticipate an expanded use of the section 23 public housing leasing program, although I do not believe a stautory amendment is required. Thus, the first two objectives set forth above will be addressed through the use of several programs, each designed to deal with specific local needs.

Even though necessary steps are taken to improve the structures and the neighborhood environment, individual homeowners or tenants of previously abandoned buildings—or those threatened with abandonment—do not, in many cases, have sufficient income to meet the operating costs necessary to maintain the housing in sound condition. This problem should not materialize where the properties become part of a local public housing program either through leasing or direct ownership by a public housing authority because of the provisions contained in last year's housing act which have been discussed earlier in this statement. Where the properties are retained by private parties, however, the problem becomes paticularly acute.

I am therefore introducing an amendment to the rent supplement program which will extend that program to cover abandoned or deteriorating structures. The problem is a complex one, since inadequate income affects all facets of a family's well-being, not simply its ability to meet housing costs. I am heartened, however, that consideration is being given by the Senate Finance Committee to the administration's proposal for a "minimum family allowance" (H.R. 16311). Although the proposed level of the allowance of $1,600 for a four-person family is low, this legislation is an important first step toward setting a floor on family income. If a family allowance is enacted at a level sufficient to meet minimum family requirements for food, clothing, and other nonhousing needs, then Federal assistance for housing can be a most useful complement to such a program.

The problem of obtaining decent living accommodations without the expenditure of a disproportionate share of a family's income for rent is acute for many Americans; however, it is most urgent, where low-income families are involved. Many families have incomes which qualify them for public housing, although they are not able to obtain such housing for a myriad of reasons. In some instances, local authorities already have long waiting lists of applicants who cannot be placed because of the shortage of public housing units. Elsewhere, local communities may not have engaged in either Federal or State public housing programs and hence subsidized structures are simply not available to meet pressing needs.

I am, therefore, introducing a third bill which would establish a housing al-

lowance program on an experimental basis. Thus, Federal subsidies would be available equal to the difference between 25 percent of a tenant's monthly income and the maximum fair market rentals for standard housing in the community involved. The benefits provided for public housing tenants would thereby be extended to those persons who qualify for public housing but are unable to obtain public housing accommodations.

I offer this particular proposal with the hope that it will prove successful and will generate much-needed relief to low-income families in the future. The housing allowance would be limited to those tenants who qualify for public housing and to those communities where the Secretary of Housing and Urban Development determines that an adequate supply of standard housing exists. The latter requirement is included in the proposal to prevent the payment of housing allowance funds from being translated into rent increases because of the shortage of available units.

While the housing allowance concept is not new, it is one of the few proposals which may enable low-income families to meet their housing needs on reasonable terms, avoiding the expenditure of a disproportionate share of income for rent.

I offer these three bills with the hope that serious consideration will be focused on the concerns of low-income families during this session of Congress. There is a growing sense of hopelessness among this segment of our population which must not be perpetuated. The promises of recent years have too often lost their credibility with low-income families as well as local officials who are often frustrated in their efforts to meet local needs. It is no solution merely to rescramble existing programs, if we do not provide the necessary funds and wherewithal to address the pressing problems at hand.

The proposals which I put forth today represent constructive solutions to some of the more serious problems at hand. I recognize that these proposals do not address the concerns of middle income families or the housing crisis as a whole; however, recent bills passed by the Senate and the House will hopefully bring much-needed relief to other sectors of our society.

Mr. President, I ask unanimous consent that the text of the three bills be printed in the RECORD, together with a national housing and development law project memorandum.

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

The bills, introduced by Mr. BROOKE (for himself and other Senators), were received, read twice by their titles, referred to the Committee on Banking and Currency, and ordered to be printed in the RECORD, as follows:

S. 4086

A bill to provide decent and suitable living accomodations for low-income families

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 "Housing and Urban Development Amendments of 1970".

SECTION 1. Insert the following paragraph after the last full paragraph in section 2(1) of the United States Housing Act of 1937:

"Except that in the case of those families receiving public assistance, the total amount of their benefits thereunder shall not be reduced as a result of any rent reduction by a local public housing agency made pursuant to the rent ceiling specified above."

SEC. 2. The second paragraph of section 2(1) of the United States Housing Act of 1937 is amended by striking out the words "as defined by the Secretary" after the word "income".

SEC. 3. After the third sentence of section 10(a) of the United States Housing Act of 1937, as amended, the following is added:

"Provided further, That the Authority shall amend or supersede annual contributions contracts to provide payments annually up to the maximum allowable contribution for each contract under section 10(b) and section 14 of the Act: (1) to assure the low-rent character of the projects involved; (2) to achieve and maintain adequate operating and maintenance services and reserve funds; and (3) to cover any public housing agency's operating deficit, including deficiencies in reserve funds, for the fiscal year which includes December 24, 1969."

SEC. 4(a). Section 1603 of Title XVI of the Housing and Urban Development Act of 1968 is amended by striking the word "and" in subsection (5) thereof and the period at the end of subsection (6) thereof and inserting "; and" at the end of the latter subsection.

(b) Section 1603 of Title XVI of the Housing and Urban Development Act of 1968 is amended by inserting the following after subsection (6):

"(7) contain a documented statement of the current effectiveness of statutory construction cost limits for public housing and statutory mortgage limits for insured programs authorized under Title II of the National Housing Act and a recommendation as to the appropriate cost and mortgage limits for the ensuing twelve month period.

"The cost and mortgage limits recommended pursuant to subsection (6) above shall automatically become effective after 60 days unless Congress specifically rejects or amends them within that period of time."

SEC. 5. (a) Section 10(c) of the United States Housing Act of 1937 is amended by striking out the term "existing structures" in the last proviso and inserting in lieu thereof the term "private accommodations".

(b) Section 23(a)(3) of the United States Housing Act of 1937 is amended by striking from the first clause thereof the words "an existing" and inserting in lieu thereof the word "a".

SEC. 6. The last sentence of section 23(d) of the United States Housing Act of 1937 is amended by striking out the term "sixty months" and inserting in lieu thereof "120 months".

SEC. 7. The Housing Act of 1937 is amended by striking section 23(a)(2) and renumbering the succeeding subsections accordingly.

SEC. 8. Section 2(11) of the United States Housing Act of 1937 is amended by striking the period at the end of the first sentence thereof and inserting the following:

": *Provided,* That tenants shall be authorized to serve on the Board of Directors or similar governing body of the governmental entity or public body involved."

S. 4087

A bill to address the growing problem of abandoned properties and neighborhoods

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 "Abandoned Properties and Neighborhoods Act of 1970."

SEC. 2 (a) Part A of title I of the Housing Act of 1949 is hereby amended by adding the following new section at the end thereof:

"IMPROVEMENT ASSISTANCE FOR NEIGHBORHOODS WITH ABANDONED PROPERTIES

"SEC. 119(a) Notwithstanding any other provision of this title, the Secretary is hereby authorized to make, and to enter into contracts to make grants (in an aggregate amount not to exceed $200,000,000 in any fiscal year) as provided in this section to cities, other municipalities, and counties for the purpose of assisting such localities in carrying out programs to alleviate harmful conditions or prevent deterioration in neighborhoods where the local governing body has determined that a substantial number of properties have been abandoned or foresees that the problem of abandonment may arise.

"(b) Such grants shall not exceed two-thirds (or three-fourths in the case of any city, other municipality, or county having a population of fifty thousand or less according to the most recent decennial census) of the cost of planning and carrying out programs which may include, but shall not be limited to, (1) the repair of streets, sidewalks, parks, playgrounds, publicly-owned utilities, public buildings to meet needs consistent with continued use of the area, (2) the improvement of private properties held by any city, other municipality, county or instrumentalities thereof to the extent needed to eliminate harmful effects to public health and safety or the physical or social environment involved, (3) the demolition or closing of structures determined to be structurally unsound or unfit for human habitation or which contribute adversely to the physical or social environment of the locality involved, (4) the establishment of recreational or community facilities including public playgrounds, and (5) the improvement of garbage and trash collection, and street cleaning.

"(c) The Secretary shall encourage, wherever feasible, the employment of otherwise unemployed or underemployed residents of the area in carrying out the activities and undertakings assisted under this section.

"(d) The provisions of sections 101(c), 106, 114 and 115 shall be applicable to activities and undertakings under this section to the same extent as if such activities and undertakings were being carried out in an urban renewal area as part of an urban renewal project: *Provided,* That in such neighborhoods the grants authorized under section 115 may be made to a low-income individual or family, as defined in section 115, who owns property otherwise eligible under section 115 even though such individual or family is not an occupant of the property: *Provided further,* That the grants authorized under section 115, in connection with eligible neighborhoods under this section, need not involve major rehabilitation, but can include the cost of refinancing, repairs, and minor rehabilitation."

(b) Section 103(b) of the Housing Act of 1949 is amended by striking out "$1,700,000,000" and inserting in lieu thereof "$1,900,000,000", and by adding at the end thereof a new sentence as follows: "Not less than $200,000,000 of the amounts available to the Secretary for grants under this title shall be for grants under section 119."

SEC. 3. Subsection (1)(C) of section 312 (a) of the Housing Act of 1964 is hereby amended by striking the colon at the end of that subsection and inserting in lieu thereof: "; or" and by adding a new subparagraph as follows:

"(D) the property is in an area with respect to which assistance may be made available pursuant to section 119 of the Housing Act of 1949, and the rehabilitation of such property is consistent with the locality's plan for the improvement of the neighborhood: *Provided,* That loans for such properties need not involve major rehabilitation, but can

cover the cost of refinancing, repairs, or minor rehabilitation;".

SEC. 4. (a) Subsection (b) of section 101 of Title I of the Housing and Urban Development Act of 1965 is amended by striking the period at the end of the first sentence and inserting the following in lieu thereof:

": *Provided further,* That the term 'housing owner' means an individual, partnership, or corporation where a local public agency authorized by the Secretary determines that the property is located in an area with respect to which assistance may be made available pursuant to section 119 of the Housing Act of 1949."

(b) Subsection (c) of section 101 of Title I of the Housing and Urban Development Act of 1965 is amended by inserting the following after subsection (c)(2):

"*Provided,* That the provisions of subsection (c)(2) shall not apply in the case of property receiving assistance under section 119 of the Housing Act of 1949."

S. 4088

A bill to provide on an experimental basis, a housing allowance program

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Low-Income Housing Assistance Act of 1970".

SEC. 1. The Housing Act of 1937 is amended by adding at the end thereof the following new subsection:

"(a) For the purpose of assisting, on an experimental basis, qualified tenants to obtain rental housing of their choice in existing standard housing units, the Secretary is authorized to pay and to contract to pay, subject to the limitations of this subsection, monthly housing allowances to families of low income in localities determined by the Secretary to have an adequate supply of such housing.

"(b) As used in this subsection—

"(1) the term 'families of low income' shall have the same meaning as in section 2(2) of this Act and, in addition, such families shall agree that any monthly housing allowance received by them pursuant to this subsection shall be used solely for the payment of rent or rental charges in existing standard housing for their occupancy; and

"(2) the term 'existing standard housing' shall mean a rental unit which meets standards prescribed by the Secretary.

"(c) Housing allowances to families of low income shall not exceed the difference between 25 per centum of the families' monthly incomes and the maximum fair market rentals established in the locality by the Secretary for dwelling units of similar size in projects receiving annual payments under contracts authorized by section 101(a) of Title I of the Housing and Urban Development Act of 1965.

"(d) The Secretary is authorized to pay and to contract to pay (in an aggregate amount not to exceed $100 million in any fiscal year) monthly housing allowance payments to families of low income pursuant to this section.

"(e) The Secretary is authorized to contract with public or private organizations to provide the services required in the selection of families of low income and any distribution of monthly rental assistance payments to such families. In contracting with such organizations, the Secretary is authorized (without limiting his authority under any other provision of law) to delegate to such organizations the authority to make monthly rental assistance payments to families of low income selected by such organizations.

"(f) The Secretary shall cause to be made such surveys and studies concerning the operation of the program authorized by this section as he deems useful to assist in the preparation of reports required by section 5 of the Housing and Urban Development Act of 1968."

The memorandum, presented by Mr. BROOKE, is as follows:

NATIONAL HOUSING AND DEVELOPMENT LAW PROJECT MEMORANDUM

The purpose of this memorandum is to interpret the meaning of Section 213 of the Housing and Urban Development Act of 1969, in order to provide a guide for the expenditure of funds authorized in these sections.

Since the statute itself is ambiguous, it is necessary to turn to the legislative history of the section.

Section 213(a) and 213(b) of the Act originated as S. 2761, which was introduced by Senator Brooke. That bill added a new Section 24 to the United States Housing Act of 1937 authorizing up to $75 million for annual rental assistance payments to public housing authorities to enable such authorities to maintain adequate operating and maintenance services and reserve funds, while at the same time limiting rents to no more than 25 percent of a tenant's total income. S. 2761 was incorporated into the final bill which emerged from the Committee on Banking and Currency, S. 2861, as Section 211.

The bill which was approved by the House did not contain the Brooke provision. However, as the Conference Report on the Housing and Urban Development Act of 1969 makes clear, the "Conference substitute retains the basic concept of Section 211 of the senate bill by generally limiting rents that may be charged public housing tenants to no more than 25 percent of their income." [Conference Report No. 91–740, p. 30]. The Report goes on to specify the two purposes for which federal funds may be expended: "It provides Federal funds *to cover* the amount by which the appropriate rental charges exceed 25 percent of the income of the tenant *and to cover* the cost of adequate operating and maintenance services." [Conference Report No. 91–740, p. 30 Emphasis added]. That there were two purposes for which the act authorized the expenditure of Federal funds is reinforced by the similar language used earlier by the conferees in describing the Brooke Amendment as it passed the Senate. There again it is specified that the Brooke provision authorized up to $75 million per year in contracts for annual rental assistance payments to public housing agencies to cover "the amount by which rental charges allocated to a unit exceed 25 percent of the tenant's income and to provide improved operating and maintenance services." [Report, p. 30].

Thus, on the first page of the Conference Report dealing with public housing, the conferee's description of the Brooke Amendment, and of the ultimate conference bill, indicates that they regarded Section 213 as having the dual purpose of: (1) limiting the rent a tenant pays to no more than 25% of his income; and (2) providing Federal assistance to LHA's for operating and maintenance expenses.

On page 31, the conferees give an additional indication of their intent in a key paragraph which reads as follows:

"The conferees intend that the secretary's authority to make annual contributions in *excess of debt service* requirements *may be used,* to the extent that the statutory annual maximum permits, for (1) payments to cover existing operating deficits of public housing agencies and enable *them* to maintain adequate operating and maintenance services and reserve funds, and (2) additional payments to make up the amount by which the proportionate share of operating and maintenance expenses attributable to a public housing tenant's dwelling unit exceeds 25% of the tenant's income."

This paragraph combines the "Brooke Amendment" with the "Sparkman Amendment" and simply notes that pursuant to the Secretary's newly clarified powers under Section 212(a) he may make annual contribution payments in excess of debt service to LHA's as authorized by the Brooke Amendment as well as payments in excess of debt service under the Sparkman Amendment. Thus, to understand the provisions of this paragraph, it is essential that the analysis of the Brooke Amendment by the conferees as set forth on p. 30 of the report be read into the language of this paragraph. Further, the conferees language on p. 31: "*transferring*" the payments authorized by the Brooke Amendment from a new Section 24 to the annual contribution contracts authorization provided by Section 10(c) of the U.S. Housing Act of 1937 again evidences the necessity of reading the Brooke Amendment language on p. 30 of the report into this paragraph.

As the Conference Report states on page 31, the payments were transferred from a new section 24 "on the basis that assistance for this purpose [rental assistance payments] can be provided within the existing annual contributions framework as clarified by the bill . . ."

The General Counsel of the Department of Housing and Urban Development, in a memorandum dated January 23, 1970, has offered an interpretation of Section 213 which is at considerable variance with the language of the conferees' report. His interpretation of the intent of Congress with respect to how funds authorized under those sections should be expended ignores the language on page 30 completely and relies entirely on the paragraph from page 31 of the Conference Report quoted above, to which he adds the following emphasis:

"The conferees intend that the Secretary's authority to make annual contributions in excess of debt service requirements may be used, to the extent that the statutory annual maximum permits, for (1) payments to cover *existing* operating deficits of public housing agencies and enable *them* to maintain adequate operating and maintenance services and reserve funds, and (2) additional payments to make up the amount by which the proportionate share of operating and maintenance expenses attributable to a public housing tenant's dwelling unit exceeds 25 percent of the tenant's income. (Emphasis added by General Counsel).

Drawing on only that paragraph, the General Counsel argues that the intent of the conferees was that no federal payments could be made to LHA's for operating and maintenance services except: (1) where the agencies have "*existing* operating deficits," (2) "to the extent that such improved services would require tenant rents in excess of 25 percent of tenant's income." Payments with respect to (2), according to the General Counsel, are "mandatory;" payments with respect to (1) "may be in the Secretary's discretion."

Thus, it is clear that the conferees did not intend that placement of the Brooke Amendment within the annual contributions framework should affect the dual purposes of the program set forth on page 30 (to cover both the cost of adequate operating and maintenance as well as the amount by which the appropriate rental charge exceeds 25% of income).

Moreover, the meaning of the word "and" in the phrase "payments to cover existing operating deficits of public housing agencies *and* enable them to maintain adequate operating and maintenance services . . ." must be understood in its normal statutory sense. That is: "to convey the relation of addition or connection, and [to] signify that something is to follow in addition to that which proceeds." See, for example, *Oliver v. Oliver,* 286 Ky. 6, 149 S. W. 2d 540, 542. When that meaning is applied to the phrase quoted

above, it is apparent that the conferees intended that the "payments to cover existing operating deficits of public housing agencies" and payments to enable public housing agencies to "maintain adequate operating and maintenance services and reserve funds" be regarded as independent authorizations. This is consistent with the dual purpose ascribed to Section 213 by the conferees on page 30 of the report.

Taken as a whole, then, the language used by the conferees on pages 30 and 31 of their report can be seen to provide for three things: (1) payments "to cover existing operating deficits of public housing agencies;" (2) payments to enable LHA's "to maintain adequate operating and maintenance services and reserve funds;" and (3) payments "to make up the amount by which the proportionate share of operating and maintenance expenses attributable to a public housing tenant's dwelling unit exceeds 25% of the tenant's income."

Thus, under the General Counsel's interpretation of the Act, only one category of local housing agencies would be immediately eligible for federal payments for the maintenance of adequate operating and maintenance services, and reserve funds—those agencies with "existing operating deficits." The only way in which other agencies could receive federal funds for such expenses is if the "improved services" contemplated by the agency would "require tenant rents in excess of 25 percent of tenant's income." In that case, the agency would receive the difference between the cost of "improved services" and the amount of income devised from charging the 25% maximum allowable under Section 213.

The General Counsel's interpretation is erroneous in several respects. The first point to be made is that in formulating his interpretation, the General Counsel ignores language contained on page 30 of the Conference Report which is crucial to determining Congressional intent with respect to how the funds authorized are to be expended. As was pointed out earlier in this memorandum, the language utilized by the conferees on page 30 makes it clear that Section 213 did three things: (1) it authorized HUD to make payments to cover existing operating deficits of LHA's; (2) it authorized the Department to provide Federal funds to public housing agencies to cover the amount by which the rental charges necessary to sustain the operation of the project exceeds 25% of tenant income; and (3) it authorized HUD to provide Federal funds to cover the cost of adequate operating and maintenance services. That the latter two purposes were regarded as separate areas of authorization is made clear by the conferees repetition of the phrase "to cover" in the last sentence of the third paragraph of the Section on page 30 as set out below:

"It [the conference substitute] provides Federal funds *to cover* the amount by which the appropriate rental charges exceed 25% of the income of the tenant and *to cover* the cost of adequate operating and maintenance services." Emphasis added.

The General Counsel completely ignores this language of the conferees on page 30 and, as a result, erroneously subsumes payments for operating and maintenance services, and for reserve funds under the other categories of payments authorized by the conferees—those made to LHA's with operating deficits, and those made to LHA's whose operating expenses exceed the income available under the 25% maximum stipulated by the Brooke Amendment. On the basis of the language on page 30, it is apparent that such an interpretation is not in harmony with the intent of the conferees. Thus, the General Counsel's interpretation excludes language on page 30 of the Conference Report that is crucial to understanding congressional intent with respect to the purpose of Section 213.

Even if one accepts the General Counsel's view that congressional intent can be determined from the single paragraph from page 31 of the Conference Report alone, he misinterprets even that paragraph.

Looking first at the policy consequences of the General Counsel's reading of the Act, under his interpretation, an LHA which does not have an *existing* operating deficit, and which is currently charging its tenants less than 25% of their income as rent, can obtain Federal payments for adequate operating and maintenance services, and reserve funds in only one way: by raising the rents it is charging its tenants. Yet, the conferees plainly state on page 32 of the Conference Report that they "do not intend that all tenants in public housing should pay 25 percent of income for rent."

The 25% ceiling established by the Brooke Amendment was intended as the maximum amount which a tenant could be charged—not as the standardized rate at which tenants should pay. As Congresswoman Dwyer, (a House Conferee), noted on December 12, 1969, during the House debate on the conference substitute, "The Brooke Amendment assures that those who qualify for public housing need pay no more than 25 percent of their income for rent. And, I might add, this ceiling of 25 percent, should not encourage housing authorities to begin raising rents to that level. 75% of the tenants still pay less than 25%." (CONGRESSIONAL RECORD, vol. 115, pt. 29, p. 38778.)

Under the General Counsel's interpretation, local housing authorities will not simply be encouraged to raise rents to the ceiling; they will be required to do so in order to receive Federal payments for the maintenance of adequate operating and maintenance services and reserve funds, in clear violation of the language of the conferees on page 32.

In addition, the General Counsel's interpretation of the paragraph in question misconstrues two key words—"and," and "them." His interpretation of "and" in the phrase "payments to cover existing operating deficits of public housing agencies *and* enable them to maintain adequate operating and maintenance services . . ." subordinates payments designed to enable public housing agencies to "maintain adequate operating and maintenance services and reserve funds" to payments made "to cover existing operating deficits."

But as was noted earlier the normal statutory meaning of "and," especially in its conjunctive sense, is to convey the "relation of addition or connection, and to signify that something is to follow in addition to that which proceeds." If this meaning of "and" is applied, it is clear that the General Counsel's interpretation conflicts with the conferee's intent that two kinds of payments were being authorized by category (1) of the paragraph.

The General Counsel also misconstrues the grammatical function of "them" in the same paragraph. As "them" is a pronoun, one would normally interpret it to modify the noun immediately preceeding it—in this instance, "agency" or "public housing agency." But in the General Counsel's interpretation of the paragraph, "them" is construed to refer to "public housing agencies with existing deficits." Such an interpretation has no basis in normative grammer. Interpreting "them" to refer to "public housing agencies"—and not the grammatically untenable "public housing agencies with existing operating deficits"—reinforces the view that Congress intended to provide funds under the statute for two purposes: (1) to subsidize LHA's with existing operating deficits; and (2) to enable public housing agencies to maintain adequate operating and maintenance services and reserve funds. This interpretation, it should be noted, is consistent with the intent expressed on page 30 of the Conference Report.

Further, the General Counsel's interpretation is logically unsound in that it specifies that LHA's must have operating deficits before they are eligible to receive federal payments to "maintain adequate . . . reserve funds."

In accordance with HUD practice, LHA's are permitted to accumulate reserve funds which are equal to one-half of one year's rent roll. If an LHA incurs an operating deficit in a given fiscal year—in other words, if its expenses exceed its income—it is permitted to dip into its reserves to make-up the operating deficit. Hence, an LHA which has an operating deficit will usually have already dipped into whatever reserve funds it may have accumulated. Payments "to cover existing operating deficits" and payments "to maintain adequate . . . reserve funds" are, it should be noted, of a substantively different kind. The former were intended to result from the clarification of authority which Section 212(a) of the Act gave to the Secretary to make payments in excess of debt service requirements. The latter, on the other hand, resulted from the authority embodied in the Brooke Amendment.

As the Senate Banking and Currency Committee's Report on S. 2864 (Report No. 91-392) noted, two problems were recognized by Congress. One problem was that "a subsidy limited to debt service requirements is not sufficient to assure the low-rent character of projects located in some of our larger metropolitan areas." This refers to the projects with "existing operating deficits." The other problem was the need, as the committee put it, "to keep these local housing authorities solvent." This refers to the need to bolster inadequate LHA reserve funds.

Thus, it is clear that Congress did not intend that one category of payments should be subordinated to the other. Yet, this is precisely what the General Counsel's interpretation does.

In summary, the General Counsel's memorandum misinterprets congressional intent with respect to the implementation of Section 213 in two respects: (1) it fails to take account of language critical to an understanding of Congressional intent set forth on page 30 of the Conference Report, and unjustifiably relies on a single paragraph on page 31; and (2) it misinterprets even that paragraph by: (a) misconstruing the meaning of key words in the paragraph; (b) ignoring the stipulated intent of the conferees on page 33 that not all tenants in public housing pay 25% of their income as rent; and (c) failing to recognize the functional differences between payments "to cover existing operating deficits" and payments "to maintain adequate . . . reserve funds," and the logical unsoundness of subsuming the latter category of payments under the former.

S. 4089—INTRODUCTION OF A BILL TO AMEND THE TAX CODE TO CLARIFY THE TAX STATUS OF SELF-PROPELLED OIL WELL SERVICE OR DRILLING EQUIPMENT

Mr. MOSS. Mr. President, I am introducing today a bill to amend the tax code to clarify the tax status of self-propelled oil well service or drilling equipment with a chassis specially designed and constructed for such service or driving. Internal Revenue Ruling 69-340 held that such equipment is a highway motor vehicle and therefore subject to the Federal highway taxes. This self-propelled equipment, however, is not primarily designed for highway travel, but for onsite maneuverability. The Federal

highway taxes are supposed to be a users charge since the revenue is put into a trust fund used solely for highway construction. Thus, since self-propelled equipment is used on the highways less than 2 percent of its working life, I believe it should not be classified as a highway motor vehicle.

If this equipment had been designed only to move from site to site over the highways, a great deal of time and money could have been saved by simply using conventional trucks. It is important to note that older methods of transporting equipment with conventional trucking equipment are rapidly being phased out of the oil industry.

Although this type of self-propelled equipment which is used on the highways less than 2 percent of its working life is classified as a highway motor vehicle, other vehicles which use the highways much more often are not so classified. Earthmovers, bulldozers, cotton-pickers, and other vehicles use the highways to and from their worksites daily yet they are exempt from Federal highway taxation. Simple fairness would dictate that self-propelled drilling equipment receive similar treatment.

The Internal Revenue Service states that its reason for holding self-propelled equipment as highway vehicles is that the site-to-site mobility is the sole reason for their design. This rationale is clearly wrong. The primary function of oil well servicing and/or drilling equipment of the type in question is to provide a complete, self-contained unit as the site of the proposed drilling. This requires the presence of a power source to operate the winch on this type of equipment—the single most important part of the unit. The primary transmission shaft leading from the motor goes to the winch. There is only a secondary shaft leading to the vehicle wheels.

Several States have specifically exempted self-propelled oil well service and/or drilling equipment from the general category of motor vehicles for tax purposes. For reasons of fairness and consistency, the Federal Government should do the same thing.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The bill will be received and appropriately referred.

The bill (S. 4089) to amend the Internal Revenue Code of 1954 to clarify the status of certain oil well service equipment under subchapter D of chapter 36 of such code—relating to tax on the use of certain vehicles—introduced by Mr. Moss, was received, read twice by its title, and referred to the Committee on Finance.

SENATE JOINT RESOLUTION 220—INTRODUCTION OF A JOINT RESOLUTON TO ESTABLISH A COMMISSION ON LABOR LAW REFORM

Mr. TOWER. Mr. President, the country is again faced with the possibility of another railroad strike. Again, the President has ordered a 60-day halt to the strike and has set up an emergency board to look into the dispute between the carriers and the major rail union involved. Although I am hopeful that an accord can be reached by the parties independent of Government intervention, the history of such disputes belies sincere optimism for a settlement.

The provisions found in the Railway Labor Act of 1925 which deal with this type of labor-management dispute have proved to be most ineffective. President Nixon has responded to this urgent need by proposing reform of the Railway Labor Act. Last February my distinguished colleague from Michigan, Senator GRIFFIN, introduced the Emergency Public Interest Protection Act on behalf of the Nixon administration. I am proud to be a cosponsor of the bill. The need for passage of this legislation becomes more apparent as the country is faced with yet another possible strike in a transportation industry. The Washington Post, in an editorial on July 10, clearly enunciated the need for this legislation to be acted upon by the Congress. Concerning the current provisions under the Railway Labor Act, the Post stated the following:

> This forty five year old law has proved to be singularly ineffective. Its emergency provisions have been invoked 188 times, and in recent decades work stoppages at the end of the 60 day period have occurred at a rate of more than one a year. Twice Congress has had to legislate an end to railroad disputes. The White House finds it necessary to fall back upon the law as new emergencies arise, but its inadequacies are widely recognized.

Mr. President, as of this date neither the Senate nor the House of Representatives has held hearings on the Emergency Public Interest Protection Act. This is most distressing when one realizes the overall deteriorating conditions existent in current labor-management relations. The transportation industries represent just one area of concern in labor-management relations. Legislation pertaining to other fields of labor-management concerns has been introduced this session of Congress. However, the Congress has been slow to recognize the problem and act to reform our existing labor laws.

I believe the time for reform is long overdue. A recent task force studying labor problems concluded that a blue-collar revolt is a possibility for the future. We, as lawmakers, must conclude that our outmoded labor laws are a prime contributor to this dangerous state of affairs in labor relations.

With this in mind, I am introducing a joint resolution establishing a Commission on Labor Law Reform. While I have already referred to the urgent necessity to act on existing proposals, I also feel that the formation of this commission would be a step in the right direction in our continuing attempt to update our labor laws. The function of this commission would be to formulate a set of policy changes with regards to these laws.

I believe we need a report that will find fault where fault exists—a report that will have the support and backing of both political parties and the complete trust of the entire American populace. The commission proposed in my resolution would have all of these and more. Not only will it be empowered to recommend radical changes in the labor law field, but its mere existence alone might maximize public attention for action on current legislative proposals. It is not my objective to suggest the direction in which this proposed commission might conduct its activities. However, it is my obligation, in my opinion, to endorse such a commission when the need arises. Many of our labor laws are so old and entrenched as part of our system that an attack on them is sometimes considered the act of a fool.

Laws are never so old that they cannot be constructively reformed. The fact that labor laws are outmoded has been admitted by individuals on both sides of the political spectrum. I firmly believe that the adoption of this joint resolution will set us on the right direction in the field of labor law reform. I ask unanimous consent that the text of this joint resolution be inserted into the RECORD at this time. Furthermore, I ask my colleagues in the Senate to expedite consideration of this matter with the sense of urgency the problem demands.

The PRESIDING OFFICER (Mr. ALLEN). The joint resolution will be received and appropriately referred.

The joint resolution, Senate Joint Resolution 220, to establish a Commission on Labor Law Reform, introduced by Mr. TOWER, was received, read twice by its title and referred to the Committee on Labor and Public Welfare.

ADDITIONAL COSPONSORS OF BILLS

S. 364

Mr. TOWER. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Tennessee (Mr. GORE) be added as a cosponsor of S. 364, to amend title 10, United States Code, to equalize the retirement pay of members of the uniformed services of equal rank and years of service, and for other purposes.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

S. 3671

Mr. TOWER. Mr. President, I ask unanimous consent that, at the next printing, the name of the distinguished Senator from Oklahoma (Mr. BELLMON) be added as a cosponsor of S. 3671, to insure the separation of Federal powers by amending the National Labor Relations Act to provide for trial of unfair labor practice cases in the U.S. district court, and for other purposes.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

S. 3799

Mr. MOSS. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Idaho (Mr. JORDAN) be added as a cosponsor of S. 3799, to amend the Small Reclamation Projects Act of 1956, as amended.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

S. 3807

Mr. SMITH of Illinois. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Pennsylvania (Mr. SCHWEIKER)

and the Senator from Kansas (Mr. DOLE) be added as cosponsors of S. 3807, the Ethnic Hertage Studies Centers Act.

The PRESIDING OFFICER (Mr. GOLDWATER). Without objection, it is so ordered.

S. 3921

Mr. MOSS. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Montana (Mr. METCALF), the Senator from Oregon (Mr. HATFIELD), the Senator from Minnesota (Mr. MONDALE), the Senator from Wisconsin (Mr. PROXMIRE), the Senator from Wisconsin (Mr. NELSON), the Senator from Minnesota (Mr. MCCARTHY), and the Senator from Idaho (Mr. CHURCH) be added as cosponsors of S. 3921, to authorize emergency loans under subtitle C of the Consolidated Farmers Home Administration Act of 1961 to mink farmers who suffer severe losses caused by economic conditions.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). Without objection, it is so ordered.

S. 4041

Mr. TOWER. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Utah (Mr. Moss) be added as a cosponsor of S. 4041, to repeal section 7275 of the Internal Revenue Code of 1954, relating to amounts to be shown on airline tickets and advertising.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

SENATE RESOLUTION 430—RESOLUTION REPORTED TO PAY A GRATUITY TO SYLVIA M. COLEMAN

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following original resolution (S. Res. 430); which was placed on the Calendar:

S. RES. 430

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Sylvia M. Coleman, widow of Raleigh S. Coleman, Jr., an employee of the Architect of the Capitol assigned to duty in the Senate Office Buildings at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

ADDITIONAL COSPONSORS OF A CONCURRENT RESOLUTION, SENATE CONCURRENT RESOLUTION 69

Mr. SMITH of Illinois. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. FANNIN), the Senator from Michigan (Mr. HART), the Senator from South Carolina (Mr. THURMOND), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Rhode Island (Mr. PELL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Kentucky (Mr. COOPER), the Senator from Utah (Mr. BENNETT), the Senator from Kansas (Mr. DOLE), the Senator from Illinois (Mr. PERCY), the Senator from Indiana (Mr. BAYH), the Senator from Florida (Mr. HOLLAND), the Senator from Tennessee (Mr. BAKER), the Senator from Wyoming (Mr. HANSEN), the Senator from Alaska (Mr. STEVENS), the Senator from West Virginia (Mr. RANDOLPH), the Senator from North Carolina (Mr. ERVIN), the Senator from Oregon (Mr. PACKWOOD), the Senator from California (Mr. CRANSTON), and the Senator from Nevada (Mr. BIBLE), be added as cosponsors of Senate Concurrent Resolution 69, expressing the sense of the Congress regarding an appropriate final tribute to American servicemen who have died in combat or in the service of their country.

The PRESIDING OFFICER (Mr. GOLDWATER). Without objection it is so ordered.

CREATION OF AN OFFICE OF DISASTER RELIEF—AMENDMENT

AMENDMENT NO. 783

SUBMISSION OF AN AMENDMENT TO S. 3619, TO MAKE THE ASSISTANCE PROVIDED UNDER PARTS B AND C OF TITLE III OF S. 3619 AVAILABLE TO THE COUNTIES AFFECTED BY THE PLAINVIEW AND LUBBOCK TORNADOES AND SAN MARCOS FLOOD

Mr. YARBOROUGH. Mr. President, I submit, for appropriate reference, an amendment to S. 3619, the Omnibus Disaster Assistance Act, which would make the assistance provided for under parts B and C of title III of S. 3619 available to any area designated as a major disaster by the President within 1 year prior to the enactment of S. 3619. More specifically, my amendment would insure that the special disaster assistance programs contained in title III of S. 3619 would apply to counties in the Plainview-South Plains and Lubbock areas which were affected by the devastating tornadoes of April 17, 18 and May 10, 1970, and the San Marcos-Hays County area which suffered from flooding on May 15, 1970.

This spring has been a time of great tragedy and suffering for many people in Texas. The South Plains area suffered the devastating effects of tornadoes and the city of San Marcos, in south Texas, was ravished by a flood. The people of these disaster stricken counties are doing the best they can with what help is available from the Federal Government to rebuild their homes and communities. Unfortunately, our present Federal disaster assistance law, Public Law 91-79, does not afford these people with all the relief they so desperately need.

On May 18, 1970, I, together with the distinguished junior Senator from Texas (Mr. TOWER), introduced a special disaster assistance bill, S. 3848, which would provide the people of the Plainview-South Plains and Lubbock areas with additional Federal assistance. In particular, S. 3848, would provide the Small Business Administration and the Farmers Home Administration with authority to forgive up to $5,000 of any loan made to a disaster victim. Under the present law the limit on forgiveness or cancellation on such loans is only $1,800. In this time of high interest rates, tight money, and inflationary prices, the $1,800 cancellation provision of the present law is of small assistance to a homeowner who has sustained a substantial loss.

This increased cancellation feature is also part of S. 3619, which is presently being consdered by the Senate Public Works Committee. Should S. 3619 be passed this session, which I, as a cosponsor of this measure, earnestly hope, it would be a great injustice if the assistance it provides were not available to the people of the counties that have suffered from the disastrous effects of the Plainview and Lubbock tornadoes and the San Marcos flood. These areas have been declared major disaster areas by the President and are desperately in need of all the relief the Federal Government can provide. My amendment is designed to insure that these unfortunate citizens of Texas are not cut out from any additional disaster relief legislation that Congress passes this session.

Mr. President, I know how hard the chairman of the Subcommittee on Disaster Relief (Mr. BAYH) and the members of his subcommittee have worked on S. 3619. I am grateful to the subcommittee for the concern it has shown for the people of Texas and the prompt attention it has given my bill, S. 3848. I urge the Senate Public Works Committee to accept the amendments I have offered this week and to report this bill to the Senate as soon as possible.

Mr. President, I ask unanimous consent that the amendment I am submitting today be printed in the RECORD.

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

The amendment (No. 783) was referred to the Committee on Public Works, as follows:

AMENDMENT NO. 783

On page 42, between lines 2 and 3, insert the following new part:

"PART D—EFFECTIVE DATE

"EFFECTIVE DATE

"SEC. 335. (a) The provisions of this title shall take effect upon the date of enactment of this Act.

"(b) Notwithstanding the provisions of subsection (a), assistance provided under parts B and C of this title shall be available for one year after the effective date of this title to any area designated as a major disaster area by the President within one year prior to such date."

NOMINATION OF DR. GLENN T. SEABORG TO ATOMIC ENERGY COMMISSION—NOTICE OF HEARING

Mr. PASTORE. Mr. President, the Senate section of the Joint Committee on Atomic Energy will hold a public hearing on Thursday, July 16, 1970, at 2 p.m., in room S-407, U.S. Capitol, on the nomination of Dr. Glenn T. Seaborg to be a member of the Atomic Energy Commission for a term of 5 years expiring June 30, 1975. President Nixon nominated Dr. Seaborg to the 5-year term on June 29, 1970.

Dr. Seaborg has served as the Chairman of the Atomic Energy Commission since 1961.

I ask unanimous consent to have printed in the RECORD a biography of Dr. Seaborg which was forwarded to the Joint Committee in connection with his proposed reappointment to the Atomic Energy Commission.

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

GLENN T. SEABORG

Glenn T. Seaborg was born April 19, 1912, in Ishpeming, Michigan. At the age of ten, he and his family moved to California. In 1929 he was valedictorian of his class at the David Starr Jordan High School in Los Angeles. In his junior year at the University of California at Los Angeles, he was named to Phi Beta Kappa, and in 1934 he received an A. B. degree in chemistry from UCLA. In 1937 he was awarded the Ph. D. degree in chemistry from the University of California, Berkeley.

Dr. Seaborg is Chairman of the United States Atomic Energy Commission, having been appointed by President Kennedy in 1961, and subsequently reappointed by President Johnson and President Nixon. He also served under President Truman, from 1946 to 1950, as a member of the Atomic Energy Commission's first General Advisory Committee, and under President Eisenhower, from 1959 to 1961, as a member of the President's Science Advisory Committee.

From 1958 to 1961, Dr. Seaborg was Chancellor of the University of California, Berkeley, having served on the faculty since 1939, and from 1937–1939 as the personal research assistant of Gilbert Newton Lewis, Berkeley's famous physical chemist. He is currently on leave as professor of chemistry.

During World War II, while on leave of absence from Berkeley, he headed the group at the Metallurgical Laboratory of the University of Chicago that devised the chemical extraction processes used in the production of plutonium for the Manhattan Project.

Among his major scientific contributions are his discoveries, between 1940 and 1958, with several colleagues, of the transuranium elements: plutonium (element 94), americum (95), curim (96), berkelium (97), californium (98), einsteinium (99), fermium (100), mendelevium (101), and nobelium (102). His co-discoveries include the fissile isotopes plutonium–239 and uranium–233, as well as the identification of more than 100 other isotopes throughout the periodic table, including a number that have practical applications in research and medicine such as iodine–131, cobalt–60, technetium–99m, cobalt–57, iron–59, iron–55, manganeses–54, antimony–124.

In 1951, at the age of 39, Dr. Seaborg was awarded the Nobel Prize in Chemistry (with E. M. McMillan). In 1947 he was named by the U.S. Junior Chamber of Commerce one of America's ten outstanding young men. For his outstanding work in the field of nuclear chemistry and for his leadership in scientific and educational affairs, he was awarded the Atomic Energy Commission's 1959 Enrico Fermi Award. In 1962 he was named "Swedish American of the Year" by the Vasa Order of America in Stockholm, and in 1963 he received the Franklin Medal of the Franklin Institute of Philadelphia. The Pacific Science Center, Seattle, recognized his vast contributions to the public understanding of science by selecting him for the 1968 Arches of Science Award. He has been honored by the American Chemical Society with the Award in Pure Chemistry (1947), William H. Nichols Medal (1948), Charles Lathrop Parsons Award (1964), and Willard Gibbs Medal (1966). Dr. Seaborg holds honorary degrees from more than 30 educational institutions.

In 1959 Dr. Seaborg was instrumental in inaugurating the Chemical Education Material Study (CHEM Study), the high school Course Content Improvement Study of the National Science Foundation, and has served continuously since then as Chairman of its Steering Committee. Since 1966 he has been president of Science Service, Washington, D.C., an organization devoted to the popularization of science.

His many activities include membership on the Federal Council for Science and Technology, National Aeronautics and Space Council, National Council on Marine Resources and Engineering Development, Scientific Advisory Board of the Robert A. Welch Foundation in Houston, board of directors of the National Educational Television and Radio Center in New York, board of trustees of Pacific Science Center Foundation in Seattle, and Advisory Board of Nova University in Fort Lauderdale.

He is the author of more than a dozen books, many of which have been translated into foreign languages. He has published over 200 scientific papers on the transuranium elements, artificial radioactivity, nuclear physics and chemistry, high energy nuclear reactions, as well as the compilation of complete tables of isotopes, and a comprehensive article on "Elements Beyond 100, Present Status and Future Prospects" in the 1968 Annual Review of Nuclear Science.

He organized and was the chief participant in the National Educational Television series of ten half-hour films on *The Elements*, produced in 1957 and still widely used in high schools throughout the country.

Dr. Seaborg is a member of the leading national and international scientific societies, including the National Academy of Sciences, American Academy of Arts and Sciences, American Chemical Society, American Physical Society, American Nuclear Society, American Philosophical Society, Royal Society of Arts (England), Royal Swedish Academy of Engineering Sciences, Bavarian Academy of Sciences, Argentine National Academy of Sciences, Spanish Royal Academy of Sciences, honorary fellow of the Chemical Society of London, and the Royal Society of Edinburgh.

Dr. Seaborg is married to the former Helen L. Griggs; they have six children.

He is an ardent sports fan. His favorite spectator sports are football and baseball. His recreational interests include hiking and golf. From 1953 to 1958 he served as Faculty Atheletic Representative of the University of California, Berkeley, to the Pacific Coast Intercollegiate Atheletic Conference.

ADDITIONAL STATEMENTS OF SENATORS

DECREASING VALUE OF DEFENSE DOLLAR

Mr. STENNIS. Mr. President, the Senate in a few days will begin the debate on the annual authorization legislation for military hardware and research and development. The bill proposes an authorization of $19.2 billion and represents a 6.7-percent reduction by the committee. The purpose of my remarks at this time, however, is not to discuss the details of this legislation, which as we all know will be the subject of debate for a number of weeks and will cover the hundreds of items in the bill, together with a number of amendments which will be offered on the Senate floor.

I would only emphasize that the committee is recommending to the Senate an austere authorization, one which in my opinion will be the lowest possible dollar level consistent with the necessity for providing the weapons for our national survival. In reducing this bill below the budget request, which was described as rock bottom, the committee was keenly aware of the many problems facing the Nation: the severe financial condition of the Federal Government, the growing unpopularity of the Vietnam war, our many domestic problems, the inflationary trend of our national economy generally, and the highly significant fact that our total Federal budget while increasing in dollar amounts is failing to keep pace with the many demands on the Federal Government.

The purpose of my remarks today, Mr. President, is to point out, first, the declining share of the defense dollar within the Federal budget, and, second, the very severe effects of inflation on the defense budget since 1964.

REMOVAL OF MISCONCEPTION

Mr. President, I want to remove a widespread misconception that relates to the defense dollar and what has occurred since 1964 with respect to the defense budget as a whole.

Contrary to popular belief, the defense proportion of the total Federal budget is decreasing. From fiscal year 1964 to fiscal year 1968 total Government spending rose by 50 percent and I might add that in the President's budget forecast another increase of 12 percent is projected by the end of fiscal year 1971. In other words, from fiscal year 1964 through fiscal year 1971, total Government spending will have increased by 62 percent.

On the other hand the expenditures of the Department of Defense from fiscal year 1964 through fiscal year 1971 are expected to increase by 41 percent as compared to 62 percent for the Government as a whole. Dollarwise defense spending in fiscal year 1964 was $50.8 billion compared to $71.8 billion for fiscal year 1971.

In summary, Mr. President, from fiscal year 1964 through fiscal year 1971, discounting inflation and pay increases, over 90 percent of the increase in Federal spending has gone to non-defense Federal agencies.

Another significant and related fact is that since fiscal 1968 the Federal budget as a whole has grown very little except for inflation. In terms of actual dollars the fiscal 1968 budget was $178.9 billion. This same figure for fiscal 1968 would amount to $201.2 billion on the basis of fiscal 1971 prices and pay raises. Mr. President, the actual dollar outlay, for the Federal Government for 1971 is forecast at $200.8 billion.

INCREASES SINCE FISCAL YEAR 1964 NOT DEVOTED TO INCREASE HARDWARE FUNDING

Mr. President, as I have indicated above, defense spending will increase by $21 billion from fiscal year 1964 through fiscal year 1971. This increase of $21 billion, however, has not resulted in an increased level of effort in terms of modern weapons and increased capability for our Armed Forces. Let me itemize for the Senate just how this $21 billion will be utilized in fiscal year 1971.

First. The sum of $8 billion represents price increases in the thousands of items the Department of Defense must purchase annually; that is, it represents pure inflation since fiscal year 1964.

Second. Another $8 billion represents pay increases for military and civilian personnel. These increases assume the same number of military and civilian personnel that were on the rolls in fiscal year 1964.

Third. Another $2 billion reflects the increased annual retired cost which now totals $3.2 billion.

Fourth. An additional $2.3 billion represents the cost of the increased number of personnel, military and civilian, now on the rolls since fiscal year 1964.

Mr. President, in round figures this totals $20.3 billion. This total allows for no increase in the level of hardware procurement, modernization or otherwise over fiscal year 1964. I am advised by the Department of Defense that as compared to fiscal year 1964, there is an increase in our annual spending for all elements of defense other than personnel in fiscal year 1971 of only $700 million.

IMPACT OF INFLATION AND PRICE INCREASES ON HARDWARE AND RESEARCH AND DEVELOPMENT

Mr. President, it is important to understand that, despite what appears to be an increasing dollar level for military hardware and research and development, we are falling behind in terms of timely modernization of our Armed Forces.

For example, the amount enacted for the fiscal year 1964 authorization was $14.4 billion.

However, in fiscal year 1964 there were certain programs which did not require statutory authorization that are now included in the statutory authorization process. These include portions of the research and development programs, tracked combat vehicles, and the term "other weapons." If these additions had been included in 1964 the authorization for that fiscal year would have been $18.9 billion. This total should be compared to the $18.9 billion being recommended for fiscal year 1971 in the bill now before the Senate, exclusive of the $334 million being recommended for Safeguard construction.

Mr. President, I fully realize that dollar comparisons and budget figures are often dry and uninteresting, but I cannot overstress the fact that the severe and serious effect of inflation on the defense dollar is revealed by these comparisons.

At fiscal year 1964 prices—this is eliminating inflation and price increases—the fiscal year 1971 authorization would be $15.2 billion. This is a reduction of almost 20 percent from fiscal year 1964, the last prewar year.

Discounting inflation and price increases, the authorization recommended for defense for fiscal year 1971 is the lowest since fiscal year 1961 for comparable coverage. I find no basis to support an allegation that defense is continually increasing. The facts, when put on an equal basis, are quite the opposite.

INCREASED PRICE OF MILITARY HARDWARE

Mr. President, there is yet another aspect of this year's request that the Senate should be aware of. Put simply, not only has the buying power of the defense dollar been reduced, but the individual costs of military hardware are sharply increasing. This means that for the same dollar, we are able to buy less in quantity. To illustrate:

First. The Air Force is buying less aircraft in fiscal 1971 than in any year since 1935, and over half of these aircraft are designated for use of other nations of the free world.

Second. The Navy is buying less aircraft in fiscal year 1971 than in any year since 1946.

Third. From 1964 to 1971, the cost of the Air Force F–4 Phantom jet is up 104 percent.

Fourth. From 1964 to 1971, submarine sonar systems are up 159 percent.

Fifth. From 1964 to 1971, the Tartar antiaircraft missile launching system used on Navy ships is up 53 percent.

For some time now the requirements for funds to support the Vietnam war has been sufficiently urgent to cause the modernization of the Armed Forces to be postponed. It is significant that the Soviets are not neglecting their forces. The Soviet advances in strategic systems, new aircraft, and the second greatest Navy in the world are mute testimony to their continued emphasis on military superiority. Program by program, system by system we have seen rapid progress by the Soviet Union, and their momentum shows no sign of slackening.

I am convinced that today the United States has a superior military force. I am equally convinced that we can no longer delay the needed modernization of our forces. It would be criminal, indeed, if we did not match the high professionalism of our American servicemen with the latest and best equipment.

Mr. President, the pay of personnel and personnel related expenses now account for about 60 percent of defense spending. I believe that any significant reduction in defense spending will largely come from a reduction in the size of our forces. I am for a smaller force, but, in my opinion, modern equipment and a strong technological base are essential to any force reduction.

The $20.3 billion defense authorization request for fiscal year 1971 has been described by Secretary Laird as "rock bottom." Nevertheless, the committee is recommending a reduction of $1.3 billion to that request. The authorization recommended by the committee is adequate to cover only the most essential requirements.

TESTIMONY OF SENATOR KENNEDY BEFORE COMMISSION ON CAMPUS UNREST

Mr. MANSFIELD. Mr. President, the hearings of the President's Commission on Campus Unrest got underway this morning. The first witness was the able and distinguished assistant majority leader, the Senator from Massachusetts (Mr. KENNEDY). Senator KENNEDY's testimony exhibited a great deal of insight and perception regarding the grave and highly important matter under consideration by this Commission. I commend his statement to the attention of all Senators and ask unanimous consent that it be printed in the RECORD.

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

TESTIMONY OF SENATOR EDWARD M. KENNEDY BEFORE THE COMMISSION ON CAMPUS UNREST

Chairman Scranton, distinguished members of this Commission, I am honored to appear before you this morning and to have the opportunity to participate in the public phase of your proceedings.

I am especially pleased that the Commission is conducting part of its investigations in public. In spite of the strong pressure you face if the October deadline for your report is to be met with constructive analysis and recommendations, I believe it is absolutely vital that the work of the commission not only be of the highest quality, but that it be seen to be so.

More than any of the distinguished public and private commissions that have preceded you—especially the Crime Commission, the Commission on Civil Disorders, the Violence Commission and the Columbia Commission—your national mandate to identify the causes of our recent campus violence and to recommend methods to insure an effective atmosphere for education goes to the heart of the only future America has—our youth.

Today, sadly, neither the President nor any of the highest officials of his Administration can travel freely to the campuses of our country. Of all the deep concerns that plague the nation today, perhaps the deepest is the isolation of our leaders from our youth, the alienation of our present from our future.

The scream of the young girl kneeling beside her dead friend on the grass at Kent State is the scream of America. That terrible scene—and the photograph of the national guard firing wildly into the Kent students and the bullet-riddled Jackson dormitory, have become symbols of the tortured spirit of America, just as Picasso's "Guernica" and Goya's painting of the firing squad in Madrid transformed lonely killings in the past into timeless symbols of man's brutality to man.

We are surrounded by the signs of urgency of this Commission's investigation:

The most recent Gallup Poll indicates very clearly that the American people see campus unrest as the number one problem facing the nation, outdistancing even the Vietnam war and racial strife. Obviously, because the campuses are now quiet in their summer season, and because the poll was taken in May, at the height of the national outrage over the killings at Kent State and Jackson State the figures may be high. Nonetheless, the results are dramatic, and ominous in their implication for further unrest when classes resume in September. The recommendations of the Commission can be issued none too soon.

The number of great universities that have experienced severe disorder or unrest has increased dramatically in recent years. Berkeley and Columbia, Harvard and Yale have been joined by Kent and Jackson, and by Middle America. No longer is it possible to dismiss a campus disturbance as a manifestation of unique local factors. In spite of obvious differences, a common thread runs from campus to campus, whose dominant feature is the apparent collision between the irresistible force of youth and the immovable object of faceless and unresponsive institutions at all levels—Federal and local, public and private, business and academic.

The divisiveness of student confrontations has spilled over beyond the gates of the campus and into the community at large. The wounds opened in society by the street fighting on Michigan Avenue in 1968 and Wall

Street in 1970 have not yet begun to heal. Even when they do heal, the scars they leave behind will be solemn reminders of the abyss of anarchy into which we have gazed.

In my testimony today, I would like to touch on a number of related aspects of the crucial problem of campus unrest.

The first and most important point is that we cannot treat the problem of campus unrest in isolation, divorced from its central relation to the war in Southeast Asia. It is no coincidence that the age of campus unrest coincides almost precisely with the escalation of American involvement in Vietnam. It is no coincidence that the killings at Kent State came hard on the heels of our invasion of Cambodia.

The problem of campus violence cannot be solved by the resort to self-contained principles like the need for law and order, or the preservation of academic discipline. The problem must be seen in the larger political context of our society itself, the central fact of which is the war in Vietnam.

I urge this Commission not to back away from its own confrontation with the issue of the war. An analysis of campus unrest cannot look solely at the acts of students as disruptive and lawless. The analysis cannot omit Vietnam. It cannot ignore the central fact that the presence of the war has eroded the faith of all our citizens—and especially our youth—in the ability of our government and institutions to do the things that must be done.

I and all other Americans lament the wave of recent violence and destruction on our campuses, but we cannot confine the issue solely to the campus. We must treat it also as a reflection of the larger unrest in our society as a whole.

However, idealistic our hopes may be, none of us can reasonably expect our universities to be spared the disruption that permeates so many other aspects of society. A living university is a vital institution that exists in the real world. It does not float calmly in the ideal world of the platonic dialogue. The arena of the university is preeminently the place where problems are solved through rational discussion, but it is also a place that mirrors all the aspirations and frustrations of society.

Any one of us who has visited a campus in recent years knows the tensions that exist between the active life and the contemplative life. For students, however, the disparity between the real world and the ideal world goes especially deep, and feeds the frustrations that lead inexorably to unrest. They are the ones who face the draft. It is their friends who are dying in the war. It is their lives and careers that are being disrupted. They are disillusioned by the gap between the performance and the rhetoric of the Administration. They have lost faith in the ability of government and society to end the war, to bring the races together, to heal the economy, to help the Indians, and to preserve the environment. To deny or ignore this simple truth is to be wholly out of touch with the situation on every campus in America.

It may well be that in the nature of things, there can be no solution to the problem of campus unrest until there is a solution to the war in Vietnam. It may well be that the only line in the Commission's report that will have any real meaning for our colleges and universities is the line that reads "This war must end".

The second point I would like to make is that although the war may explain the present atmosphere of campus unrest, it cannot condone the violence and vicious confrontations that have become the hallmark of too many campus demonstrations. No amount of deep concern or commitment to a cause can possibly justify the wanton acts we have seen on campuses across our nation in recent weeks. This spring alone, professors have been violently assaulted at Connecticut, their homes vandalized in Wisconsin, manuscripts of their life's work destroyed at Stanford. ROTC buildings have been burned to the ground at Kent State and firebombed at Penn State. On many campuses the very functioning of the university has been made impossible by senseless acts and threats of violence.

We know that some societies and institutions can be closed, so unresponsive, that change can never come except by the use of force. But this is not the case with the universities of America in 1970. No amount of impatience for faster change or frustration with existing policy can possibly justify the cruel violence and brutality we have seen on campuses in recent years. Violence cannot be condoned. It must be contained. There is no need—no need whatever—for anyone to resort to the path of the brick or the bomb.

As the Violence Commission eloquently put it last June in its statement on campus unrest, "All history teaches that as a conscious method of seeking social reform, violence is a very dangerous weapon to employ." Violence feeds on itself. It breeds reaction and repression. Invoked for the best of causes, it produces counter-violence for the worst of causes, and mortally endangers the very goals for which it is invoked.

Too often, it is said, liberals see America as stolid and inert, dehumanized and incapable of change. They think you've got to shake America until the teeth rattle, kick it until the parts start moving.

Our greatest leaders have had a different view. They see America as a fragile society, stretched tense by our historic deep divisions and antagonisms. They recognize that the fabric of America can be easily torn, our liberties lost, if the constant struggle between change and repose becomes too passionate, and unleashes the spectre of violence and destruction.

It is clear, however, that if the tendency to violence is the most serious danger of today's college generation, it is not the only criticism.

Today's generation of students has all the virtues and vices of youth. At their best, as the Columbia Commission found, the present generation of young people is the best informed, the most intelligent and the most idealistic the country has ever known. They are sensitive to public issues, and they have a sophisticated sense of social and political conscience. Their role in issues like Vietnam and civil rights and voter registration is well known. In hundreds of respects, they have set far-reaching example of insight and commitment for us to follow.

At their worst, they are impulsive and arrogant, often wrong, but never in doubt. They are too willing to make the nonnegotiable demand, to insist that their own sense of values and events must be embraced by everyone. At their worst, they are ungenerous and rash in the motives they impute to others. Professors and administrators who are well-motivated are too often seen as villians, too often condemned as unscrupulous manipulators of the status quo, instead of as individuals genuinely concerned, trying to muddle through in a complicated world. Too often, in the metaphor used by Alfred North Whitehead to describe the difference in philosophy between himself and Bertrand Russell, students see the world at noon under a cloudless sky, when others see it at dawn on a misty morning.

This said, however, we must also keep in mind that the violent excesses of students in recent weeks appear to have been the work of only a tiny fraction of the student body at any campus. This may be an area where the Commission can make a lasting contribution. It can attempt to assess the relative proportions of students among the passivists, the peaceful activists, and the violent activists.

It is also worth remembering that in the America of recent weeks, the most destructive campus violence has not been student violence. It has been official violence—the official violence of the National Guard at Kent State, the official violence of the Highway Patrol at Jackson State. Who of us, seeing American students slain on the playing fields of this university, does not also see My Lai, with its defenseless Vietnamese civilians cut down by the official violence of American troops?

The most immediate task of the Commission is to investigate the tragic events at Kent State and Jackson State. It is absolutely essential for the Commission to find the facts and identify the principal causes of the killings at those two campuses. Chairman Scranton and Mr. Rhodes have already indicated their determination to get to the root of those tragedies and to develop recommendations to prevent them from recurring. Only by succeeding in this task can the Commission fulfill its mandate and maintain its credibility with the American people.

Last May, immediately after the killings at Kent State, many of us in Congress recognized the need for a full, candid, and objective inquiry into the facts of that tragic day. The questions on the mind of every American demanded answers. Who gave the order for military rifles to be fired at unarmed civilians? Were the Guardsmen shot at before they fired? What kind of training and instruction did the Guardsmen receive on the use of deadly force? What effect on young Americans and their feelings of frustration and dissatisfaction and alienation did the statements about them from high government officials have?

What was the impact of such statements on the Guardsmen in their attitude toward the demonstrating students? What is the proper means of handling violent campus disorder? What limits and conditions should be placed on the use of deadly official force on the campus?

The fatalities at Jackson State made even more pressing the need to re-examine the whole approach to the official handling of campus gatherings and outbreaks of campus disorder.

It was with these questions in mind that many of us, including Senator Mansfield, the Senate Majority Leader, urged the President to establish a high-level non-partisan Commission to inquire into these tragedies and to make recommendations that would preclude them from ever happening again.

From the general survey now being undertaken by my Senate Subcommittee on Administrative Practice and Procedure, it appears to me that the National Guard at Kent State was in direct violation of the standards set forth in the Army Field Manual under which all National Guardsmen are trained. Those standards prohibit firing of weapons where innocent persons may be killed or injured. Those standards require that all other means be exhausted before deadly force is used. Those standards require that if sniping occurs, specified trained marksmen respond with precision fire aimed at identified sniper targets. They would have required that the Guardsmen shoot to wound and not to kill. If those standards had been followed in the past, Kent State could not have happened. If those standards are followed in the future, no more Kent States can happen.

The problem, however, is that each state's National Guard operates under the control of the State Governor. Under present practices, each State can formulate its own rules for the use of deadly force, which may or may not be consistent with the national standards. In some states, the National Guard rules seem to encourage the use of weapons. In other states the rules are even stricter and more explicit than the Army rules.

In a recent letter to the President, I have expressed my deep concern with these disparities. I have urged him to use all the powers of the Department of Defense to bring the criteria for the use of deadly force by the National Guard into line with the Army's Field Manual. I have also suggested certain changes to clarify and update the Manual, and to coordinate the activities of law enforcement and military agencies that may be operating at the same time in the same area. I would be pleased to provide this Commission the materials I have assembled on this subject. The reality of campus violence makes it essential that we consider this distressing problem thoroughly before another tragedy occurs, rather than be forced to consider another tragedy.

My third point is that we must not allow our concern over campus unrest to obscure the important positive contribution that students have now begun to make to the political process in America. Historians of the future may well record that in the spring of 1970, the six year tide of campus disturbance that began at Berkeley in 1964 finally began to recede. Student activism has begun to take on a new and far more constructive dimension. On campuses across the nation, the student body as a whole is beginning to take over the center stage from the radicals. The ranks of the uncommitted have shrunk. More and more of our youth see that the system can change, and are caught up in the peaceful movement to accelerate the change from within.

It is fair to say that for a large number of college students across the nation, final examinations this year were held in Washington, D.C., instead of on the campuses of their universities. In my opinion and in the opinion of many others in Congress, the students passed with high marks—higher marks than we in Congress in good conscience could give ourselves for our activities over the past year.

Never before in my years in public life have I seen democracy in America come so alive, with so much constructive passion and energy, as it has this spring in the halls of Congerss and on the steps of the nation's Capitol. At the very moment when the invasion of Cambodia had plunged the nation into despair over the wisdom of the mind of its leaders, we saw the wisdom of the hearts of the people, especially our students.

Thousands of students who came to Congress to voice their protest have taken the trouble to inform themselves of the facts and the background of the war. Their intellectual analysis of the war is often highly sophisticated, even among the most radical students and activitists. Townsend Hoopes is sweeping the campus today the way J. D. Salinger did in the Fifties.

The role of the graduate students has been especially impressive. Five years ago, it was largely the undergraduates who first took up the call for peace. The center of college activism was the undergraduate campus. The graduate schools were bastions of apathy and reaction. Now, the undergraduates of 1965 are enrolled in the graduate schools. They have carried their activism and commitment with them, to the benefit of new generations of undergraduates and the entire university community.

As a result, the discourse about the war has been continuously refined at successively higher levels. Through coordinated activities like the Southeast Asia Program at Cornell and similar programs at other universities, students and faculty have been extremely resourceful in researching and analyzing our involvement in Asia, and documenting the manner in which our political system has responded to that involvement. They have gone to the heart of the problem, they have researched it well, and they have come up with thoughtful answers and positions.

Equally important, it is frequently the best students who are involved in these constructive campus activities. Of course, not all of the best students are activists, and there is often a large amount of faddishness and modishness in such pursuits. But nonetheless, the fact remains that to a large extent the best students of today—the leaders of tomorrow—are not just in the college libraries learning the traditional disciplines. They are also working to understand and helping to solve the great issues of our time—not just the war but issues like race, crime, health, education, pollution and all the other problems that trouble our society.

I see great hope in this development. We can begin to close the generation gap that has opened wide in recent years in our society. Instead of watching the generation fly apart from one another, we can combine our resources in a bold effort together, based on mutual understanding and respect.

The fourth point I would like to make is that even though much of the present campus disorder is the direct result of wanton student acts, faculty and administrators must also share some blame.

The member of the faculty who promotes campus unrest as a way of pandering to student popularity is behaving every bit as irresponsibly as the most outrageous student. We cannot be blind to student excesses, but neither can we condone the aggravating acts of those who blindly seek and follow student passions.

Another major factor contributing to the current polarization in our universities is the disposition of too many faculty and administrators to respond to complex problems by invoking simple principles, instead of seeking real solutions. We all pay homage to the great principles by which our universities have always been governed, but we must also recognize that the principles are often abused. The cry of "academic freedom" or the "distinterested pursuit of knowledge" can only be the beginning of analysis, not the end. No university ever solved a serious crisis by hiding behind a statement of serious principle.

Even the most revered principle on which the life of a university is founded can become politically provocative when it is hoisted as a flag by a professor or college president, with the expectation that dissident students will salute it.

More likely than not, if the principles are legitimate and their applications are pursued in a reasonable way, the university will see that the principles are not under attack at all. When students at a university demand a program of studies relevant to contemporary social issues, it is not enough for the faculty to reject it on the ground that the university would be politicized, or that the principle of the university's disinterested pursuit of knowledge would be violated.

America's seven million college students well know that this sort of retreat to the shelter of abstract principle is highly artificial. It fails to acknowledge that the university exists in the real world, that the university is a very imperfect place where the purity of an intellectual principle can seldom be achieved in practice.

Almost everywhere that students look in the university curriculum—law, medicine, engineering, agriculture, government, business, ROTC, defense-research—they clearly see the involvement of their university in areas that can hardly be called the disinterested pursuit of knowledge. Frequently, the university is the largest employer or landowner in the community. The wage scales and housing patterns it sets may affect the life of every citizen in the community. In countless ways, the University is involved in the problems of society and is working for their solution.

Obviously, a particular social studies program can fulfill the sort of need for one segment of the community as, say, an agriculture studies program fulfills for the farm community. The problem is that, in using the principle of academic purity to deny the request for a social studies program, the faculty is making a selective invocation of the principle. It is applying a more rigorous standard of university purity to social studies than it applies to programs already existing in other areas. In reality, the request of the students is not so much a threat to the principle of academic purity—which is honored more often in the breach than in the observance—but a threat to the status quo and the complacency of the university.

Almost always, the university's resort to principle is a simplistic response to a situation perceived as a threat. I believe that this response is a product of inadequate analysis and confusion in people's minds. It is not at all the sign of administrative malice or duplicity that too many students are willing to see. The same faculty member who defends the principle of disinterested pursuit of knowledge by the university often sees nothing inconsistent in defending an ROTC program as part of the university's obligation to help the nation train its officers. Obviously, this sort of posturing within the university is a flaw in the very ideal for which the university stands—the fair analysis and application of principle—and the sooner the flaw is perceived the sooner it will be cured.

I have no answers here to the great questions of the changing role of the university in our society, but I believe that we cannot be content with code words like academic freedom or intellectual purity. The eloquent statement of an abstract principle will never solve a concrete crisis, and the earlier our faculties and administrators learn this elementary political lesson, the closer we will be toward finding a real solution to the problem.

At bottom, the question is not *whether* the university should be socially oriented, but *what* the social orientation should be. Just as the most crucial issue facing us in Congress is the reordering of national priorities, so the most crucial issue facing the university is the reordering of academic priorities. To a large extent, in raising this issue, students are filling a faculty vacuum. They are reflecting the mood of the nation as a whole when they challenge the university's traditional priorities, especially the imbalance between defense-related activities and contemporary social programs. Ralph Nader has a valid point when he asks MIT why it has so many dollars in funds for defense research, but so little for auto safety.

The same confusion surrounds the principle of academic freedom. Too often today, the legitimate invocation of the principle against certain kinds of intolerable, unreasonable, and disruptive student pressures shades off into a general lament over the politicization of the university, a form of nostalgia for a sheltered university that has never really existed.

Our greatest universities have always been forums of robust debate and intense legitimate pressures. The crucial question is not *whether* the universities should be under pressure, but *at what point* the pressures become illegitimate and repressive. Just as the public laws of a civilized society are called the wise restraints that make men free, so the reasonable pressures of the university create the nourishing tensions in which academic freedom can truly flourish. One of the great tasks of this Commission, therefore, is to give us guideposts by which the meaning of principles like academic freedom and intellectual purity can be understood and applied, while maximizing the opportunity for peaceful protest and dissent,

and minimizing any interference with the ongoing processes of education at the university.

The final point I would like to make is that I believe the Commission should give special emphasis to ways to prevent campus disruption before it begins, rather than merely dealing with disruption already in progress.

Clearly, as I have already indicated, the Commission must address the difficult problem of containing campus violence, especially the sensitive question of the relationship between the university and the local police or the national guard. To me, however, once a campus degenerates into bloodshed and violence, it has already deteriorated into a situation of despair. The real issue is how to develop the sort of early warning system that is necessary if the university is to have the opportunity to prevent events from disintegrating into serious violence.

The Commission on Civil Disorders was able to distill a general profile of the riot process from its extensive studies of the racial disorders in American cities in the summer of 1967. The Commission observed many similarities in that riot process from city to city, and found that virtually every major episode of violence was foreshadowed by an accumulation of unsolved grievances and widespread community dissatisfaction with the unwillingness or inability of local institutions to respond.

We need the same sort of profile of campus unrest. In spite of the unpredictable variations that will inevitably exist from campus to campus in the interactions between students, faculty, administrators, and local authorities, it is my hope that the studies of this Commission will be able to extract the similarities that exist in situations of developing campus unrest. Perhaps only in this way can we acquire the sort of concrete knowledge we need to understand the problem.

In large part, I suspect—because our level of knowledge is so low—it is still a matter of chance that one or another university has so far escaped the ravages of real violence. For example, in spite of the popular image of Cornell as a bloody campus—in spite of the student guns and isolated acts of destruction—that university has managed to avoid the mass violence that has come in recent years to Berkeley, Columbia, and Harvard. Often—and Kent State is a classic instance—what happens hundreds of miles away in Washington or thousands of miles away in Indochina may be far more directly related to the incitement of campus violence than any act or omission at the university itself.

At the same time, as the lesson of Yale suggests—a campus caught by chance in the throes of a Black Panther trial—an attitude of responsiveness and receptiveness by an enlightened university administration to the needs and passions of its students can do much to stem a tide of threatening violence, whatever the source.

There are many concrete steps that colleges and universities can take to help make the university community into the sort of society that is essential if it is to continue to function and effectively prevent disruption by violence. A year ago, the report of the Violence Commission urged the universities to establish codes of acceptable conduct for the presentation of ideas and redress of grievances, and to prepare contingency plans for dealing with campus disorders, so that trained police are brought onto the campus as a reasoned response to obvious necessity, not, as at Harvard or Jackson State, as a reflex response to the first breath of insult to the university by a student group.

Leaders like President Brewster of Yale have begun to move their universities in the direction of more open channels for the communictaion of grievances and dissent, better publication of the reasons for important university decisions, and greater public accountabiilty by the university to its entire constituency—not just to the faculty alone, but to students, alumni, and the community at large.

These are the challenges that our colleges and universities face today, if they are to move with the tide of change. We must reject the path of stagnation. We cannot simply hold our finger in the dike, blindly resisting the overwhelming force of change. If Americans can walk the surface of the moon, then we can end the war in Vietnam. We can heal the wounds of our campuses and build a stronger university for the future.

If we succeed, the tragic deaths at Kent State and Jackson State will not have been in vain. 2500 years ago, Aeschylus, who fought at Marathon, gave us these immortal lines:

"I pray for no more youth
To perish before their prime;
That Revenge and iron-hearted War
May fade with all that has gone before,
Into the night of time."

This is the prayer that we must make our own.

AMERICAN PRISONERS OF WAR

Mr. GRIFFIN. Mr. President, the great English poet, Walter Savage Landor, once wrote that, "delay of justice is injustice." Surely, the delay and refusal of North Vietnamese authorities in abiding by the most elemental provisions of the Geneva Convention with respect to the treatment of prisoners of war is the most savage injustice of all those they have inflicted on these helpless men.

THE NEWS MEDIA—OUR MOST SERIOUS ENEMY

Mr. ALLEN. Mr. President, Mr. Sam Engelhardt is one of Alabama's most distinguished citizens and public servants and a valued personal friend. He has called my attention to a column by the nationally syndicated columnist, Henry J. Taylor, published in the influential Dothan, Ala., Eagle, on July 9, 1970.

Mr. President, Sam Engelhardt has written to me in part as follows:

I believe that the news media is our most serious enemy and will eventually destroy us if not reined in.

You have been in politics long enough to know what they can do. We will all appreciate your efforts to stop their brainwashing. . .

Mr. President, the column referred to provides facts to support the above conclusion of my friend Sam Engelhardt. I ask unanimous consent that Mr. Taylor's column be printed in the RECORD.

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

NETWORKS PRESENT ADULT TV MOBSTERS

NEW YORK.—Infiltrated CBS, NBC and ABC still push on us such individuals as William Kunstler, attorney for the convicted Chicago 7, under the subterfuge, as usual, of "news."

Mr. Kunstler attended an Oakland, Calif., conference conducted by the Black Panthers. He stated in reference to the death of white policeman John Gleason in Plainfield, N.J., "The crowd, justifiably without the necessity of a trial, and in the most dramatic way possible, stomped him to death."

The William Kunstlers, et al., pushed into out nation's homes on TV, who proudly proclaim they are revolutionists are not just hot-headed "generation gap" youngsters. They are adult mobsters with coordinated plans and defined goals.

AT EVERY TURN

Meanwhile, while criminals and their propaganda are literally featured at every turn by infiltrated CBS, NBC and ABC, the excellent, police-oriented programs, "The F.B.I." and "Adam 12," have been dropped.

This column has asked several times whether you think it's a coincidence that anybody—literally anybody, some anonymous person who is certainly not newsworthy at all—can achieve a nationwide TV news spot if he is condemning the United States, a university, the ROTC, any of our respected institutions, a judge in some courtroom, the American flag or the forces of law and order. Why?

Or if there is fighting in our streets, in even some little town, you can be sure the TV cameras will somehow be there. You can be equally sure that you can predict the ending: policemen clubbing people—with the provocations usually omitted—and, in the closing shot, dragging bleeding people away.

ANARCHY TAUGHT

The anarchy that many people taught on TV they are practicing. "Teach anarchy and violence to the young," said Lenin. The respected National Association for Better Broadcasting reports that the average American child during the ages of 5 through 16 is subjected to 21 hours a week under the influence of TV.

The mayhem watched is now so immense that before reaching 16 this average child witnesses some 12,000 TV deaths. In one week, in just one city, TV stations showed nearly 800 acts of violence.

How can so many among us be blind to the profound helpfulness of all this to the Communist masters?

Anarchy—monumental anarchy—is on the planning boards in Moscow. The Kremlin men know that internal demoralization plus external encirclement, reinforced by nuclear blackmail, can equal overt or covert surrender.

The explosion of the first Soviet nuclear bomb in 1949 was the beginning of a redistribution in the balance of power. The Moscow center of worldwide Red manipulation has achieved a military stalemate.

STRIKE AT AMERICA

Everywhere I go in the world the Communists live on the prestige of violence. Read today's dispatches from anywhere. By their conspiracies, their power grabs, their fifth-column groups, their propaganda of local terror, their clever appeals to people who do not know they are serving the Red cause, they strike at America from the inside. We are the chief target for the United States is the only country the U.S.S.R. fears.

Russia does not intend to lick America, or even to fight America. Russia does not want actual war with us. Russia does not intend to have it. War with atomic-armed America would hurt Mother Russia. They are not fools. "They have very canny brains," as President Nixon himself once said.

The Kremlin masters have a better idea. They expect us to lick ourselves. They expect us to knock ourselves out in our own gymnasium.

The Moscow planners are pursuing this idea every hour of the day and night. They know that the key to our world power is our home power. If our home power is lost our world power is lost. Everything the Kremlin masters do and say today is dedicated to cracking America's solidarity and sense of greatness.

This is why the constant, relentless TV featuring of the William Kunstlers, et al., and

the steadily repeated TV violence are the greatest things that can happen for the Kremlin masters—really hitting the U.S.A. jackpot, sweeping the board of the winning stakes and breaking the bank all in one.

TV is the most powerful medium any civilization ever had. Don't the TV stations, getting a free ride on the public's airwaves, have any responsibility at all?

NO U.S. GROUND FORCES IN LAOS

Mr. GOLDWATER. Mr. President, during my colloquy yesterday with the Senator from Wisconsin (Mr. PROXMIRE), I may have left the impression that the United States has ground forces in Laos. I should like to clarify at this time that what I meant was that our ground forces in Vietnam were greatly benefited by the tactical bombing of the Ho Chi Minh Trail in eastern Laos and that the airmen conducting this bombing used information supplied by ground sensor systems.

It is unfortunate, Mr. President, that such an inadvertent comment on my part should be seized upon by newsmen who prefer to believe that there is some deep, dark mystery about the disposition of our ground forces in Indochina. I can assure everyone that, so far as I know, President Nixon has been completely honest and above board on this subject; and I certainly do not possess any information to the contrary.

So at this time I want to make it absolutely clear that I did not in any fashion want to imply in my remarks yesterday that the United States is maintaining a ground force in the country of Laos.

THE FLOOD OF TEXTILE IMPORTS

Mr. HOLLINGS. Mr. President, today I received a petition from the legislative delegation of Spartanburg County, S.C., urging our Government to act swiftly to halt the flood of textile imports which have been so damaging to the American textile industry and to textile jobs. In recent months we have lost hundreds of vital textile jobs in my home State. There can be no doubt that the deteriorating situation for the American textile industry can be directly attributed to the increasing import problem.

The resolution from Spartanburg County succinctly summarizes the extent of the crisis. I commend it to Members of the Senate so that they may better understand the necessity to act now and delay no longer. I ask unanimous consent that the resolution be printed in the RECORD.

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

RESOLUTION OF THE DELEGATION TO THE SOUTH CAROLINA SENATE FROM SPARTANBURG COUNTY AND THE MEMBERS OF THE HOUSE OF REPRESENTATIVES OF SOUTH CAROLINA FROM SPARTANBURG COUNTY

Whereas, the textile industry is of vital importance to all the people of Spartanburg County, and the State of South Carolina, thousands of families being dependent upon employment in that industry, and

Whereas, since World War II the United States Government has expended billions of dollars to re-establish the textile industry in foreign countries so that for years the textile industry of the United States, and particularly the State of South Carolina and Spartanburg County, has suffered economically from the importation of foreign textiles, and

Whereas, the situation caused by unrestricted textile imports has become critical in the area represented by the undersigned, resulting in the closing of textile plants, unemployment, and layoffs, so that the people of this area and the economy of this State should no longer be sacrificed to Japan and the industrial nations of the Far East. Now, therefore,

Be it resolved, that the Delegation to the South Carolina Senate from Spartanburg County, and the members of the House of Representatives of South Carolina from Spartanburg County, do hereby urge the United States Congress and the Executive Branch of the United States Government to firmly support, enact and execute import quotas upon textiles, restricting the importation of textiles from other industrial nations by decisive and effective legislation, strengthening and restoring the textile industry of this Nation and the State of South Carolina.

Be it further resolved, that this Resolution be delivered to the President of the United States, United States Senator Strom Thurmond, United States Senator Ernest F. Hollings, and United States Congressman James R. Mann and United States Congressman Wilbur Mills.

HATFIELD COMMENTS ON STUDENT DISSENT

Mr. SCHWEIKER. Mr. President, the distinguished Senator from Oregon (Mr. HATFIELD) spoke recently before the Oregon Fire Chiefs Association. Some of his remarks dealt with legislation of interest to the fire chiefs, but Senator HATFIELD discussed at length the question of student unrest and dissent.

As a former college dean of men and one who speaks on many campuses across the country, his comments should be read and considered by all of us.

I ask unanimous consent that the pertinent section of Mr. HATFIELD'S speech be printed in the RECORD.

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

SPEECH BY MR. HATFIELD

I think that this evening we should look at the forces operating in our country which brought about the need for laws to protect our firemen and policemen. What is it that has turned segments of our society against public servants—dedicated men—who are trying to prevent death, injury, and the destruction of property?

It is a crisis of authority that we face today; authority at every point is being tested, and the basic respect for authority in our land is seriously eroding.

Why is this so? Why do we find such utter disrespect and such offensive repudiation of basic standards of human decency and integrity?

In all candor, we must begin by looking at ourselves and our own families. Authority, after all, begins in the home. The decline of respect for law and authority has at least part of its roots in our homes.

It is in our homes that we discover how authority, if it is to be accepted, must be set forth in the framework of love. And with our children we also learn that authentic love and concern for them must include firm authority.

Authority without love becomes authoritarianism—the futile attempt to rule by brute force. Love that ignores authority becomes mere sentimentality—the naive believe that responsibility is the result of permissiveness.

What is true for our families is true for society as well.

It is the rule of law which is under attack in our land again today. Many times before in our history we have had to face the challenges to lawful authority which have come from the extremist elements—both on the left and the right. In the past, we have met and survived these challenges by firmly supporting the laws of the land—and by just as firmly supporting the right of all citizens to peacefully state their opinions. During these past decades, when Ku Klux Klan members, Communists, Fascists, and others have threatened the fabric of law in our society, we neither retreated to naive permissiveness, nor relied on brute force to preserve our democracy. Today we must continue to resist these temptations. Proper authority is not rooted in force, but is entwined in the fabric of human association through respect, through loyalty, and through love.

We all must strongly reject the thesis that violence is the only means available to effect change in our system. Recent events prove the potency of public opinion. Public opinion drove LBJ from the White House; public opinion influenced recent Supreme Court nominations. In the ABM debate, we started with 20 Senators, and public opinion helped us gather 30 more.

Here in Oregon, we saw public opinion at work in the May elections. On the positive side, it resulted in a massive state effort to fight air and water pollution. The political analysts tell us that public reaction to the disturbances at Portland State shortly before the election is one reason the 19-year-old vote failed.

We all have been shocked by events on our campuses during these past months. The burning of buildings, the closing of campuses, and the occupation of our universities by federal troops—as well as needless injuries and deaths—all seem unbelievable, and truly are intolerable.

I have spoken on college campuses and tried to build bridges of communication with the younger generation. Whenever I have done so, however, I have constantly warned students about the grave dangers and intolerable consequences of any use of violence—in any situation. More than a year ago, I was invited to be the Charter Day Speaker at the University of California in Riverside. At that time, I warned students that "violent, anarchistic means to promote change, whether successful or not, will likely result in a violent end . . . Those who choose to carry their protest, regardless of its virtue, to the point of aggression, coercive disruption and destruction only invite the application of counter-force. In any resort to violence today, the side best equipped and best trained in violence will win, regardless of the relative justice of the issues involved."

Peaceful dissent is an act of faith in the democratic system—a belief that orderly change is an attainable goal. Peaceful dissent is a responsible outlet for sincere differences of opinion, and is within our democratic framework. Peaceful dissent also focuses attention on public issues troubling our nation.

The right to dissent, however, is no license for violence, subversion, or revolution. These extremes run counter to all that I stand for in the name of peace.

Those who use violence in the name of peace are saboteurs of the cause they espouse. We who seek peace through lawful means are appalled at revolutionaries who subvert our goals and so mock our aims.

There are the warnings I have consistently issued to students and all audiences. For it is clear that the small minority of revolutionaries across our country today have created a massive counter-reaction throughout society. The polarization has been dramati-

cally deepened and we are on the verge of being at war with each other.

No one gains from this condition, least of all our country. Let us be clear about the situation. We all know that violence and unlawful activity on our campuses cannot be tolerated. The campus cannot be a sanctuary immune from the laws and the individual rights that govern society in general.

We tell our young children that, as they grow, with each new freedom comes a new responsibility. Freedom brings responsibility in all areas of our society, and the university cannot be an exception. Those on our campuses who abuse freedom to avoid responsibility must face the same consequences that you and I face.

At the same time, however, the use of brute force to suppress or inhibit anyone who simply seems to disagree with us will only worsen our condition. If it is support for the law we wish to instill, then we must apply the law with complete justice, fairness, and firmness. Lawful channels for dissent must exist. When such channels are absent, or defective, frustration and resentment breed violence and rebellion. Naked power rises to take the place of authority.

The great danger of our time is that the trend of polarization will intensify. When anyone reacts to those he dislikes with bitterness and hatred, then the cycles of deterioration and division repeats itself.

To be frank, there are few that get more satisfaction out of this trend than the people who would like to undo us. The Communist leaders in Moscow, or Peking, or a revolutionary here in America, must take great delight in seeing the right-wing of a society fighting the left wing in our streets. They must applaud the trend toward oppression—the blanket condemnation of all students; and they would encourage the radical rhetoric and disruption across our land.

Here in Oregon, the long constructive efforts of the many young people involved in the 19-year-old vote were overthrown by those irresponsible actions of people using violence for their own ends. The revolutionaries in this country know that if the voting age is lowered, this will siphon off the 95% of the young who will work for change within the system. In short, those who want to destroy our society know that it can be done from within—and without firing a shot; it can be accomplished by dividing us as a people—by turning father against son, worker against student, old against young. If we allow or encourage this kind of division and polarization, then we are playing into the hands of those who seek our destruction.

What is the answer? What can we, as individuals, do, within our family, our town, and our country, to heal this malaise before the fuse burns down to the keg?

This is a perplexing age for parents and their children. Both react with more rhetoric than reason. We should realize how we rupture relationships with our young—often within our own family. We must remember that young people seek meaningful human relationships. They respect honesty, and seek understanding and love. This really starts at home for all of us. We should bridge the gaps in our own families and help build foundations for our young people's lives.

The strength of our democracy rests not in uniformity of thought or conformity of attitudes. Those are the principles which control totalitarian societies. Rather, in our land, it is the diversity of opinion that gives us our true strength. We believe that the freedom of thought and expression—in peaceful means protected by our law—is the great and distinctive quality of our society. It is freedom that we all cherish and this freedom which we all want to preserve.

But in any pluralistic society, where we believe in this right of all men to live in freedom, we must also be undergirded by understanding, respect, and love.

There is no hope for freedom to survive without a framework of reconciliation. To listen, to understand, to respect the opinions of others, and to build bonds of communication—all of us, whether young or old, must learn to practice these qualities if we are to protect our freedom.

To exercise authority in the framework of love, is the task for us all. Whether it be in our individual families, or in our Nation. We know that there will be no peace and no harmony among us if we believe that authority precludes love or, that love denies authority.

In this troubled age, as divisiveness and polarization threatens the strength of our land, I hope we can all choose the path of reconciliation. Our society needs to be brought together; we need to be healed. But this is more than can ever be accomplished by any act of Congress or by any expenditure of federal money. It must begin within our own hearts and our own families and in our local communities.

PRESIDENT'S INDIAN POLICY STATEMENT WORTHY OF SUPPORT

Mr. McGOVERN. Mr. President, President Nixon's recent statement to Congress on the status of Indian affairs deserves a word of praise and credit. It forcefully states that the policy of his administration toward termination is unalterably opposed to the policy of the administration in which he served as Vice President. The administration's statements regarding self-determination and Indian management of Indian programs and Indian affairs is certainly a step in the right direction for both the administration and the Congress.

Though the President's statement did not mention specifically a concurrent resolution I submitted several years ago, calling for a new Federal policy toward American Indians, I think that the aims and goals of my concurrent resolution sufficiently parallel the policy as outlined by the President that the adoption of the resolution by both Houses of Congress would sufficiently enunciate an acceptable policy statement for this administration.

Mr. President, my Indian policy concurrent resolution was agreed to by the Senate in the 90th Congress by a unanimous vote. I consider it unfortunate that it was not acted upon by the House in that same Congress.

The concurrent resolution was resubmitted in this, the 91st Congress, and it is now awaiting adoption in this, the 2d session of the 91st Congress. I hope that the Senate will soon again complete action on the concurrent resolution and that the House will see fit to give it early consideration.

Mr. President, so that Members of both bodies will be fully appraised of the contents of the concurrent resolution, I ask that it be printed again at this point in the RECORD.

There being no objection, the concurrent resolution (S. Con. Res. 34) was ordered to be printed in the RECORD, as follows:

S. CON. RES. 34

Whereas it is recognized by Congress that American Indians and Alaska natives (Eskimos, Indians, and Aleuts) suffer from adverse economic, health, education, and social conditions which prevent them from sharing equally in the great social economic advancements by our Nations; and

Whereas it is the understanding of Congress that periodic reversals in our Government's Indian policy throughout the years have ruled against full development of human and economic potential of Indian communities, thus prolonging the aforementioned deplorable conditions; and

Whereas improved and expanded services in Indian communities in recent years through direct Federal Indian service programs and a wide variety of other services have begun accomplishing encouraging breakthroughs; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) the deplorable conditions of American Indians and Alaska natives can only be alleviated through a sustained, positive, and dynamic Indian policy with the necessary constructive programs and services directed to the governing bodies of these groups for application in their respective communities, offering self-determination and self-help features for the people involved; and that our Government's concern for its Indian citizens be formalized in a new national policy so that the beneficial effects may be continued until the day when the Nation's moral and legal obligations to its first citizens—the American Indian—are fulfilled.

(2) modern day needs of Indian people are no longer responsive to the programs and services of the two major Federal Indian service agencies alone (the Bureau of Indian Affairs and the Division of Indian Health), but the complete solution of Indian problems will require new and innovative services for the full development of Indian and Alaska native people and their communities, and that the National Council on Indian Opportunity created by Executive Order numbered 11399, because of the representation on the Council of the Secretary of the several Departments concerned with the welfare of the Indian people and of the representation of the Indian leaders and because of the responsibility of the Council, under the chairmanship of the Vice President of the United States, for coordination of efforts of the Executive branch in Indian affairs, should be charged with the important responsibility of coordinating the wide range of Federal, State, and local resources.

(3) Indian and Alaska native governing bodies should be recognized as having the full authority to determine the extent and manner of utilizing all available resources for their communities.

(4) American Indian and Alaska native property will be protected; that Indian culture and identity will be respected; that the necessary technical guidance and assistance will be given to insure future economic independence; that continued efforts will be directed to maximum development of natural resources; that inadequate and substandard housing and sanitation will be corrected; that a comprehensive health program incorporating and assuring curative and preventive physical and mental health will be further developed for Indian and Alaska natives; and that a long-term general, vocational, technical, and professional education program will be encouraged and developed for both old and young American Indians and Alaska natives so that they may share fully in our society;

(5) that the National Council on Indian Opportunity should periodically review all the activities of the Bureau of Indian Affairs and all other agencies of the Federal Government concerned with Indian welfare to assure Congress of maximum utilization of Federal, State, and local resources for Indian and Alaska native well-being; and that the National Council on Indian Opportunity should submit an annual report with necessary legislative recommendations to Congress

to indicate the manner in which the intent of this resolution is being carried out; and

(6) American Indian and Alaska native communities should be given the freedom and encouragement to develop their maximum potential; and that Congress will support a policy of developing the necessary programs and services to bring Indians and Alaska natives to a desirable social and economic level of full participating citizens.

MEDICAL AND DENTAL SCHOOL CRISIS

Mr. JAVITS. Mr. President, last year I introduced—with the cosponsorship of 23 Senators from both parties—S. 3150, a bill to provide emergency assistance to our Nation's medical and dental schools. The bill was recently adopted by the Committee on Labor and Public Welfare as an amendment to the Health Training Improvement Act of 1970 and ordered favorably reported out.

The amendment—section 102 of the bill—is designed to be a first step, stopgap emergency measure that seeks to save our medical and dental schools from disastrous closings and at the same time, enable these institutions to continue programs and services in the national interest.

There is a growing national concern with the financial crisis in our medical and dental schools and in view of the situation—and to further document the urgent need for my amendment—I believe there may be wide interest in a report published this month from the National Fund for Medical Education, a nonprofit organization with headquarters in New York. This document lives up to its purpose of giving the reader "a better understanding of the crisis in medical attention." In this discussion John S. Millis, the distinguished educator who was formerly chancellor of Case Western Reserve University and is now the vice president of the National Fund for Medical Education, outlines the nature of the problems facing the medical schools.

The report examines and clarifies the nature of the costs on the one hand and the services, on the other, of the medical school and its affiliated teaching hospitals and medical centers. Too often, in assessing the costs of medical education, some forget that university medical centers supply medical service to the public, for example, at least one out of every nine patients admitted to a hospital goes to a primary or secondary teaching hospital.

I commend this report to the Senate and ask unanimous consent that the text of the report entitled "Toward a Better Understanding of the Crisis in Medical Education" be printed in the RECORD.

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

TOWARD A BETTER UNDERSTANDING OF THE CRISIS IN MEDICAL EDUCATION

It is widely known that the medical schools of the United States are experiencing substantial financial difficulties. Of greater importance is that fact that some schools are in truly critical financial straits—so critical that one must be concerned about their maintenance of quality and even about their ability to survive.

This unhappy state is of serious concern to the American people because the continued and expanded production of physicians and other health professionals by the medical schools is crucial to the achievement of the health goals which we as a nation have recently set for ourselves. We cannot provide more and better health services to more and more people unless we first have more physicians and health personnel, skilled in the most modern methods of health care.

Most people find it difficult to understand how such a serious financial crisis can have happened. The medical schools spend very large sums of money each year while enrolling relatively small numbers of undergraduate students. In fact, the Education Number of the *Journal* of the American Medical Association recently reported that in the year 1967–68, the 89 medical schools in full operation (there were five additional schools in development but not included in these figures) enrolled 34,538 undergraduate medical students, spent $1,175,396,186 and conferred 7,973 M.D. degrees.

To state on the strength of these figures that the average annual expenditures of the schools is about $34,000 per M.D. candidate and that it costs about $145,000 for each M.D. degree awarded is extremely misleading. The basic fact is that one cannot understand the crisis nor the underlying causes by examining the medical schools alone. Medical education is much like an iceberg. When the berg is observed from the usual vantage point of the surface of the sea, about one-tenth of the whole is visible, while nine-tenths is hidden from view. Similarly, the medical school is only the most obvious part of the total apparatus of medical education, and the education of the undergraduate medical student is only a small fraction of the responsibilities and activities of medical education.

Let us examine the part of the iceberg below the waterline not visible to the layman:

In the first place, medical education is not conducted in medical school buildings alone. Rather, it occurs in the medical school and, for more than half the four years, in one or more closely affiliated hospitals—that is, in a large and complex medical center. In the second place, the education of students requires that the medical center assume many added responsibilities. In addition to teaching, the medical school facilities must care for millions of patients, conduct much of the bio-medical research done in the nation, and furnish many and costly services to their communities, frequently in response to the decisions of governmental bodies. To understand the financial crisis, one must first understand the size and importance of all of the activities of a medical center—education, patient care, research, and extramural services.

I. EDUCATION

The education of physicians is a lengthy and complex process, accomplished in two principal steps: First, undergraduate education under the jurisdiction of a medical school which is generally part of a university. This four-year experience leads to the degree of Doctor of Medicine. Second, graduate education at one or more teaching hospitals, many of which are an integral part of or affiliated with a university medical center. This internship, followed by a residency, lasts an average of 4.7 years, and its completion is recognized by eligibility for certification by a specialty board.

Not only are undergraduate medical students taught in university medical centers, but also surprisingly large numbers of other students. These include interns and residents as already noted; undergraduate students in the basic medical sciences who are candidates for the degrees of Master of Science or Doctor of Philosophy; post-graduate clinical fellows and students in the basic sciences; and other professional students who are essential to the delivery of medical care, such as dentists, nurses, physical therapists, occupational therapists, medical technologists, pharmacists, dietitians, medical social workers, and radiological technicians. To compensate for the growing shortage of physicians, experiments are under way to train entirely new classes of health professionals such as assistants for physicians and dentists. Should these tests be successful, an additional teaching burden will be placed on the university medical centers.

In the academic year 1968–69 the enrollment of students in the American university medical centers engaged in full-time study for degrees, diplomas, or certificates was as follows:

a. Candidates for the M.D. degree	35,833
b. Interns	4,860
c. Residents	18,602
d. Post-graduate clinical students	4,966
e. Candidates for the M.S. or Ph.D. in basic science	7,892
f. Post-doctoral fellows in basic science	1,200
g. Candidates for degrees or diplomas in other professions	235,054
The teaching responsibilities of the medical school faculties for these students are estimated to be the equivalent of 15,842 undergraduate medical students	15,842

In addition to this number, there were about 100,000 physicians enrolled in one or more programs of continuing education offered by the university medical centers of the country. While no figures are available, the added burden on medical school faculties must be the equivalent of teaching several thousand undergraduate medical students.

The figures represent all of the undergraduate medical students in the country, virtually all of the post-graduate clinical fellows, the candidates for the M.S. and Ph. D. degrees, and the post-doctoral fellows in the bio-medical sciences; more than two-thirds of the interns and residents, and three-fifths of the registrations in continuing education of practicing physicians.

II. PATIENT CARE

In the process of education, the university medical centers are large suppliers of medical service to the public. Patient care is rendered by 189 major teaching hospitals of the 89 medical centers and by an additional 65 university-affiliated hospitals which are used to a lesser extent for teaching purposes. One out of every nine patients admitted to hospitals in the United States goes to one of these primary or secondary university teaching hospitals. About one in seven births takes place in teaching hospitals and one in seven outpatient visits.

In the following table, the several categories of patient care delivered by these university hospitals over a twelve-month period ending in August, 1968, are summarized. Because a few hospitals have not supplied figures for all categories of service, the totals reported must be regarded as minimal. Even so, they are impressive.

	Primary teaching hospitals	Secondary teaching hospitals	Total
1. Inpatient admissions	3,015,431	830,878	3,846,309
2. Newborn (not duplicated in admissions)	335,510	102,348	437,858
3. Patient days of hospital care	35,710,590	10,834,295	46,544,885
4. Outpatient visits	14,924,779	2,327,162	17,251,941
5. Annual expenditures	$2,608,419,000	$724,128,000	$3,332,547,000

Source: The 1968-69 Directory of the Council of Teaching Hospitals, issued by the Association of American Medical Colleges updated from statistics continued in the Aug. 1, 1969, issue of Hospitals, Journal of the American Hospital Association.

III. RESEARCH

In the past 20 years, the research efforts of the university medical centers have increased rapidly producing major contributions to the health of the American people. Examples include immunization against infantile paralysis, measles and other infectious diseases, techniques for open-heart surgery, control of hemophilia, antibiotic control of many diseases, such as mastoiditis, and substantial progress in treating cancer through chemotherapy.

In 1967–68 the 89 medical schools in full operation at that time expended $473,270,303 for sponsored research. Included were all funds restricted to research from federal grants, from foundation and most association grants, from personal gifts, and restricted endowment income. Undoubtedly there was some research paid for by unrestricted university funds, but the amount is probably so small that it can be neglected. In addition, the hospitals of the medical centers receive very substantial sums from governmental agencies, from private gifts and from foundation grants which also have the effect of supporting the research activities of university personnel. The locale and legal sponsorship are simply hospital rather than university.

From reports obtained by the Council of Teaching Hospitals of the American Association of Medical Colleges, it is clear that these hospital research expenditures are not less than $150 million per annum. Thus, the total research activity of the medical centers of the nation in 1967–68 involved the expenditure of not less than $625 million.

IV. EXTRA-MURAL SERVICES

In addition to better known activities of education, patient care and research, the professional members of the medical centers carry on a number of activities in the community and in the nation as a whole. These activities include participation in the organization and operation of community health centers, in regional health planning, in programs of public health, and in advising governmental and private agencies.

No data on the cost or value of these services is collected on a national basis. However, a recent experimental cost allocation study under the auspices of AAMC and HEW has been made and released under the title, "Program Cost Allocation in Seven Medical Centers: A Pilot Study." In this study, it was found that on the average 1.1% of annual expenditures went to these extra-mural services. When this percentage is applied to the total medical center expenditures in 1967-68, we obtain a value of approximately $35 million. This sum, though a small proportion of total expenditures, is still substantial.

SUMMARY

In summary, one can describe the 1967–68 activities of the medical centers of the country in the following quantitative terms:

1. The education and training of 272,767 health professionals and technologists of whom 61,828 were physicians-in-training.

2. The continuing education of about 100,000 practicing physicians.

3. The provision of 46,500,000 patient days of hospital care for over 3,500,000 patients and care of 440,000 newborn.

4. The provision of services for 17,250,000 out-patient visits.

5. The conduct of $625 million worth of bio-medical research.

6. The provision of extra-mural services at a probable cost of $35 million.

7. The expenditure for all of the above services of $4.5 billion.

THE FINANCIAL PROBLEM

We are now ready to examine the adequacy of incomes which are available to support these many, large, and complicated responsibilities of the university medical centers. Funds for patient care as described in Summary items 3 and 4 above do not constitute a serious problem—in fact, here the situation is improving. The amount of "charity care" which has to be furnished without reimbursement is declining because of medicare and medicaid payments and because the number of our citizens covered by health insurance plans continues to increase.

In contrast, in the other four areas, funds are at best remaining constant or declining while demand is increasing and purchasing power is being eroded by a rapid inflation. We need more physicians and we need more health professionals of all kinds. The medical schools are responding, shouldering the greater costs and responsibilities of educating more medical students. The number admitted to the freshmen class in 1969 was more than a thousand greater than only three years ago. This expansion of entering classes in existing and new medical schools will continue, and 2,000 additional entering places will be available in 1975. Similar increases in interns, residents, and clinical post-graduates have and will occur. At the same time, increases in the numbers of nurses, dentists, pharmacists, and other health professionals in training status have been accommodated along with greatly expanded programs in continuing education of practicing physicians, placing an additional heavy burden on the medical faculties. The educational demand is rising and the medical centers are responding.

In contrast with rising demands, income to support educational programs has not risen, and, if discounted because of inflation, has actually declined in many instances. For example, there is no income for the support of the training of interns and residents other than the fraction which can be buried in hospital costs to patients. Although endowment income, student fees and private contributions have increased dollarwise, the proportion of these sources to total income has fallen rapidly. Only recently have there been federal funds appropriated for the direct support of the education of students, and these, like state appropriations to support existing public medical schools, are not rising in keeping with the need. Although the drug industry has supported selected programs in continuing education, this activity is particularly lacking in support, with no endowments, no governmental appropriations, and no foundation grants. The participating physicians do pay fees for attendance, but these cannot cover more than a fraction of the cost.

The problem in research is quite different. Whereas in education, the medical schools have tried valiantly for years to teach more students, supported by inadequate budgets which are now declining in purchasing power, in bio-medical research, the medical schools have experienced a very rapid increase in financial support over the last two decades, particularly from federal sources. They have recruited large and competent staffs, built research facilities, and acquired expensive apparatus and libraries. In the past two years, the rising trend of federal support has stopped, and currently a decline has set in. Thus, the medical schools continue with responsibility which society asked of them, but no longer have the economic means to meet this responsibility. Adjustments in research obligations can be made and surely will. However, such adjustments take time, and there is and will continue to be a drain on medical school funds to meet the deficits between the former level of research support and that lower level which national policy seems to require.

Cutbacks in research and training grants pose another problem for medical schools. Medicine is taught today as an indivisible triad, in which teaching, research and patient care go hand in hand. Thus, research and training grants help to finance the faculty and general overhead of the schools. Of 22,163 faculty members, nearly half receive some portion of their support from research and training grants, and 16.3 percent are entirely funded in this way. Reduce the flow of those funds and the entire education effort suffers.

In the last category of medical center activity, extramural services, lies perhaps one of the most vexing parts of the financial problem. There are no endowments, no tuitions, few government appropriations, no foundation grants, and no voluntary gifts to support them. In contrast, the requests, the demands, the pleadings to each medical school for assistance, participation, advice and manpower for a great variety of community and national projects are swelling to great proportions. Medical school deans find themselves faced with the cost of meeting community demands but with little or no income to pay for it.

Extra-mural services also add to the already critical manpower problems of the centers. Committed to the education of more students, caring for more patients, and continuing vital research, medical school faculties still find it difficult to turn a deaf ear to community needs. It should be remembered that members of the clinical faculty already hold dual appointments in the medical school and teaching hospitals. For example, the chief of the medical service at the hospitals also serves as chairman of the department of medicine at the school and so on down the line. It is little wonder that these busy men can find time for community service only as an overload on a work week which is already of the magnitude of seventy hours.

It is difficult, if not impossible, to place the blame for the financial plight of our medical centers on a particular activity or a failure of the schools or of society. Yet, the simple fact is that our medical schools must do and are doing more and more and, as a consequence of a declining income, are working themselves into bankruptcy.

JOHN S. MILLIS,
Vice President.

POLITICAL REPRESSION BY THIEU REGIME

Mr. FULBRIGHT. Mr. President, I regret to bring to the attention of the Senate yet another example of the consistent pattern of political repression employed by the Thieu regime. Mr. Philip Shabecoff in an article in the New York Times describes a growing wave of student protest in Saigon and the efforts being made by the Thieu regime to stifle it. I ask unanimous consent that Mr. Shabecoff's article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. FULBRIGHT. Mr. President, the Saigon University students are protesting the Thieu government's violation of the civil liberties of student representatives. According to a student quoted by Mr. Shabecoff, 18 student leaders have been arrested by the Thieu regime since 1967 but none of them has ever been brought to trial. The students are demanding that those arrested be given prompt trials in civilian courts.

This might seem to be a simple enough request, but given the recent drumhead justice meted out to Deputy Tran Ngoc

Chau by an unconstitutional military tribunal, there seems little likelihood that their request will be honored. As one student leader told Mr. Shabecoff:

In the broader sense this student protest is only part of a struggle for real freedom and democracy in this country.

The present student upheaval only one in the latest of a series of events which illuminate how rapidly the facade of democracy in South Vietnam is crumbling. Having ridden roughshod over the National Assembly and the Constitution in the Chau case, President Thieu now finds himself beset by the students. The portents of this development are most ominous. As Mr. Shabecoff points out, student groups have played a major role in the overthrow of previous Vietnamese ruling cliques.

One wonders whether the Embassy in Saigon and the administration see the relationship between the Chau case and the current student unrest. One wonders further whether they have noted the parallel between the events which preceded the end of the Diem era and the present latent turmoil in Saigon.

Regardless of what happens militarily in Vietnam, the character of the Thieu regime may well be the determining factor in the fate of the administration's Vietnamization policy. There seems to be little disposition on the part of the administration to acknowledge the realities of this fact.

The American public has been deceived about the nature of the Thieu regime. What is worse is that the administration has apparently deceived itself into believing that its lofty purposes in Vietnam can be achieved through the agency of a regime which corrupts the very freedoms which we are supposed to be defending.

EXHIBIT 1

VIETNAM STUDENT PROTESTS SPREAD IN SPITE OF POLICE

(By Philip Shabecoff)

SAIGON, SOUTH VIETNAM.—A student protest movement is rapidly gathering momentum in South Vietnam despite Government efforts to stifle it.

Today the police sealed off the office of the students' "struggle committee," which is directing a general strike of Saigon University's 32,000 students.

Yesterday, policemen and soldiers occupied all branches of the university to block a planned mass meeting and a march on President Nguyen Van Thieu's palace.

But the police action has apparently not slowed the growth of the protest movement. Students at the universities at Hue and Cantho and the Buddhist Van Hanh University have offered support to the Saigon students.

Eight Roman Catholic priests have published a declaration supporting the student movement and alleging police brutality in dealing with student prisoners.

Leaders of the movement said today that 20 students had volunteered to disembowel themselves and that five had offered to commit suicide by fire if the students' demands were not met.

Basically, the students are demanding that the Government respect civil rights and allow university autonomy. The immediate cause of the walkout at Saigon University was the arrest on March 10 of Huynh Tan Mam, acting chairman of the University's Student Union. The police said that Mr. Mam was a Communist and an agent of the Vietcong.

STUDENT SEES IRONY

The students dispute the Government accusation against Mr. Mam. But that was not the reason for the strike. The protest movement is intended to force the Government to give Mr. Mam and other arrested students speedy trials by independent civilian courts.

Doan Van Toai, a leader of the Saigon University protest movement, asserted in an interview today that Mr. Mam was the 18th student representative arrested since 1967 who had not been brought to trial. Most of them, he said, had been drafted into the army after having spent several months in jail.

"It is ironic that the Government accuses them of being Communists and then puts them in the army," said Mr. Toai, a slight, softspoken, 24-year-old pharmacy student.

One reason that Mr. Mam was arrested, Mr. Toai asserted, was that as leader of the Student Union he had transmitted a letter from Saigon students to students in the United States alleging that the Government of South Vietnam was becoming a dictatorial regime.

The students are insisting that the Government explain all charges of Communism and other vague accusations against all students arrested and detained in recent years.

Finally, the students are demanding that the Government end its "repressive measures" against the students and to respect the principle of university autonomy.

"In the broader sense, this student protest is only a part of a struggle for real freedom and democracy in this country," Mr. Toai said.

He declared that the Government's attempt to crush the protest movement was not a new policy. He said:

"The Government will not let the students meet among themselves for any reason. We can't even get together to put on plays or listen to music."

If precedent is any guide, President Thieu's Government has reason to be wary of student power. Militant students played a major role in overthrowing the regime of Ngo Dinh Diem in 1963 and of Nguyen Khanh in 1964.

After the presidential elections of 1967, which brought Mr. Thieu to power, students in Saigon held a number of meetings to charge election fraud. But after a number of student leaders were arrested and put in the army, the student movement remained relatively dormant.

By law, university students in South Vietnam are supposed to be draft-exempt as long as they pass their annual school examinations.

The current student movement is somewhat different from past student protest activity. For one thing, its basic support is said to come from southern Roman Catholics. Past student movements were largely organized and supported by Buddhist militants.

However, this movement too is employing nonviolent techniques such as hunger strikes and the threat of self-immolation by students.

The students are bracing for still sterner repression by the Government, Mr. Toai said.

"The Government gives those who oppose it only two alternatives," he declared. "Either they go to jail or they join the Vietcong."

DAVID LAWRENCE SQUELCHES CHET HUNTLEY

Mr. DOLE. Mr. President, in an editorial in the July 14 Evening Star, David Lawrence accurately refutes the charges recently made by Chet Huntley, an NBC commentator who for 14 years has presented an anti-Republican, anti-conservative view of the news.

His charges that the President is "shallow" are groundless and apparently based on the fact that President Nixon did nothing to curry Huntley's favor—which, to many, is a mark of great distinction.

In any event, the editorial should be of interest to Senators. 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:

"SHALLOW" COMMENT ON NIXON SCORED

(By David Lawrence)

When a prominent broadcaster was quoted the other day as having said in an interview that he was "overwhelmed" by the "shallowness" of President Nixon, one wonders how the busy man in the White House could get "equal time"—either in the magazine that published the article or on the wire services that reported it—to point out the number of observers who evidently think just the opposite about some of his policies.

Sizing up a president is not an easy task, as not all the critics really get behind the scenes. A chief executive, when he does have newsmen traveling with him, is usually cautious about what he says.

A good way, of course, to analyze his judgment is to read the transcripts of his remarks in a televised news conference. The questions asked are, for the most part, usually not known to the president in advance, and certainly as some of his answers provoke other questions it is obvious that he is talking in an impromptu manner.

Nixon has been on television at least seven times since last November, and, based on the Gallup polls, he has generally made a good impression on the public.

Presidents have had a variety of relationships with newsmen throughout the years, depending on how communicative they are on public affairs. This correspondent has known 11 out of the 15 presidents who have served in the second century of America's history as an independent nation. Some of them have been inclined to talk freely to members of the press, and others have been reluctant.

But a judgment of the kind of man sitting in the White House can hardly be formed on the basis merely of press relationships. It comes only by talking with men in and out of Congress who have conferences frequently with the chief executive and who have a chance to appraise his brain-power and his grasp of public affairs.

This writer started to cover the White House in 1910, during the administration of President William Howard Taft, and has written about the news there under Presidents Wilson, Harding, Coolidge, Hoover, Franklin D. Roosevelt, Truman, Eisenhower, Kennedy, Lyndon Johnson and Nixon.

While each of them differed from the other in personality, they were all men of good conscience and integrity. They were dedicated to their jobs. They made some decisions that were unpopular. They made mistakes in judgment and encountered criticism. But even their bitterest critics would say privately that they respected the presidents with whom they differed.

This writer has observed that every president has shown a deep sense of responsibility and a seriousness of purpose—a feeling that the high office of chief executive could not be dealt with in any casual way. The advice of well-informed persons has been earnestly sought again and again. Though policies have sometimes met with disfavor, the presidents themselves have felt that they had made a sincere effort to reach the right conclusion.

To say that any president of the United States is "shallow" seems to ignore the fact that throughout his political life many people have a chance to test him in other positions which he previously held. It would be

almost impossible for anybody without a sense of practicality and experience in American life to become president of the United States—especially in the last half-century.

Nixon volunteered for the Navy in World War II and won two battle stars and two commendations. He was elected to the House of Representatives in 1946, then to the Senate in 1950. Subsequently for eight years he served as vice president, and was barely defeated for the presidency by John F. Kennedy in 1960. Individuals prominent in public life and in the Republican party had a chance to know him.

From 1963 to 1968 Nixon practiced law in New York City—a place where he won a reputation for alertness of mind and good judgment as well as a capacity to render sound advice. After all this, the Republican party nominated him in 1968 almost without opposition, and the American people elected him president. The latest Gallup polls show the silent majority is still behind him.

LEON SHLOSS, SENIOR EDITOR OF GOVERNMENT EXECUTIVE, PRAISES ACTION TO UNIFY GOVERNMENT RESEARCH ON AIR AND SEA—SENATOR ERNEST HOLLINGS, CHIEF SENATE SPONSOR—IN-DEPTH HEARINGS TO BE CHAIRED BY SENATOR HOLLINGS

Mr. RANDOLPH. Mr. President, the capable senior editor of Government Executive, Leon Shloss, has written a timely and interesting article on the administration bill to combine governmental research in the Nation's air and sea.

In his comprehensive report "At Long Last: Unified Government Research on the Air and Sea," Shloss explains the basic proposals contained in the measure to create the National Oceanographic and Atmospheric Administration to replace the many Government agencies engaged in this important research.

The Senator from South Carolina (Mr. HOLLINGS), chairman of the Oceanography Subcommittee, is expected to hold in-depth hearings on the reorganization plan for a single entity to control research in the ocean and atmosphere. His understanding of this problem is well known, and we can expect leadership from our colleague as he moves forward in the determination of a program for effective research.

Mr. President, I ask unanimous consent that Mr. Shloss' article be printed in the RECORD.

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

AT LONG LAST: UNIFIED GOVERNMENT RESEARCH OF THE AIR AND SEA

(By Leon Shloss)

HIGHLIGHTS

1. For at least 10 years a dozen U.S. Government agencies with fragmented authority have been trying to cope with the problems of environment—making studies while other nations were "making hay."

2. Now, at long last, it seems certain that a single entity will be created to research the mysteries of the ocean and the atmosphere. To be named the National Oceanographic and Atmospheric Administration (NOAA) it will take command of the "splinter" offices.

3. Doubtless the head men of departments which will have some authority subtracted will buck the reorganization plan which the White House is sending to Congress. But the plan is in the form of an Executive Order and does not require passage of new legislation. The proposal will become law in 60 days unless the House or Senate objects.

4. All official quarters have dropped the "cone of silence," but here are the details as ferreted out by Government Executive.

After too many years of badly splintered authority, during which other nations were making steady progress while the U.S. was making studies, this country is about to have a single Government entity to deal with its pressing oceanographic and atmospheric research needs.

The new unit will be titled the National Oceanographic and Atmospheric Administration (NOAA) which, of course, acronym-mad Washington is already calling "Noah." NOAA's budget would be in the neighborhood of $200 million.

At presstime, Congress awaited an Executive Order from the White House directing creation of NOAA and specifying what functions will be removed from what agencies and placed under one roof—the Commerce Department.

Appropriate Congressional committees have been briefed by the White House. Creation of an "administration," as opposed to an independent "agency," does not require legislation, which might be filibustered by Government departments which stand to have some current authority subtracted. Hence, NOAA will become fact unless the House or the Senate objects within 60 days.

Capitol Hill expects the Executive Order, embodying the recommendations of the President's Advisory Council on Executive Organization, chaired by Litton Industries President Roy L. Ash, by July 1. This means that, barring Congressional objection, NOAA would come into being about September 1.

The departments and other entities which stand to lose the most include Interior, National Science Foundation, the Army Corps of Engineers, the Coast Guard and the Navy.

A Senate official who is intimately involved with the project was asked if he expected any substantial opposition from executives of those bodies. He said: "There'd better not be if they want to stay around town. Have you noticed what is happening to dissenters?"

Under the organization plan in the works the following programs would be taken over by NOAA: Bureau of Commercial Fisheries (from Interior): Anadromous (salmon) fishing (from Interior); marine mining (Interior); sea grant programs (investigation of marine resources) from the National Science Foundation; Great Lakes survey functions (from Army Corps of Engineers); the National Data Buoy program (from the Coast Guard); the National Oceanographic Data Center (from the Navy).

The Congressional committees involved (House Merchant Marine and Fisheries, House Government Operations, and Senate Commerce), plus the Commerce Department, obviously got the word to clam up until the plan reached the Hill, but *Government Executive* was able to obtain the following information from completely reliable sources:

Commerce would receive authority for operation of NOAA, in turn would probably make its own Environmental Science Service Administration (ESSA) the nucleus. The handful of involved officials in Commerce, including Secretary Maurice Stans, made themselves completely unavailable to news media, but Stans attended the Congressional briefings by the White House to the Oceanography subcommittees of the Merchant Marine (House) and Commerce (Senate).

The only hearings required will be before the Government Operations Committee, but the House Oceanographic subcommittee will probably hold hearings to, among other things, give industry representatives a voice. A House source said:

"This subcommittee has been working on the problem for 10 years. Its chairman, Rep. Alton Lennon (D-N.C.), a year ago introduced a bill to establish an independent oceanographic agency which would have absorbed the entire Coast Guard. The new NOAA proposal takes from the Coast Guard only the National Data Buoy program. The bill would also have established a National Advisory Committee on the oceans and the atmosphere, comprising 15 leading figures from outside of Government. Such a step is not in the current White House proposal, and the subcommittee will probably want to know why."

"I am sure," he continued, "the subcommittee will also want to make a determination on the issues that are certain to come up in the wake of the NOAA order, and to define follow-up legislation."

A Senate source said he expected that hearings would also be held by the Oceanography subcommittee headed by Sen. Ernest Hollings (D-S.C.).

Both sources said there was nothing in the White House briefings that the subcommittees hadn't already deliberated. This tended to confirm the belief that the Administration was caught with its position papers down by newspaper stories that obviously were leaked, and had to hustle to catch up with the situation.

Among the items yet to be decided is the level of leadership NOAA will be given—certainly at least an assistant secretary of Commerce, with a possibility of an under secretary.

In addition there is the matter of what will happen to the Coastal Zone Management and Coastal Laboratories functions now within the Interior Department.

The White House decided on two new reorganization plans to cope with the environment problem—the other entails creation of an Environmental Protection Administration (EPA)—because President Nixon is said to feel that the Government must fight the problems of pollution on two fronts. The first front is the immediate war against today's polluted air and water. This will be EPA's concern. The second front concerns the forecast of pollution problems and the research which must be done to identify and combat the pollution of the 1980s and beyond. This will be one of the tasks of NOAA.

Oceanography has traveled a rocky road. The late President John F. Kennedy said this Nation's survival might depend upon the seas. Later he pocket-vetoed an important piece of oceanographic legislation. President Lyndon B. Johnson named a commission to study oceanographic needs but failed to act upon any of the recommendations that the commission made. Up until now President Nixon has included the subject in one campaign speech, appointed a task force to study it and mentioned it as one of the topics edited out of his State of the Union message. Otherwise he has avoided any reference to the problem.

One of the most knowledgeable journalists in the field—Robert W. Niblock, editor of *Under Sea Technology*, the industry's recognized authority, sums it up this way: "If ever a method was devised to build ships out of paper, then the oceanographic studies that exist would provide enough raw material to build a luxury research vessel for every scientist who wanted to go to sea.

"If there is any single major conclusion to be drawn from all the studies, it is this: the present Federal organizational structure for oceanography stinks and progress will be stymied until something is done about it."

The benefits to be reaped through an efficient NOAA are myriad. Taking as an example the National Data Buoy program, it could provide information which would vastly improve long-range weather forecasting. At present there are tremendous areas of the earth from which no data is available and little air-sea interaction data and

data on the temperature of the upper layers of the water. Once such data becomes available, there would be payoffs such as these:

Knowing when to project shortage of fuel oil for winter.

How much salt to stockpile for clearing off roads in the winter.

Assist the recreation business, whether it's skiing in the north or swimming in the south.

When to get people off high steel in the construction business.

Agricultural implications.

Routing of ships. If a few hours can be lopped off a ship's time from Point A to Point B, that's money. It would be not a matter of the shortest *geographical* route, but the *fastest* route through and around weather.

There are many economic windfalls to be derived, from understanding the oceans better, in the areas of communications, transportation, fishing, safety, oil tower operation and others.

While foreseeable economic benefits are significant, there are credible authorities who hope that not too much emphasis will be placed on the cost/benefit ratio. One such authority is Dr. Harris B. Stewart Jr., director of ESSA's Atlantic Oceanographic and Meteorological Laboratories near Miami, Fla. Stewart says:

"I think there are two great intellectual challenges facing our American generation—one of these is certainly the exploration of space. The other is the exploration and understanding of the oceans. The nation that fails to meet the intellectual challenges with which it is faced is doomed as a society.

"If we devote the major share of our gross national product (GNP), particularly through the Federal Government, to provide creature comforts, and neglect these intellectual challenges, we've had it.

"I think a stronger program of exploring and understanding the seas can in fact be justified on the presently popular cost/benefit ratio basis. I think it can also be justified on the fact that this is an intellectual challenge and we damn well better rise up and meet it or the U.S. is doomed as a country."

Stewart makes several other points:

"It seems to me that NOAA is going to be dependent on whether it can locate, identify and lure the really top people. This to me has been the secret of NASA's success. They have put together a team the likes of which have never been seen. Of course, it took a lot of money, but the point is it worked.

"I'm firmly convinced that NOAA can be established without great influxes of money. I think it makes thoroughly good sense just to combine the activities for smoothness of operation. There will be pressures for more funds to get things started. But I'm against any big influxes. We're not ready for it and there are too many other demands on available monies.

"There is a *Sputnik* syndrome that might happen at any time. Assume that Russia were to plant a manned habitat on the middle of the Atlantic Ridge. All of a sudden we'd be in a flap and we'd have the same really wasteful initiation of a mass project to counteract. Now if NOAA is established and already going with relatively little money, and something like that does happen, here's a group already working that can handle the situation.

"The Stratton Committee report calls for about $8 billion over a 10-year period. I think that's a bit much, although it would take that much to do all the things the Stratton report sees NOAA doing. But my own feeling is that it's got to come slowly. We don't want a crash program. As soon as you get into such a program, you generate waste. I would like to see a slow, orderly development of U.S. posture vis-a-vis the oceans. We have problems in that oceanography has been oversold. I think we made a mistake years ago trying to justify the U.S. scientific problem on the basis of the rich resources that could be exploited."

(The Marine Sciences Commission, chaired by Julius A. Stratton, chairman of the Ford Foundation, and composed of competent, top level men from industry, the legal profession, Government and academic institutions, made recommendations that have been strongly supported by nearly everyone who read them. During hearings held by Senator Hollings' subcommittee, Hollings finally drew from Dr. Lee DuBridge, the President's science advisor, the embarrassing admission that he had not read the Stratton report.)

Stewart says that the early overenthusiasm resulted in the U.S. "jumping over the exploration challenge and trying to go right into the exploitation job, and that's not smart. Exploration is an absolute precursor to exploitation."

It is undeniable that as of now (with possible exception of the Navy) there is no single focus in Government working on the technology of oceanography. Instead, as Stewart puts it: "You have a bunch of bicycle shops working independently."

An example of the duplication of effort that has been rife in the last 10 years:

The Bureau of Commercial Fisheries had a man producing a bathymetric (bottom topography) map. He used data from the Coast and Geodetic Survey. Geological Survey had a group producing a map of the entire East Coast, also using data obtained for the Coast and Geodetic Survey. Coast and Geodetic Survey is the entity charged with this mapping responsibility. It had been asking unsuccessfully for years through budgetary channels for funds so it could take from its files the data it already had and produce these maps. The demand for the maps was big. The Bureau of Commercial Fisheries needed them so that struggling commercial fishermen could be advised where to fish.

When industry was oversold on the future of oceanography it tooled up on its own to produce research submarines. As Stewart says: "There are some crackerjack ones on the market but they're being laid up right and left because there is not enough money in the separate Federal agencies to support them. The U.S. has an incredible fleet of research submersibles and no one agency has enough money to afford to use them; NOAA could pull together the projects requiring their use."

Many authorities object to the long-bruited appellation "Wet NASA" for a Federal oceanographic agency. These authorities point out that "Wet NASA" implies a NASA-like operation which it really would not be. Exploration in inner space is different in that there is a whole group of Federal agencies which have a whole set of differing responsibilities, each of which demands that it have a certain amount of knowledge about the oceans.

One obstacle has been the Bureau of the Budget which apparently regards oceanography as another potential space program, with tax dollars flowing out and nothing coming in. Yet, the Government each year receives in revenue for lease and sale of offshore lands more than its annual investment in the oceanographic program. As Editor Niblock puts it:

"If the President decided tomorrow to launch a massive ocean program the industrial and technological capability would be there waiting. He would not, as was the case with the space program, need to spend enormous amounts of tax dollars to create a new industry. Hundreds of production projects could be launched immediately by firms that were started with this very objective in mind."

It may be hard to visualize an oceanographic exploit matching the drama and adventure of the lunar expeditions, but ocean exploration is not entirely colorless either. More important, however, is that the reasons for undertaking a major ocean exploration and exploitation effort can be understood by the average citizen. He knows that considerable food, minerals and fresh water already are being extracted from the sea and that an additional investment will produce a still larger ocean harvest.

Many say that the principal reason that oceanography has not received the attention or support it deserves from the White House is that it lacks a strong lobby. "But," says Niblock, "must an effort that is so clearly in the national interest fade away because it wasn't able to muster enough political pressure?"

As land resources are depleted by an ever-expanding world population the United States and other nations will depend increasingly on the sea. It is ironic that European countries and Japan are making much better use of the Stratton Commission's report than the United States.

Japanese government officials and industrialists are studying the document and adapting it to their own needs.

In Europe a six nation organization (EUROCEAN) has been established to speed the development of advanced marine technology and the acquisition of oceanic information.

Nobody today can say with certainty, says Niblock, how the sea will best serve future generations, but even the untutored realize that man's survival will depend in large part on his ability to understand and use the ocean properly. Whether NOAA receives the attention it deserves remains to be seen as the nation scrambles through the environmental seventies and the priorities sort out.

A NEW CROP IN THE FERTILE CRESCENT

Mr. JAVITS. Mr. President, in school textbooks, a great part of the Middle East was dubbed with its ancient name of "the Fertile Crescent." Once the prosperous heart of the ancient world, a new crop is now being sown in the area. According to Aviation Week & Space Technology—a highly regarded technical magazine and not a political journal—the Soviets and Arabs now have 1,230 fighter-bombers and bombers deployed in the Middle East, compared with approximately 330 Israel aircraft in these categories. And an additional 50 Mig-21J's under Soviet command are expected to be added this summer.

Added to this are some 2,400 Soviet T–54 and T–55 tanks, an almost equal number of 120-millimeter and 160-millimeter heavy mortars and at least eight new *Komar*- and *Osa*-class missile boats, all of which have been sent by the U.S.S.R. to its Arab clients.

This is quite a sowing of dragons' teeth.

The quantities of arms—representing some $3 billion in Soviet "investment"—belie the claim that these are for Arab defense against a voracious Israel, for the gap between Israeli and Arab strength in aircraft—running about four to one—is, in the words of Aviation Week, "substantially wider than it was at the start of the 6-day war on June 5, 1967, and infinitely greater than it was a week later, when both sides were at parity with fewer than 300 aircraft each." The Israelis, in addition, have only slightly less than a third of their strength in modern supersonic air-

craft while more than half of the combined Arab-Soviet forces are supersonic.

I ask unanimous consent that three articles from the distinguished nonpolitical technical journal, Aviation Week & Space Technology, on the danger-laden intensified Soviet military presence in the Middle East be included in the RECORD with my remarks. I ask that Senators read these articles, form their conclusions, and act with vigor and conscience on those conclusions in respect of the President's new policy on the Mideast which clearly depicts the grave danger of continuing war and confrontation.

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

SOVIETS SHIFTING MIDEAST BALANCE

(By Edward H. Kolcum)

TEL AVIV.—Soviet pilots defending Egypt's interior are flying a new interceptor with considerably better performance characteristics than the Dassault Mirage 3CJ, Israel's air superiority aircraft.

Russia has sent 150 pilots and 100 MIG–21J interceptors to Egypt to take over the country's air defense mission. The Russians are organized into 24 flight units and operate from at least four bases around Cairo and from Beni Suweif, 60 mi. to the south. The aircraft and pilots are part of a complete modern air defense package that includes 40–50 SA–3 Goa low-altitude surface-to-air missile batteries being installed and operated by the Russians.

The USSR in a combat role in Egypt has abruptly changed the Middle East strategic picture in these ways:

Israel is compelled to halt deep strikes into Egypt to avoid a direct confrontation with Russian-flown aircraft.

Egypt is relieved of protecting its interior and is concentrating its full air and ground strength on the Sinai territories Israel captured in the 1967 war. In the past two weeks, 250,000 Egyptian troops and substantial numbers of missile and artillery batteries have been massed in a 20-mi. band along the 109-mi. Suez front line. Another 100,000 troops are in reserve. Israel is able to commit fewer than 30,000 troops along this line.

Egyptian air force has started a series of bold probes into Sinai. Flights of two and three Sukhoi Su–7 strike fighters are regularly pounding Israeli Suez position with 500-lb. bombs. For the first time since the cease fire, Soviet-built Ilyushin Il–28 bombers have taken the offensive and are hitting Sinai targets. Israel claims to have shot down two Il–28s over the captured air base at El Arish.

Syria and Jordan are exploiting heavy Egyptian pressures along the Suez and have started air and ground probes in Israeli-occupied eastern borders.

Israel is unable to compete with this new Arab initiative. One Israeli said his country's losses "have been tremendous. They're slaughtering us."

At this time, Israel does not know the depth of the Russian commitment to Egypt—whether the Soviets have agreed only to establish defense enclaves around cities and strategic sites, if they will protect all of Egypt, or if they will extend their role and go on the offensive.

A senior Israeli diplomat said further developments depend largely on international reaction to the direct Russian involvement. He said Israel is convinced Russia does not want a full-scale war and has concluded that its present move into Egypt is the only way to protect its investment in the country.

The MiG–21J flown by the Soviets is a formidable weapon. It is the most advanced interceptor in this series and can fly supersonically at sea level. This version has four wing hard points, two for the Atoll infrared guided air-to-air missile. The other two normally are used for fuel tanks. The MiG–21J also carries an external 23-mm. gun in a centerline pod. Hard points also can be used for air-to-surface missiles in an offensive strike role.

Even if Israeli pilots were free to engage this aircraft, the Mirage has neither the speed nor maneuverability to close at low level.

The MiG–21J is replacing the MiG–21C flown by the Egyptians. Israel has captured a C model, and tests have found that even the MiG–21C is more maneuverable than either the Mirage or the McDonnell Douglas F–4E, when flown by Israelis. However, when flown by Arab pilots, the MiG–21C has been ineffective. It is not supersonic at sea level. Israel claims only two of its aircraft have been lost in dogfights with the Egyptians since the cease fire.

The F–4 currently is used only as a strike aircraft by Israel because it has not been needed for air superiority against the MiG–21C. If Israel unleashes its pilots to go on the offensive against Russian-flown MiG–21Js, it is likely that the F–4 will be given this mission.

U.S. and Israel say they have determined independently that Soviet pilots are flying air defense in Egypt. The first Israeli knowledge of this came Apr. 11 when a Mirage pilot who understands Russian heard the language being spoken between the pilots of two MiG–21 aircraft. He reported this to his base and was ordered not to engage. A second similar incident occurred Apr. 18.

During the following week, Israel cut back on its deep raids, and on Apr. 28 the government and defense ministry decided to stop strikes into the interior entirely. The rationale was that an Israeli-Russian confrontation could bring the U.S. into a combat role here and could set the stage for a general war.

A high Israeli foreign ministry official said an indication of an escalation in the Middle East war would be the Soviet admission that they have taken over Egypt's air defense, an admission they have not yet made. Despite the general knowledge of the Soviet intervention, "the Russians have been eloquently silent. We take this as a signal that they are not yet committing themselves. If the [missile] sites are hit, they will not be Russian targets, and the casualties will not be Russian," he said.

This same logic could apply in air engagements.

Russia has long been involved in training Egyptian pilots as well as in tactical planning. Only a few days before Israel discovered that Soviet involvement had escalated to combat missions, key Israeli defense and diplomatic spokesmen told AVIATION WEEK & SPACE TECHNOLOGY that the air strategy of deep and shallow strikes was so successful that Egypt could not mount an attack to regain the Sinai for another five years.

Russian pilots at the control of the MiG–21J come as a shock to Israeli planners. Some strategists, who correctly predicted the MiG–21J would be deployed in Egypt, forecast that Russian pilots would not be committed to combat until the Yakovlev Yak–28P Firebar all-weather fighter was assigned to the country.

Israeli officials believe the Russian motivation to sharply increase its involvement in Egypt is based on the following:

Politically, Egypt is the funnel for Soviet incursions into the Mediterranean basin, North Africa and the Middle East.

Militarily, Russia was becoming increasingly frustrated at the inability of the Egyptians to handle the hardware it is lavishing there. The Soviets are appalled that Israel aircraft flew unchallenged deep into the UAR.

Economically, Russia has pumped $3 billion in military equipment and aid programs into Egypt.

Thus, the Soviets' options were clear: either keep pouring complex equipment into Egypt which they knew the Egyptians could not operate, or take the gamble of a general war by operating the equipment themselves. A third option would be to stop aid to Egypt entirely. But this would have virtually assured an unbroken string of Israeli victories and a resultant toppling of the government of Egyptian President Nasser on which Russia depends.

Russia's huge military investment in Egypt has included 934 aircraft and 300 SA–2 Guideline missiles. Israel's deep strikes into Egypt have wrecked the Guideline missile system, which was deployed in 30 batteries.

Israeli air strategy is based fundamentally on keeping the cease fire lines quiet. Deep strikes at multiple targets, which were conducted from Jan. 7 until late April, forced Egypt to thin the concentration of missiles and artillery along the Suez. This strategy successfully eased the front line pressure until early this month, when Egypt was able to reconcentrate its fire there. The second part of the strategy, shallow strikes along the front lines, succeeded in keeping Arab forces along the borders pinned down and blocked any buildup in forces preparatory to an attempt to retake the lost territories.

Israel is now forced to reshape its air strategy. It is likely that Israel will accept the concept of enclaves defended by Russians and will not attempt to engage Soviet-flown MiGs or to destroy SA–3 sites. On the other hand, Israel is likely to continue to pound all targets in a band 15 mi. behind the Suez whether Egyptian or Russian pilots defend this airspace.

Whatever new strategy should evolve, Israel cannot continue to sustain the casualties it has received since May 1, when Egypt exploited the cessation of deep raids by reestablishing all its firepower along the Suez.

Until the deep raids were stopped, Israel provided daily demonstrations of its control of the Middle East airspace in spite of the heavy numerical aircraft superiority held by the Arabs. Israeli security has become extremely tight since the 1967 war, and air strength is one of its most closely guarded secrets. Best estimates are that the air force consists of 300 tactical strike, air superiority and trainer aircraft—about half of them Mirage 3s, F–4s and McDonnell Douglas A–4s. The three most militantly active Arab countries—Egypt, Iraq and Syria—had fleets totaling 1,116 aircraft earlier this year.

The numerical odds are now substantially higher, with the Russian-flown MiG–21Js and the prospect that Libya could join the militants when it has its fleet of 108 Dassault Mirages. Israeli planners believe the Egyptian and Libyan air forces will be merged, but one official said Egypt will be Israel's only major Arab adversary for many years.

"Under Israeli standards," a top air officer said, "it would take 4,000 people to maintain and fly 100 Mirages. Under Arab standards, it will take 12,000. Maybe in 20 years Libya will have an air force. Until then, Egypt will control it."

In the tactical environment before the Soviets arrived, Israel had the opportunity to shake down much of its new hardware in battle. The F–4 was first used in combat by the Israelis Jan. 7 in the strike against an SA–2 missile site at Dahashur, 7 mi. south of Helwan. This raid marked the opening of deep strikes into Egypt. In the four months the deep strikes were part of the air strategy, about 45 were flown against 30 different targets located more than 10 mi. behind the cease fire line along the Suez.

Israel consistently denies raids against any but military targets. Egypt has charged that civilan targets, including a school, have been hit.

The F–4 and A–4 were used as fighter bombers in deep raids with the Mirage 3 pro-

viding air cover. The Mirage has been responsible for knocking down most Arab aircraft in air battles. Both McDonnell Douglas aircraft can be equipped for dogfights, but neither has yet flown an air-superiority mission in the Middle East.

One observer said it was not necessary to use the American aircraft for any but strike missions as long as targets were defended by the MiG–21C. At $4.5 million each, the Phantom is too expensive to commit to a dogfight merely to see if it is better than the MiG–21 in the Middle East environment. He added that the high ratio of Arab losses to those of Israel proves the Mirage was in the proper role.

The Mirage was both an air-superiority fighter and fighter bomber in the six-day war. The combination of aircraft cost, range with weapons load and success evolved the Israeli formula for aircraft usage.

As now used, the A–4 can carry an 8,200-lb. weapons load and the F–4, 16,000 lb. This compares to about 4,000 lb. for the Mirage 3. The A–4 is equipped with two 20-mm. guns and can be fitted with two Sidewinders. The F–4E has the M61 Vulcan cannon capable of firing 6,000 rounds/min. If necessary to use it in an air-superiority role in Israel, it can be fitted with four Sparrow and four Sidewinder missiles.

In its air-superiority configuration, the Mirage 3 is equipped with two 30-mm. cannons, a Matra 530 missile and two Sidewinders.

Another American system in operation here is the Sikorsky CH–53 heavy-lift helicopter. In one of the boldest raids of the war, the CH–53 carried a commando team to Ras Arib last Dec. 26 where experts dismantled and captured a complete Russian-built S–12 Barlock search radar installation. The raid was in preparation for deep strikes into Egypt that began two weeks later. Used to detect low-flying aircraft, the radar was taken apart with blow torches, wrenches and wire cutters and loaded complete with consoles and antenna into the helicopters. It has since been reassembled and is in operation in Israel.

Four ranking Egyptian air force officers were reported executed because of the radar theft, indicating the depth of Egyptian frustration over its inability to stop Israeli raids into the country. This undoubtedly was an element that impelled Egypt to surrender its air defenses to Russia.

Israel has not admitted receiving the CH–53 but now has seven in service. The helicopter probably will be shown publicly for the first time at the independence day parade here May 11. F–4s currently are being delivered at the rate of two per month, and the order for 50 was to have been completed by the end of this year.

All 48 Skyhawks in the same order have been delivered.

Of the French aircraft in the inventory, only the Mirages and Dassault Mystere 4s are now used in combat. Some of the other aircraft—Super Mysteres and Dassault Ouragan fighter bombers and Sud Vautour light bombers—are reaching service lives of 15–20 years. Israeli Fouga Magister trainers can be converted for ground attack, but they were found to be highly vulnerable in the 1967 war and have not been used for this purpose since then.

Initially, Israeli strikes into Egypt were restricted to a 10-mi. strip behind Egyptian lines. When the air force established confidence in its new long-range F–4s and A–4s, the attack pattern was enlarged to hit "anything that affects the quiet of the front lines," a top air strategist said. "The main thing we accomplished [with the deep strikes] was proving to Nasser and his generals that they are not ready for another war with Israel. If we hadn't done what we did, Egypt would have attempted to cross the [Suez] canal and there would have been another war."

One of the interior Israeli targets is believed to have been the Egyptian missile manufacturing site at Heliopolis, located between Cairo and Alexandria.

The two medium-range missiles Egypt is known to be developing have not been fired since the 1967 war when they were ineffective. Egyptian-built ballistic missiles are the Al Zafir, a 200-mi. weapon with a 900-lb. warhead, and the Al Kahir, a 350-mi. missile with a 1,000-lb. warhead.

MIDDLE EAST AIRCRAFT CLAIMS (SINCE 1967 CEASE FIRE TO MAY 1)

Country	Type	Number shot down
CLAIMED BY ISRAEL		
Egypt	Mig–21	57
	Mig–17	13
	Su–7	18
	Il–28	2
	Unidentified	1
Syria	Mig–21	20
	Mig–17	4

	Number Israeli aircraft shot down	Number admitted by Israel [1]
CLAIMED BY ARABS [2]		
Egypt	158	10
Guerilla groups	69	0
Jordan	45	7
Iraq	27	0
Syria	19	2
Saudi Arabia	2	0
Lebanon	1	0

[1] Israel does not identify type of aircraft lost. Of its total losses, 2 came in air battles over Egypt. Ground fire losses were 8 over Egypt, 7 over Jordan and 2 over Syria.

[2] For the most part, Arabs do not list type shot down.

SOVIETS ACCELERATING MIDEAST DRIVE

(By Edward H. Kolcum)

GENEVA.—Soviet Union is accelerating its massive penetration into the Middle East and employing strategy designed to give it control of the Suez Canal, the Red Sea and ultimately the oil-rich, defenseless states that border the Persian Gulf.

At the same time, Russia has started to court Libya directly with the objective of torpedoing the French sale of 108 Dassault Mirages to that country. In this move, Russia has the strongest support of Egypt, Libya's eastern neighbor.

The feverish burst of Soviet activity is being viewed in Europe as a clever exploitation of the internal dissension in the U.S. triggered by President Nixon's controversial Cambodian campaign. While America, and much of the remainder of the western world, is engrossed in the U.S. domestic turmoil and events in Southeast Asia. Russia has been able to accelerate its Middle East timetable by:

Taking over the complete operation of three Egyptian military airfields and controlling three others (see map, p. 17).

Selling Libya 25 MiG–21 Mongol trainers.

Increasing the number of seasoned airmen and ground troops in Egypt to 15,000. Another 5,000 Soviet civilian technicians and advisers are in the UAR.

Delivering 80 low-level surface-to-air SA–3 Goa missile launchers and 160 Goa missiles to Egypt.

Constructing 15 T-shaper Goa concrete-shelter sites along the entire 109-mi. length of the Suez west bank. Sites are being built at standard 7.5-mi. intervals along the Suez narrows. This interval allows a range overlap for the SA–3s, providing a serious potential threat to low-level Israeli strike missions against massed Egyptian artillery emplacements along the west bank. The Goas probably will be manned by Russian military personnel.

Deploying four Tupolev Tu-16 strategic reconnaissance aircraft to Aswan, from which they will keep watch on the Red Sea.

Stationing a picket destroyer off the Sinai coast to furnish early warning data to Egypt of Israeli air activity.

Increasing air- and sea-lift between Russian and Egyptian ports to the point where deliveries now are at the heaviest pace since the end of the 1967 Arab-Israeli war.

A new intelligence assessment is that Russia will bring a total of 150 MiG–21J interceptors and 250–300 interceptor pilots into the UAR to defend the country's interior. Three airfields now completely under Soviet command and control are at Inchas, 30 mi. to the northwest of Cairo; Jiyanklis, 70 mi. to the northwest of Cairo, and Al Mansura, 70 mi. north of the UAR capital. Russian pilots also fly from Beni Suef. Cairo West and Aswan. They probably control these bases, but Egyptians also fly from them.

Soviet aircraft are protected by camouflaged shelters at all bases. There are about 450 hardened shelters in Egypt.

In addition to interior air defense of Egypt and reconnaissance of the Red Sea, Russia also conducts; routine reconnaissance of the U.S. 6th Fleet and the Mediterranean, using seven Tu–16s, with Egyptian markings but flown by Russian crews.

The 15,000 uniformed Russian airmen and troops in Egypt are responsible not only for operating and maintaining MiG–21J interceptors and Goa missiles, but also for manning and maintaining associated search radars and the artillery defending the missiles and radar. Russia has deployed two low-level radars to Egypt. They have the code names Low Blow and Flat Face. The 23-mm. antiaircraft artillery used for defense is radar controlled.

Russian flying elements in Egypt are organized into 12-aircraft units. Three such units, with 36 aircraft, form a fighter regiment. The entire Soviet interceptor fleet in Egypt goes on alert whenever Israeli aircraft penetrate UAR airspace.

New equipment delivered to Egypt in recent weeks also has included 16 additional Sukhoi Su–7 fighter bombers. This brings to 86 the number of these strike aircraft in Egyptian hands, and the new deliveries indicate that Egypt intends to increase its air pressure on the occupied Sinai.

As of late last week, Egypt's tactical combat air fleet also consisted of 55 MiG–21Cs and 44 MiG–21Ds. The UAR also has 73 tactical helicopters—mainly the Mil Mi–1, –4, –6 and –8.

In Russia's Middle East and North African penetrations, Egypt has been the strategic pivot point. There is a new fear that Egypt is convincing Libya to back out of its deal with France to buy Mirages. The rationale for this is that 25 Mongol trainers have been delivered to Egypt, which does not need them. They are apparently awaiting further shipment to Wheelus Air Base when the U.S. completes its withdrawal from this base June 30. Egypt and Libya will establish a master Arab air training center and air academy at Wheelus when the U.S. leaves.

French sources dispute the conclusion that Libya is about to default on the Mirage deal and say that first deliveries will be made on schedule next January and February. They point out that Libya already has lost $80 million by canceling the missile air defense package with Britain. It is estimated that Libya has paid at least $30 million down on the $400-million Mirage deal, which includes spares, training and maintenance as well as the 108 aircraft.

Oil looms ever larger as the major strategic and economic factor behind Russia's Middle East and North African push. Although the Persian Gulf states have largely been overlooked by intelligence experts as a Soviet goal, the departure of Britain from the five states there makes the area highly attractive at minimum risk.

Britain will begin its East-of-Suez withdrawal this summer and complete it by the end of next year. This will leave the wealthy states of Bahrain, Qatar, Kuwait, Muscat and Oman, and the Trucial states open to Soviet incursions.

These developments are evidence to some western observers that land-based military airpower is the real strategic key to the Soviet Middle East intervention. To Israeli planners, the speed at which Russia is moving means, the price Egypt is paying to the Soviets for military and economic aid is the control of the Suez Canal.

With Soviet control of the Suez, a direct confrontation between Russia and Israel will be unavoidable if Israel continues its basic policy of holding the Sinai territory it captured in the 1967 war. A critical aspect of Israeli strategy is to pin the enemy down along a 15-mi. strip behind the Suez cease-fire line to prevent an Arab buildup for retaking the Sinai.

At this point, Israel appears willing to allow the Soviets to defend enclaves in Egypt's interior, but believes its existence depends on maintaining the Sinai as a buffer zone. Doubtless, both sides will probe the other to determine how far they can go short of exploding the area into a general war.

SOVIET, ARAB AIRCRAFT STRENGTH IN MIDEAST TOPS ISRAEL'S 4 TO 1

Soviets and Arabs now have 1,230 fighter-bombers and bombers deployed in the Middle East, compared with approximately 330 Israeli aircraft in these categories. An additional 50 MiG–21Js under Soviet command are expected to be added this summer.

The present 900-aircraft gap between Arab and Israeli fighter-bombers and bombers is substantially wider than it was at the start of the Six-Day War on June 5, 1967, and infinitely greater than it was a week later, when both sides were at par with fewer than 300 aircraft each.

Massive Soviet resupply of Arab air forces, which began with the June, 1967, cease-fire has continued to this date.

Breakdown of the Arab-Soviet-Israeli air order of battle shows the Israelis with slightly less than one-third of their strength in supersonic aircraft while more than half of the combined Arab-Soviet forces are supersonic. By country, the fighter-bomber and bomber estimate is:

Soviet Union, 100 MiG–21Js, with plans to add 50 more by summer. All Soviet aircraft units are based in the United Arab Republic. Russia had no aircraft in the region at the close of the Six-Day War, but immediately established a permanent command presence in Egypt and thereafter began flying operational missions in Yemen against the Royalist forces.

United Arab Republic, 600 aircraft. Of these approximately 320 are MiG–21s and Sukhoi Su–7s. The rest are subsonic MiG–17s, Tupolev Tu–16s and Ilyushin Il–28s. At the close of the Six-Day War the UAR had 100 fighter-bombers and bombers.

Syrian Arab Republic, 260 aircraft of which 175 are MiG–21s and Su–7s and 85 are MiG–17s. Syria had 55 aircraft in these categories on June 11, 1967.

Iraq, 230 aircraft of which 150 are MiG–21s and Su–7s and 80 are MiG–17s and MiG–19s. The current figure represents an increase of more than 200 aircraft of this type in inventory since June 11, 1967.

Jordan, 40 aircraft, of which 22 are Hawker Hunters and 18 are Lockheed F–104s. Jordan's entire 29–aircraft air force was destroyed in the 1967 war, and F–104s were supplied on condition they not be used against Israel.

Israel, 330 aircraft of which approximately 60 are Dassault Mirage 3Js, 42 are McDonnell Douglas F–4s and 48 are McDonnell Douglas A–4s. Israel had approximately 280 aircraft at the end of the 1967 war.

In addition to the more than 900 aircraft they shipped to the Mideast, the Russians have sent approximately 2,400 T–54 and T–55 tanks and an equal number of guns, the majority of them 120–mm. and 160–mm. heavy mortars. Bulk of the tanks and guns—1,300 and 1,200, respectively—has been delivered to Egypt. Syria has received 650 tanks and 800 guns and Iraq 100 tanks and 300 guns since the Six-Day War.

The Russians have also shipped eight new Komar and Osa class missile boats to the Cairo government, one of which has already been sunk by the Israelis. The Israelis hope to counter these, and the Soviet Mediterranean fleet as well, with missile boats, six of which were spirited out of France last December. The new Israeli missile boats will be equipped with the Gabriel ship-to-ship missile.

MEMORIAL TO THE LATE MRS. CAPUS WAYNICK

Mr. JORDAN of North Carolina. Mr. President, it has been truly said that behind every great man stands a wonderful woman.

I know of no one who better exemplified that in her lifetime than Mrs. Elizabeth McKee Waynick, the late wife of former Ambassador Capus M. Waynick of High Point, N.C.

Before her death earlier this year, Elizabeth Waynick had for more than half a century been her husband's constant companion and partner in his distinguished career as a soldier, editor, diplomat, and Presidential confidant and finally as his State Adjutant General.

Recently I was privileged to read a memorial tribute to Mrs. Wynick, written by Mrs. Lettie E. Crouch, of Mayodan, N.C., who had known her since college days. It says more eloquently than I possibly could the kind of person she was and I wish to share those thought with the Senate.

I ask unanimous consent that the text of the memorial, which appeared in the Eden, N.C., News, be printed in the RECORD.

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

THE GOVERNOR THEN THE PRESIDENT CALLED HER

Ofttimes at the busy noon hour there floats from the old Moravian church tower sweet strains of sacred music wafting to God a human soul whose body will rest under the sod and moulder to clay till the trumpet shall sound for the great Resurrection Day.

The senior class sat in tiers of wooden chairs in a building back of Home Moravian church. One day Professor Starr paused in his philosophy lecture. The students laid their pencils on their open notebooks. The professor remained silent while the trombone band announced by the playing of a hymn that a member of Salem congregation had died.

Elizabeth sat in the tier just back of me, as I remember. Finally came the long dreamed-of day. The May morning sun shone down on the commencement processional along Salem Square. The happy graduates filed into Memorial Hall, the daisy chain on their proud shoulders. At the clap of the hand of the beloved Miss Lehmann, the daisy chain fell to the floor. The students stood to receive their diplomas, and go their individual ways to the four corners of America and even across the sea. Indeed, they stood expectant. But this commencement was made memorable because even the magna cum laude graduates were called second while the people in the crowded hall looked on in respectful wonder. A little lady wearing black taffeta and in a rolling chair was brought forward. She was an Academy girl and the widow of General Stonewall Jackson. Dr. Rondthaler presented her an honorary Salem college degree before her niece, Elizabeth, and eager classmates received their diplomas.

Miss Lehmann was strong on the character fundamentals that go into living a worthy life. Teaching English literature as a vehicle, she held up as the highest ideal of young womanhood that of becoming the wife and mother in the home.

Before World War I, Elizabeth became the bride of a volunteer who saw the muddy trenches of France and the poppies blooming in Flanders Field. Peace came, or rather the semblance of it. Elizabeth began keeping house while her husband edited an enterprising newspaper in a little city humming with factories making beds, tables, kitchen cabinets, school and lawn chairs.

The smoldering embers of World War II burst into flame. The Governor of North Carolina called the editor. Elizabeth went with her husband. His stern assignment was to help fight the deadly social disease that invades military camps and preys upon young men in the service of their country.

The ravages of World War II burdened many a country. Hunger and illiteracy were familiar to peoples rich in undeveloped natural resources. The President called. Elizabeth went with her husband to Washington. The Squire of Hyde Park outlined to the couple the Marshall Plan to help the farmers of Nicaragua, then Colombia.

Helpmate of an ambassador to a foreign country, Elizabeth gave her energy and talents to entertaining diplomats and being neighborly with farm hands. A world of honest hard work, prayer, and scientific know-how went into building good will for the United States while teaching people how to better themselves. On occasions of stress and strain Elizabeth's memory must have turned those days at peaceful Salem, and nights of verbal battle. Once there was "The War of Words" in Memorial Hall. Wake Forest debated Chapel Hill on the subject "He Who Would Pluck the Rose Must Endure the Throne." Because of duty performed with grace, dignity, and charm, Elizabeth returned home to be welcomed as a "splendid ambassadress."

The two lived for awhile in the shadow of the Empire State Building, then sought the quiet of their Guilford county farm home. But the would-be farmer was called upon to lead military guardians of the state before putting his hand to the plow. Even in retirement the war veteran was called to Charlotte and Durham to guide conference on the stormy racial issues distressing the land.

Elizabeth generously offered to go with a teacher and school children on a nature trail hike on her farm. But mortals are bound by the ceaseless march of time, the nature trail hike never came off.

It was March 2, 1970, year of our blessed Lord, the Death Angel called. Elizabeth Hunt McBee, my dear sweet, lovely classmate, answered.

Her war veteran husband, Capus Waynick, former adjutant general of North Carolina, lives on at their home, "Fieldstone Farm," near High Point.

"Sunset and evening star,
And one clear call for me!
And may there be no moaning of the bar,
When I put out to sea.
For tho' from out our borne of Time and Place,
The flood may bear me far,
I hope to see my Pilot face to face
When I have crossed the bar."

SANCTUARIES

Mr. DOLE. Mr. President, in an interesting editorial published in the Evening Star of July 14, Orr Kelly points out a fact that may be overlooked by many when reviewing the Cambodian operation. As he so accurately indicates, the real gain in the Cambodia effort is the fact that the enemy will not be able to "rebuild" the sanctuaries. Certainly, supplies can be replaced, but again, as he states, sanctuaries cannot be restored.

He also explodes the charge that Communists now control most of Cambodia.

In my opinion, this is an excellent analysis of the situation. I ask unanimous consent that the article be printed in the RECORD.

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

THE NEW SITUATION IN INDOCHINA

(By Orr Kelly)

The argument between President Nixon and his critics over the wisdom and the results of the Cambodian operation has largely obscured a basic—and probably permanent—change in the battlefield situation in Southeast Asia.

Neither the administration nor its critics yet know for sure whether the pace of the American withdrawal can be increased and the number of American casualties reduced as a result of the incursion into Cambodia. But other important military effects of the operation already are becoming obvious.

Attention has centered, for example, on the amount of supplies found in the sanctuary areas and on the time it will take the enemy to "rebuild the sanctuaries." The fact is, however, that the supplies may be replaced, at some considerable effort, but the sanctuaries cannot be restored.

Enemy supply and troop movements are now subject to air interdiction from the moment they leave North Vietnam until they are committed to battle in South Vietnam or Cambodia—if they get that far. The sea route through Sihanoukville already had been cut off, even before the change in governments.

On the other side, the southern portion of South Vietnam has very much the character of a military sanctuary. South Vietnamese forces can strike from the relative security of their own bases against enemy troop or supply concentrations across the border—and they can strike at times and places of their own choosing.

In this very basic sense, the roles of the contending forces have been reversed by the events of the last three months.

In Cambodia, the maps so much in prevalence on television these days would seem to indicate that the Communists now control a vast northeastern section of the country. They have taken a few key towns, such as Stung Treng, and the Cambodians have withdrawn soldiers and population from some others.

But the area the Communists "control" contains neither population nor rice. Its major value to the enemy forces is as a route toward South Vietnam and, as such, it is subject to both air interdiction by American planes and attack on the ground by South Vietnamese and Cambodian forces. In recent days, the South Vietnamese have made just such a deep penetration along Highway 19 and Cambodian officials here say their government intends to go back into those areas.

If the Communists should take Phnom Penh, as they probably could if they set their minds to it, and establish a government friendly to their cause, they still would not succeed in re-establishing their sanctuaries.

They would, instead, assume the burden of governing a country whose citizens considered them alien invaders and whose neighbors considered them hostle rather than neutral.

Even more important, they would be forced to defend fixed positions against a foe that could choose the time—and place of attack—again a sharp reversal of traditional roles in Southeast Asia.

Given this alternative, the Communists might well decide their cause would be better served if the technically neutral Lon Nol government should survive, rather than be replaced by one more friendly to their cause.

This would leave most of Cambodia's 6.7 million people, the majority of South Vietnam's 17 million people, and most of the rice lands of Indochina under control of governments that do not want the Communists to prevail.

In these circumstances, the problems of both South Vietnam and Cambodia, in the near future, are likely to be less those of a direct military confrontation than a series of political crises brought on by a steadily worsening economic situation.

CULEBRA: TARGET OF THE MILITARY

Mr. FULBRIGHT. Mr. President, in recent weeks Culebra, a small Caribbean island, has been in the news because it is being used as a target by the U.S. military, and many of its residents do not like it.

Culebra is part of the Commonwealth of Puerto Rico. Its 726 inhabitants are U.S. citizens. Culebra's sons have fought in this country's wars and 12 of them are veterans of Vietnam. The Navy, which owns about one-third of the island and has used it for more than 30 years as a training target, sought to acquire the entire island and resettled the civilian population elsewhere. Because this was not, as the Navy admitted, acceptable to the Culebrans, the Navy had indicated its intention to acquire, by eminent domain if necessary, a leasehold interest and, eventually, purchase of an additional one-third of Culebra. The Navy wants to expand training operations and to establish a Walleye missile target on the immediately adjacent small island of Culebrita.

An official Navy statement said:

Although the plan to purchase the entire island was discarded, the requirement for additional targets and their necessary safety zones was still pertinent.

Early this year, during the Atlantic fleet's "Operation Springboard" when ships and planes from 20 allied nations practiced their marksmanship with live bombs and rockets, feelings on Culebra became particularly intense. On March 15, the mayor of the Island of Culebra—a municipality of the Commonwealth of Puerto Rico—said:

The intensity, the frequency, and the type of maneuvers carried out by the Navy of the United States on and around our island in recent years, and especially this year, have created a situation that passes the limits of our human tolerance.

The subject was given increasing attention in the Puerto Rican press and began to receive notice in major publications across the country. An article in the Washington Post on March 28, entitled "Batered Island Is at War With Navy," reported that a U.S. court of appeals had upheld a decision by a U.S. district court recognizing the Navy's legal right to bombard, strafe, and mine the island and the sea around it. The article also reported:

Up to 1968 the Navy limited its shelling to Northwest Point, a peninsula about 2½ miles from the main town, Dewey. Now, with operations increasing, more shells stray off target.

Last January, (Mayor) Feliciano says, one shell fell about 200 yards from the city hall. Another narrowly missed the ferry that plies once a day between Dewey and the town of Fajardo on Puerto Rico. Three bombs dropped by a Navy plane last month in the bay near Dewey sprouted a mushroom cloud of water hundreds of feet in the air, claims Feliciano.

"We fear for our lives," he said.

In its April 10 issue, Life magazine published an article entitled "The Navy vs. Culebra." I quote one paragraph:

Not just American ships fire on the island. The U.S. has extended punching bag privileges to 20 allied nations. Although no one has been killed during actual shelling, recent near misses have become more and more disturbing to Culebrans. Not long ago the Navy inadvertently threw a shell into the fresh-water supply of the island's one remaining town, Dewey. A bombing exercise one night last month became so intense and unbearable that islanders left their houses and huddled together in the streets, praying. "The Americans," said one small child, "are killing us."

I think the Life article summarizes an important aspect of the controversy:

Something far less tangible than too much bombing finally goaded the Culebrans to direct action. It is a matter of arrogance. With all the detachment of a 19th Century colonial power, the Navy and the rest of the U.S. often seem to Culebrans to act as if there were no people at all on the island. Congressmen enjoying winter junkets to Roosevelt Roads seldom visit Culebra. Perversely, the Navy has refused to turn over two acres of unused land so that the people can build a hospital for which they already have the money. Similarly, it has refused to cede land for a ball park. And it staunchly defends its ownership of one half the island's burial grounds.

On May 12, I received a letter from Mr. Frank Sanders, Assistant Secretary of the Navy, in response to an inquiry I made about Culebra. Mr. President, I ask unanimous consent that Mr. Sanders' letter be printed at this point in the RECORD.

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

DEPARTMENT OF THE NAVY,
Washington, D.C., May 12, 1970.

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: Thank you for your letter of April 29, 1970 concerning the Island of Culebra.

The Island of Culebra is an integral part of the Atlantic Fleet Weapons Range Complex and is an essential target area for training crews of both ships and aircraft of the U.S. Atlantic Fleet. The Navy owns approximately 36% of the land on Culebra. Navy ships have utilized the Navy-owned northwest peninsula since 1936. That is the only area on Culebra that is used for firing. The other firing targets are located on cays or small islands near Culebra. All of these firing areas are considerably farther away from

the town of Dewey than the northwest peninsula.

As recently as a year ago, the Navy initiated exhaustive studies of alternative areas to conduct this type of training. All studies concluded that the Puerto Rico operating area, centered at the Navy's Roosevelt Roads base, was by far the most suitable site for a great variety of reasons. These include comparative freedom from ocean shipping and air traffic, deep water, proper mix of topography for training exercises, weather that permits effective year-round operations, and three locations in close proximity (Roosevelt Roads, Vieques and Culebra) that permit easy triangulation for training assessment. It is presently the only target area available to the U.S. Atlantic Fleet where combined air, sea and amphibious training operations can be conducted. For this reason, the Navy has over the years invested a large amount of money to develop the weapons range complex.

The Navy is quite mindful to the well-being of the residents of Culebra. There are no plans for the use of the Atlantic Fleet Weapons Range that will require removal of the inhabitants of Culebra. The plan is to continue to conduct training with minimum inconvenience to the people. The Navy and the Culebrans have lived together for over 30 years and there is no reason why they cannot continue to live together. We are particularly proud that no civilian injuries have resulted from the use of the Culebran target complex in that time and we are most anxious that this safety record continue. The people are advised in advance of our training schedules in order to minimize inconvenience to them. Every effort is taken to avoid endangering the residents and, of course, this cannot be done without restricting their movement through target areas.

Enclosed is the statement RADM A. R. Matter, Commander Caribbean Sea Frontier, made to the news media in San Juan, Puerto Rico on April 24, 1970, which, we believe, is self-explanatory. The Navy's course of action outlined by RADM Matter will provide greater opportunity for the Culebrans to develop their economy and municipality and still provide for some of the vital training needed for the Navy.

The Governor of Puerto Rico has stated publicly that his government is pleased with the Navy plan which will permit essential training, although in a restricted manner, for the national defense, which is also their defense, without hurting the rights of the residents of Culebra for their progress and well being.

The Resident Commissioner of Puerto Rico, Mr. Jorge L. Cordova-Diaz, is fully aware of this situation and has expressed publicly his approval of the Navy plan. Perhaps you would be interested in contacting him.

Sincerely yours,

FRANK SANDERS,
Assistant Secretary of the Navy (Installations and Logistics).

Mr. FULBRIGHT. Mr. President, in the meantime the Washington law firm of Covington and Burling was authorized by Mayor Feliciano to serve as legal representative and counsel for the municipality of Culebra. The firm undertook this representation on a pro bono publico basis without fee.

Despite Mr. Sanders' indications that everything was working out satisfactorily, investigations by two Covington and Burling lawyers and several journalists from the Armed Forces Journal turned up a different picture.

Mr. Thomas Jones, Jr., one of the lawyers, conducted a survey to determine opinion on the relationship between the U.S. Navy and Culebra. In his report he states:

I attempted in every manner I could conceive of to guarantee that the results of the survey would reflect an accurate and impartial impression of the attitudes of the people of Culebra. Indeed, because the results that I was obtaining showed virtually unanimous opposition to the Navy proposal, I searched out four of the Navy's five, six, or seven employees (the number of Navy employees seems to vary between five and seven and even Admiral Ward was unable to give us the precise number) in order to see whether there was some hidden reservoir of support of the Navy that I had been unable to uncover myself. However, even the Navy employees admitted to me that there was virtually no one in Culebra who supported or would benefit from the Navy plan. Thus, I am personally convinced that if there is any error in the results of my survey it is an error which would tend to exaggerate the support for the Navy proposal rather than the opposition to it.

Ninety-five per cent of the people I spoke with were opposed to the Navy plan, and approximately seventy-five per cent favor a complete withdrawal of the Navy from the Island of Culebra. . .

The Armed Forces Journal, which calls itself "The Defense Weekly" and has been "Spokesman for the services since 1863," became interested in Culebra and decided to make a thorough check into the complaints of the Culebrans.

An editor's note accompanying the Journal's first article on the subject in the May 23 issue, seems to me to be rather convincing evidence that the Culebrans have a strong case. The Journal staff began with a strong pro-Navy bias and wound up siding with the Culebrans.

The editors of the Journal wrote:

The Journal sometimes gets stories that we'd rather not print. In many ways, this is one of them . . . Our hearts are with the United States Navy, but not about Culebra. Not now. Our biases, our opinions have shifted from the Navy's side to the Culebrans' as we tracked down and checked out the story on these pages. In these cases, we think our facts, our research, our candor will check out better than the Navy's . . . .

I want to refer to a few specific paragraphs in the Journal article:

The Navy is sincere, but readers who talk with the Culebrans would probably find them even more so. The Culebran problem isn't targets: it's people—patriotic, warm, gracious, honest, candid Americans who aren't accustomed to dealing with bureaucratic subtleties. They are not at war with the Navy. The only enemy the Culebrans have is indifference. But when you're sitting on the bull's-eye, it doesn't matter whether its friend or foe who pulls the trigger.

The Culebrans earn their living from the land, and from the sea. They have only limited access to both, and the Navy proposes to make the limits even tighter. There is no school on the island; there is, as yet, no hospital. For both, the Culebrans must go to the Puerto Rican mainland. Denial of that access becomes a major infringement on their very lives.

Culebra was also the subject of a recent article in the Wall Street Journal. In its June 10 edition the Journal reported that the Navy "often appears to treat the people in a high-handed manner," referring to claims to cover the losses of fishermen and "the Navy's apparent inability to observe the firing schedule it tacks up at the post office and at the airstrip."

According to the Journal report:

As recently as May 22 the Navy pulled what could have been a ghastly blunder. No gunfire was scheduled that day, and no warning flag was hoisted from the Navy observation post, so six children went swimming in Flamingo Bay. But at 3:30 p.m. mortar shells started falling, close not only to the swimmers but to a yacht occupied by Luis Ferre, governor of Puerto Rico. The governor had just visited Culebra to find out why the Culebrans were clamoring—and to receive Navy assurances that unscheduled firings rarely occur.

Finally, I would like to quote from a statement by Mr. Richard D. Copaken, one of the lawyers representing Culebra:

We remain unconvinced that the Navy has looked hard enough for an acceptable alternative to Culebra. The Navy had assumed until very recently that it would be able to take over the entire island of Culebra. Apparently most of its studies of alternatives began from this unspoken premise . . . Leaving aside for the moment the political and moral costs inherent in conducting training operations with live ordinance on a small inhabited island such as Culebra, strictly from the standpoint of achieving important Navy training objectives it would be desirable for the Navy to take a real look at alternatives . . .

When the human misery and deprivation that has resulted from the present level of Navy training operations is taken into account the conclusion becomes inescapable—the Navy must cease its use of Culebra and its neighboring cays as targets. In a recent press conference in San Juan, Admiral Ward attempted to delineate the issue posed as one involving a conflict between national and local interests. This, it seems to me, is not sufficiently comprehensive. There is a significant national interest in avoiding grave risk of damage to our reputation throughout the world as a nation that attaches great significance to the sanctity of life, that has committed itself to assuring every citizen the right of life, liberty and the pursuit of happiness, that treats every man as an equal under the law regardless of whether he is black or white and notwithstanding the fact that his native tongue may be Spanish rather than English.

Mr. President, I would hope that the Navy will be able to shift its training operations away from Culebra. I know that a number of other Senators and Representatives are looking into this matter and some reasonable alternatives have been suggested.

I believe that all parties would benefit if the island of Culebra was no longer used as a target.

Mr. President, I ask unanimous consent that several articles on Culebra be printed in the RECORD. They include articles from the San Juan Star of June 5, the Washington Star of June 14, and the Armed Forces Journal of June 27, which deals with alternative proposals for the Navy. I should point out, as the Washington Star article makes clear, that, contrary to Mr. Sanders' letter, Mr. Jorge L. Córdova, the Resident Commissioner of Puerto Rico, no longer approves of the Navy plan.

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

[From the San Juan Star, June 5, 1970]

MORTAR FIRING ON CULEBRA CALLED "A NAVY MISTAKE"

(By Robert Friedman)

The recent mortar firing near a Culebra beach where children were playing was a Navy mistake, Rear Adm. Norwell G. Ward, Caribbean Sea Frontier commander, acknowledged Thursday.

While Ward claimed that witnesses have reported the firing did not endanger the lives of the several children playing on the beach, he added: "It shouldn't have happened."

The incident, which occurred May 22, has escalated opposition to the Navy's use of Culebra for target practice. The mortar rounds were fired by the Navy near Flamingo Beach.

Ward also disclosed, in reply to a question, that the Navy is using live bombs in the exercises taking place along the outlying cays. He said, however, that live bombs are not used on the cays closest to Culebra, including Ladrone Cay, Culebritas and Agua Cay.

Ward, who spoke Thursday to the Overseas Press Club at the San Jeronimo Hilton, also acknowledged that prior warnings of the mortar firing were not posted. He added that "the report of the inspector general will tell us very definitely what will be done" to avoid such future incidents.

Rear Adm. M. U. Moore, the Atlantic Fleet's inspector general, is currently in Puerto Rico to gather information about the Culebra situation.

Ward said the fate of the Navy's role on Culebra would ultimately be decided by Congress. "We in the military are servants of our Congress," he said. He added that if Congress decides local interests overrode those of the Navy, then, "The Navy will be forced to look for other solutions to its training requirements."

Ward noted that there had previously been an "apparent" breakdown of dialogue between "local interests" and the Navy. He said, "I think I'm safe in saying that is in the past," then added, as far as the Navy was concerned, "Local interests will be heard."

Ward also pledged a step up in the Navy's community relations program on the island. He related how the Navy recently made available surplus incubators there.

However, despite the conciliatory tones, the admiral gave no indication that the Navy would comply with local demands that it abandon the island. He stressed the highly desirable location of the island for the gunnery exercises, and the economics involved.

Ward said that "well over $300 million" had been "invested" in the Atlantic Fleet Weapons Range. However, Culebra, itself, he qualified, represents only a small percentage of that total investment.

[From the Washington Star, July 14, 1970]

NAVY REPLIES TO ISLANDERS: CULEBRANS BATTLE A "GHOST"

(By David Braaten)

"The Navy officials were important and they did not speak Spanish."—Justino Quinone, Culebra storekeeper.

"The Navy is a ghost. It is in the water, in the air, in the land, but we cannot speak with it." Clara Feliziano, 74-year-old Culebran.

"To some it may appear that we are showing less than adequate concern for the Culebran people . . . Their safety is the Navy's paramount concern consistent with our historical principle of the rights of the individual."—Joseph A. Grimes, Jr., assistant to the secretary of the Navy.

In crisp, beribboned summer whites and conservative business suits, a dozen Navy officials appeared before a House Armed Services subcommittee last week to explain their plans for the Caribbean island of Culebra, the Navy's only inhabited gunnery target.

The Navy witnesses were in sharp contrast to Culebrans (from among the island's population of 725) who had appeared to testify the day before. Dressed in their Sunday go-to-Washington best (which in one case included World War II vintage heavy wool OD trousers), the islanders read their statements haltingly from English translations prepared from the Spanish originals they had written themselves. Other statements were read to the committee by a D.C. lawyer who collected them in Culebra.

Led by Rear Adm. M. U. Moore, inspector general of the Atlantic Fleet, and Grimes, a special civilian assistant to the secretary of the Navy, the officials testified that Culebra and its surrounding islets are uniquely suited to the Navy's target practice needs.

One-third of Culebra's 11 square miles is already owned by the Navy, and the Navy is asking Congress for authority to buy another third of the island so that operations can be expanded to include missile firings as well as bombing, strafing and shelling. The Culebrans, numbed by 35 years of the Navy's explosive activities, want the Navy to get off their island altogether.

"They now have us, the fishermen, corraled like animals. It is cruelty,, what they are doing to us."—Juan Camillo Rosano, Culebran fisherman.

"The day I was there," Adm. Moore recalled, "there was a 2½-hour delay (in the firing) because we had to use a destroyer to chase off a fishing boat." Culebran fishermen are not allowed to use the waters around the island on firing days, which often take place every day of the week.

The admiral's visit was in response to an uproar touched off May 22 when some mortar shells from a Navy observation-post on Culebra dropped near a boat offshore in which the governor of Puerto Rico was taking a nap.

Moore acknowledged that his fact-finding trip was not exactly a success. He does not speak Spanish, and anyway, he said, about the only people he saw were newsmen and pickets waving "Navy Go Home" signs.

He spoke knowledgeably of the Navy's training "scenario," the "footprint" (margin of error) of various weapons, and the "inacceptable degradation" of training and preparedness that would result if the Navy were deprived of Culebra. He had a wealth of material at hand to shoot down suggested alternative target areas. Ironically, his arguments included some of the very objections the Culebrans have raised at the Navy's use of their island.

"It is like trying to teach school in a battlefield. The continuous flow of air traffic at low altitudes over the school, helicopters, jets and propeller planes, makes an infernal noise, creating a state of tension and anxiety and rendering it virtually impossible to hold the attention of the students. The school buildings tremble with every explosion. You can see fear in the children's eyes. They sit at school in a peculiar way as if ready to run at a moment's notice. During periods of heavy night bombing, students fall asleep in class . . . The fishermen's children are kept wondering if their fathers will ever come back in one piece because of the heavy bombing out there."—Carmelo Feliciano, school teacher.

"The Culebra issue," said Grimes, the Pentagon assistant, "has been reported primarily on an emotional level—perhaps understandably so—because for many people it is an emotional issue."

Grimes articulated the Navy's surprise at the recent outpouring of Culebran hostility. He said, "On a day-to-day basis, local Navy personnel and the citizens of Culebra lived in apparent harmony for many years. . . . Recent events have made us acutely aware that we must communicate better."

"Navy personnel are very rough on private landowners. The landowners are afraid of Navy officers because they threaten to take them to court if they do not allow them to use their land."—Claro Feliciano, farm manager.

Engineman 1c Dennis S. Hooper, the ranking Navy representative on the island when the mortar incident occurred, was flown up to tell about it Thursday. He was transferred to mainland Puerto Rico immediately after the incident, and a commissioned officer is now on duty 24 hours a day on Culebra.

Hooper explained that he fired six smoke rounds on May 22 to test the concrete pads the mortars rest on. The mortars are used to mark targets during fleet firing exercises.

He didn't put up the customary red warning flag, Hooper said, because he had been given telephoned permission to fire by a lieutenant on the mainland. As it turned out, in addition to the governor's boat offshore, there were some children swimming on the beach when the firing took place. They escaped unhurt but frightened.

Asked if he thought he had followed proper procedure in not raising a warning flag or looking for swimmers immediately before firing, Hooper replied: "Sir, I ask an officer a question and get an answer and I don't take it no further."

Navy witnesses said Hooper had indeed been within the regulations, which did not at that time require a red flag to be displayed before firing rounds to test the newly poured concrete pads. The regulations have since been changed to include such contingencies.

Jorge L. Cordova, Puerto Rico's non-voting representative in Congress, said he does not hold Hooper responsible, but added: "I think it is illuminating of the attitude of the (Navy) establishment toward the Culebrans that the man in charge on Culebra is not impressed with the necessity of raising a red flag."

Cordova wanted to know if Hooper, who does not speak Spanish, had any friends among the Culebra residents. Hooper mentioned a contractor whose name he could not recall, and listed the last names of two policemen and the proprietor of a bar.

It is the same bar in which Hooper was having a coke, he testified, on the day of another disputed incident.

That involved a five-inch shell that Culebrans say landed, without exploding, in a residential area. Hooper was driving by in a Navy truck, on his way to town to get "some chalk for cue sticks," and the Culebrans got him to take the shell away in the truck.

While he was having the coke downtown, the shell disappeared from his truck, possibly taken by Culebrans who wanted it as evidence in case the Navy denied the incident. It is Hooper's and the Navy's view that the dud was found in the residential area only because it was hauled there in soil taken from a target area elsewhere on the island.

"The constant bombing affects our personal lives in many terrible ways. Walls are cracked, building foundations are weakened, and there is no possible tranquility or peace on the island, day or night, because of the bombing. (If the Navy takes two-thirds of the island) the people of Culebra will lose all they have. A community of American citizens living in their country in time of peace will be treated like enemies in time of war."—Anastasis Soto, fisherman.

Subcommittee chairman Charles E. Bennett, D-Fla., said the matter will be referred to the White House before the committee makes a decision on the Navy's request for more of Culebra.

"Assuming that we find for the Navy," Bennett said, "we will certainly require very deep scrutiny into what we can do to make life more livable for the Culebrans."

[From the Armed Forces Journal, June 27, 1970]

CULEBRA: NO ISLAND ALTERNATIVE? HONOLULU FIRM OFFERS TO BID ON BUILDING ONE

(By Bruce Cossaboom)

The Culebran Cauldron cooled down to a simmer this week, but at least four new de-

velopments bubbled up in the case of Culebra vs. the U.S. Navy:

(1) A large construction firm which enlarged Pacific islands for the Navy during WWII told The Journal it would be glad to undertake a feasibility study of building an artificial island alternative to Culebra as part of the Atlantic Fleet Weapons Range—if Congress asks it to.

(2) Branded "absolutely unfounded" by Jorge L. Cordova, Puerto Rican Resident Commissioner in Washington—and dismissed by the Navy with a "no comment"—was a *San Juan Star* story citing unattributed "Washington reports" that the Navy and the Puerto Rican government have already arrived at a settlement of the Culebra dispute behind closed doors.

(3) House Armed Services Real Estate Subcommittee Chairman Charles E. Bennett (D-Fla) and at least three other members of his seven-man panel were preparing, at Journal presstime, to fly to Culebra for an on-the-spot inspection tour. (Bennett's Subcommittee is currently considering the Navy's acquisition request for additional acreage on Culebra to enlarge existing safety zones for planned expansion of firing range activities.)

(4) A Naval Research official who had been quoted by Richard Copaken (Washington attorney for the municipality of Culebra) during the Subcommittee hearings as saying that floating platforms—another suggested target alternative—are "clearly within the state of the art," now tells The Journal he was quoted somewhat out of context and that "the concept of large floating stable platforms [needed for the Navy's target practice] is fraught with technological problems." This official projected deployment of such a device as falling within the 1985–90 time frame.

ISLAND-BUILDER CONFIDENT

Dillingham Land Corporation of Honolulu (together with Ocean Industries, one of its subsidiaries), a large and diversified land builder and developer, says it feels it could build an island the Navy could use as a target range near Roosevelt Roads if the proper conditions and requirements were met.

"It appears that there are some areas near Culebra where we could do it," company officials told The Journal, "but it would need intensive study. We'd be willing to do a detailed study if the Committee wanted us to," they said, adding that the company would provide its brochure for the Subcommittee's consideration in evaluating possible alternatives.

Dullignham officials said they would be glad to meet with the Navy, take soundings in the Culebra area, try to find suitable shallow banks or rock outcroppings that could be used as a base, and provide a quick answer at reasonable cost.

"We have built islands before," firm officials observed, citing a 75-acre island which the company built (at a cost of $4-million) in the Bahamas to support facilities for the mining of calcium carbonate.

From 1939 to 1946 the company sponsored a partnership of builders which constructed all naval military installations in the Pacific. "For this project," officials noted, "we took many islands that were too small and made them larger, such as Canton Island."

The firm was awarded the Navy "E" for excellence. It claims to have more "island-building experience" than anyone else, with operations in both the Pacific and the Atlantic.

More recently (1956–58) the company rebuilt Midway Island to lengthen the airstrip there, and built a port/airfield facility at Sattahip, Thailand.

Other company officials conceded, however, that the firm has had no mountain-building experience—and the Navy insists that any man-made targets must incorporate contours and relief similar to the features found on Culebra and other real islands.

Copaken introduced the subject of artificial islands in response to the Navy's repeated assertions that there are no natural islands which it regards as viable alternatives.

Navy officials told the House Armed Services Real Estate Subcommittee that, after studying a list of a score or more possible sites, they concluded that there is no alternative to Culebra.

Navy officials told The Journal that Atlantic alternatives from Newfoundland to the Gulf Coast and the Canal Zone had been checked out and "every logical island in the Caribbean examined," but not one of them fits Admiral Moore's six ground rules as does Culebra. ("This area is unique," Admiral Moore said of the Roosevelt Roads/Vieques/Culebra complex. "It fits our desires precisely.")

But Representative Charles E. Bennett (D-Fla.), Subcommittee Chairman, apparently regarded unsupported conclusions as inadequate testimony, and asked the Navy to provide the Committee with the detailed documentation of its "no other alternatives" position.

After considerable questioning on the subject, Bennett and other Subcommittee members indicated they felt the Navy should go back and study some more.

Bennett gave the Navy its choice between detailing the strong points and weak points of other areas at another adjourned meeting (which Bennett says now is not likely to be held) or to present them administratively with members of the staff. Navy officials at CINCLANTFLT Headquarters said they could not provide the Journal with this information before it is given to Congress.

Navy officials told the Journal that if the House panel rejects their request for approval of the Acquisition Report, they have, in effect, no contingency plan ready to go into operation.

"If the Navy directed you to use another target instead of Culebra," the Journal asked at CINCLANTFLT, "which would you use? What would be the next four or five best places?"

In the event of an adverse ruling, officials said, the Navy would have to "sit down and do some homework, some serious consideration." Alternatives?—"As far as we're concerned, there are none." Loss of Culebra, officials said, "would have a significant impact on the training of the Atlantic Fleet."

(Officials also told the Journal the Navy opposes any rearrangement of the target complex, any shift in target utilization, any greater increase in the density of operations in target complexes other than Culebra because this would "increase the safety hazard to Navy personnel." As a matter of fact, the casualty ratio of Navymen to Culebrans killed in accidents is ten to one right now.)

Navy officials also said that the idea of floating platforms as targets, although under study by Navy R&D, has not been keyed in specifically in conjunction with Culebra.

SOME OTHER POSSIBILITIES

Here are some of the other Caribbean island possibilities, as discussed during the hearings and in conversations between the Journal and Navy officials, with the Navy's assessment as to why they are unsuitable as alternatives.

North Cay—A large island off the Northwest coast of Culebra. It would be "unsafe for a bombing target," the Navy told the Journal, because its necessary safety zone would extend closer to Dewey than the zone radiating from the present targets on Culebrita Island.

Mona Island—A virtually uninhabited island, owned by Puerto Rico, on the other side of the mainland from Roosevelt Roads. It would take a period of years, the Navy said, to set up the necessary surveillance radar installed as on the complex. Its location in the international shipping lanes of Mona Passage would raise questions of international law.

Vieques—This island "does not afford two vantage points from which to determine the fall of a shot precisely."

The Navy and Marine Corps already use the island's eastern 2¾ miles for naval gunfire support/aerial close support targets, the next three miles inland for a Marine landing maneuver area, and Vieques' western end for an inert naval ammo depot. The possibility of moving the depot to Culebra, the Marine maneuver area to the western end of Vieques, and the new targets and expanded safety zones for Walleye, to the freed area on the east coast would be unworkable, the Navy told The Journal. The reason: the beaches to which it is proposed to move the Marine maneuver area are not suitable for amphibious training, the Marines say.

Desecheo—An island south of Mona, "worse" than Mona in the drawbacks it presents as an alternative, the Navy said.

East Palominos—This island doesn't have enough land mass, the Navy says, lacks suitable air space, and is in a shipping area.

Luis Pena Cay—This island off the coast of Culebra is already used as a rake station and is too close to Dewey.

The Navy stressed that any alternative would "have to be out of the shipping lanes . . . have to have the proper population density . . . have to be out of air travel lanes."

To move to some other island complex altogether would necessitate the transplantation of the Roosevelt Roads base. Bennett told Navy spokesmen he felt they should "come back and give us intensive research about that general pattern where you could still use Roosevelt Roads."

But if some are still interested in finding an alternate target to replace Culebra in the Atlantic Fleet Weapons Range, others claim that a behind-the-scenes alternative may already have been arrived at.

The *San Juan Star* cites anonymous "Washington reports" to give currency to rumors that the government of Puerto Rico (specifically Governor Luis Ferre) has made an "agreement" or a "deal" with President Nixon, SecNav John Chafee, and Henry Kissinger, the President's adviser on national security, whereby the Navy would make some concessions to the Culebrans, but would continue its operations on the island essentially unaltered.

Commissioner Cordova emphatically denied this report and said that Governor Ferre—though known to be a good friend of the President, socially and politically, and said to have been a heavy campaign contributor in the 1960 election—has not yet talked to the President personally about the Culebran issue.

But this non-visit is actually a sore point for some Culebrans, who insist that Ferre should draw on his political assets in an attempt to exert leverage on the Commander-In-Chief.

Puerto Rican Senate President Rafael Hernandez Colon—a member of the opposing political party—said at a news conference after his return from Washington (as reported in the same *Star* story) that the solution of the Culebra-Navy controversy depends upon the pressures Ferre exerts on the White House on behalf of the island.

THE KEY TO THE ISSUE?

Key to Culebra issue? Revived Navy plans to acquire all of Culebra and resettle islanders elsewhere were changed late in April when Commonwealth officials pointed out that Puerto Rico's constitution provides that no municipality can be dissolved unless its citizens vote for dissolution in a referendum.

Apparently the Navy wanted all of Culebra

in order to insure safety for use of Culebrita Island as the target for new guided missiles like Walleye, Standard ARM, Condor, Bullpup A and B, and Bulldog—plus the homing glide bomb, Hobo. These require much larger safety "footprints" than the 1½-mile-radius safety zone for inert bombs and machineguns, now used on Culebrita. (Live or explosive bombs *are* dropped on nearby targets at Shark Rock and Palada Cay, however. These targets were "leased" by the Navy from the Commonwealth of Puerto Rico in 1964 and 1965 for $1 a year each, without any prior consultation with the Culebrans. For these and nine other targets totalling 60 acres, Navy pays a total of $11 a year.)

Revised Navy plan calls for getting new 1,600-acre easement on Culebra's northeast peninsula to provide a 2½-mile safety zone for what Navy calls "the precision missile, Walleye"—to be fired against Culebra (without explosive warhead), along with Hobo glide bombs.

A SecNav official told the Journal on 15 May that the Navy also wanted this bigger safety zone for misiles like "Standard ARM, Bullpup A and B, Bulldog, Shrike, and Condor" to be fired against Culebrita. *But the same official now denies the statement.*

Navy officials tell the Joural that Standard ARM's safety footprint is bigger than Walleye's, while those of Condor and the Hobo glide bomb "are yet undetermined." Condor's, by various reports, is estimated to be much larger than Walleye's.

Thus, the Navy apparently will need some other target—not on the Culebra target range—for Standard ARM, Condor, and possibly other missiles whose safety footprints are too large for safe firing even on the expanded Culebran/Culebritan range.

This hypothesis begs the question: "Why not also fire Walleye and Hobo against this other target, wherever it is (or will be), obviating the need for a bigger safety zone around Culebrita, and thus leave the eastern tip of Culebra at least no worse off than it is now?

MINORITY UNEMPLOYMENT AND PENDING LEGISLATION

Mr. JAVITS. Mr. President, the Department of Labor issued a report on July 9, 1970, underscoring dramatically the problems presented by the uneven effect of unemployment on the different racial and cultural groups residing in the four major New York City poverty neighborhoods. This information is vital to our manpower training and for placement efforts under the bills for manpower training, Office of Economic Opportunity and family assistance.

The report was based on a study conducted during the period July 1968 to June 1969, in Central and East Harlem, the South Bronx, and Bedford-Stuyvesant. Among the disturbing findings are the following:

First. The unemployment rate for men and women in these areas was nearly twice as high as for the Nation, and more than twice as high as for New York City as a whole.

Second. For all men in the prime working category—25 to 54 years old—residing in these areas, the unemployment rate was three times that of the comparable national rate—4.9 percent versus 1.7 percent.

Third. The unemployment rate for Puerto Rican males of prime working age in these poverty areas was almost twice that of their Negro counterparts—7.9 percent versus 4.1 percent. It was almost five times higher than the national rate for men in this age bracket in 1968–69.

Fourth. Unemployment among Negroes and Puerto Ricans living in these areas is higher than the national average at every level of educational attainment. A Negro with a high school diploma, for instance, is twice as likely to be unemployed as the average white high school graduate.

Fifth. The unemployment rate for poverty area teenagers was over 25 percent—twice as high as for teenagers nationally.

Sixth. Young workers in these areas were three times as likely to experience unemployment as their white counterparts in the city as a whole. The unemployment rate for Negro and Puerto Rican men 16 to 24 years old, at 17 percent and 15 percent, can be compared with 7 percent for young white men in New York City in 1969. The rate for Negro women in this age group was 17 percent, as against less than 5 percent for New York City's young white women.

The report concluded that poor educational background was among the major reasons for the high level of joblessness in these poverty areas.

The report also stated:

> Language problems undoubtedly add to the difficulties Puerto Rican workers face in locating jobs.
>
> Discrimination by potential employers probably still bars many minority workers from desirable positions.

To further demonstrate the situation in which we find ourselves, I would like to add that while the jobless rate among workers in New York City's poverty areas was relatively high, it still ran lower than the rates in five other cities where similar studies were conducted—Atlanta, Chicago, Detroit, Houston, and Los Angeles.

Mr. President, I need not add that the overall unemployment situation is much worse now than it was when this study was made. During the study period, July 1968 to June 1969, the national rate of unemployment ranged from 3.3 percent to 3.7 percent. Unemployment for June 1970 was at 4.7 percent. The unemployment rates among black teenagers in poverty areas throughout the United States during the first quarter of this year was 32.7 percent—or approximately one-third—as compared with a rate of 20.9 percent in the first quarter of last year.

Mr. President, these statistics—which represent such suffering for so many—underscore the absolute necessity of moving forward on certain proposals now before the Congress and of providing a new commitment in terms of full funding and implementation of existing laws. Among such crucial initiatives I would cite the following:

It is absolutely essential that the Congress enact forward looking manpower legislation, sufficient to meet the needs of the disadvantaged in our urban and rural areas. The Subcommittee on Employment, Manpower and Poverty on the Senate Committee on Labor and Public Welfare, is now considering in executive markup the Manpower Training Act, proposed by the administration, and substitute manpower bills proposed by Senator NELSON, chairman of the subcommittee, and by Senator PROUTY. Among the provisions which may be most helpful in dealing with the problem of the unevenness of unemployment, are proposals by Senator NELSON and myself for public service employment programs, and proposals by Senator YARBOROUGH, chairman of the committee, and Senator MURPHY, ranking minority member of the subcommittee, to deal with the special problems of those who face language difficulties as an obstacle to employment.

Mr. President, I think that these statistics also indicate the need for the administration's proposed Family Assistance Act which would provide for the links to employment for many of the Nation's disadvantaged and provide for substantial child care facilities to enable women on welfare to engage in meaningful employment.

Finally, Mr. President, the report of the Department underscores the need for full funding of programs under the Economic Opportunity Act of 1964, especially the special impact program under which programs have been established in poverty areas such as Bedford-Stuyvesant in my own State.

Mr. President, in these respects the Congress has a clear opportunity to make the kind of commitments so vital if we are to overtake these statistics which evidence the real suffering of so many of our fellow citizens.

I ask unanimous consent that there be printed in the RECORD an article from the New York Times of July 10, 1970, written by Richard Phalon, describing the findings of the Department of Labor's report together with that Department's release regarding the same.

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

[From the New York Times, July 10, 1970]

CITY POVERTY-AREA JOBLESSNESS IS TRIPLE NATIONAL RATE FOR MEN

(By Richard Phalon)

Men in their prime employment years who live in one of the city's four major poverty areas are three times as likely to be unemployed as men in the same age bracket elsewhere in the nation, according to a survey released yesterday by the Bureau of Labor Statistics.

The Government agency's report showed that this unemployment problem is particularly severe for Puerto Ricans. It indicated that the unemployment rate for Puerto Rican males of prime working age (25 to 54 years old) is nearly twice that of their black counterparts and almost five times the rate for the nation's labor force as a whole.

The survey also estimated that poverty-area teen-agers—mostly Negro and Puerto Rican—are almost three times as likely to be out of work as white teen-agers living elsewhere in the city.

The report said poor health and poor educational background were among the major reasons for the high level of joblessness in poverty areas.

The average American worker has completed more than 12 years of school while the average male worker from one of the four poverty areas (the Bedford-Stuyvesant section of Brooklyn, Central Harlem, East Harlem and the South Bronx) "had little more than ten years" of school—a level reached by the labor force as a whole "nearly two decades ago," the survey said.

It also noted, however, that unemployment among Negro and Puerto Rican males

from the poverty areas was higher than the national average at every level of educational attainment, including college. A black man with a high school diploma, for instance, is twice as likely to be out of work as the average white high school graduate.

One of the handicaps workers from the poverty areas have to surmount, the study said, "is poor preparation for the world of work, which the educational attainment data only partially reveal."

"Language problems," the report continued, "undoubtedly add to the difficulties Puerto Rican workers face in locating jobs, and discrimination by potential employers probably still bars many minority workers from desirable positions."

Puerto Rican groups agreed with the analysis. Hector Vasquez, director of the Puerto Rican Forum, said, "We have been saying that all along."

"High unemployment among Puerto Ricans," he continued, "is a chronic situation" because of the large number of high school drop-outs and "the language problem."

The Government survey is based on in-depth interviews with 8,000 persons out of a total work force of 219,000 living in the four poverty areas. The study began in July, 1968, and continued until the end of last month. The data released yesterday cover the period from July, 1968, to June, 1969.

It showed that the jobelss rate for males over 25 in the poverty areas during that period was 4.9 per cent compared with a natural rate of 1.7 per cent. The rate for Puerto Rican men was 7.9 per cent. For teenagers it was 25 per cent, twice as high as that among teenagers nationally.

Herbert Bienstock, regional director for the Bureau of Labor Statistics, said later information on employment patterns in the poverty areas would not be available for several months.

Unemployment generally is higher now than it was this time last year, however, and Mr. Bienstock said Negroes and Puerto Ricans were among the first workers to be let go.

One reason is that a disproportionately large number of Negro and Puerto Rican workers is concentrated in unskilled and semi-skilled jobs in industries—the garment industry and the restaurant trades, for example—that are highly vulnerable to swings in the economy and where employment tends to be seasonal.

Most the city's semi-skilled blue-collar jobs are concentrated in manufacturing, an area in which employment dropped by 13 per cent between 1959 and 1969.

Although unemployment rates are high in the major poverty areas here, they are generally lower than those recorded in five other cities covered by the study—Atlanta, Chicago, Detroit, Houston and Los Angeles.

"None of these other cities reported as low a rate for Negro workers as did New York," the report said.

It attributed that fact to the comparatively high rate of employment among Negro women, a rate that "reflects in large part the greater availability of clerical and kindred white-collar jobs in New York City, filled in the main by women job-seekers."

[News release of U.S. Department of Labor]

NEW BLS REPORT ANALYZES UNEMPLOYMENT IN MAJOR NEW YORK CITY POVERTY NEIGHBORHOODS

The unemployment rate for Puerto Rican men of prime working age, 25–54, residing in major poverty areas of New York City, was almost five times higher than the national rate for men of this age in 1968–69, according to a report issued today by Herbert Bienstock, Regional Director of the U.S. Department of Labor's Bureau of Labor Statistics. The 7.9-percent unemployment rate was nearly double that for Negro men, 25–54, residing in these areas.

Characteristics of the Unemployed is the second report on findings from the Urban Employment Survey. The survey has been directed by the Bureau of Labor Statistics with the cooperation and financing of the Manpower Administration. The Bureau of the Census collected and tabulated the data. The survey, which was begun in July 1968, was designed to examine the employment-related problems of the working-age population in Central and East Harlem, the South Bronx, and the Bedford-Stuyvesant section of Brooklyn.

Although Puerto Ricans had the highest jobless rate, Negroes accounted for a majority of the unemployed, reflecting their greater numbers. The labor force (16 and over) residing in these areas totaled 219,000, of whom two thirds were Negro and one fifth were Puerto Rican. Of this total, nearly 15,000 were unemployed, including 9,300 Negroes and 4,200 Puerto Ricans. Other highlights of the report follow:

High unemployment rates in major New York City poverty neighborhoods were in good part related to the concentration of workers in low-skill, low-status jobs, where joblessness tends to be higher than average, and to poor educational background. For example, Puerto Ricans, with the highest unemployment rates in these areas, had the least amount of schooling. Puerto Rican workers were predominantly employed in semi-skilled blue-collar and service occupations.

The overall unemployment rate for the labor force living in these poverty neighborhoods was 6.8 percent during the 1968–69 survey period—more than twice as high as for the City as a whole.

The unemployment rate for married Negro men, 20–64, living with their wives, was 2.1 percent. It was close to 12 percent for married Negro men living separately. Among Puerto Rican men, the differences between the two marital-status groups were equally pronounced.

The unemployment rate for teenagers, over 25 percent, was twice as high as for teenagers nationally. The problem was of comparable intensity among all the race-ethnic groups living in New York City's major poverty areas.

A large proportion of the employed workers held jobs in occupations in which the probability of unemployment was above average. One third of the employed worked in semiskilled and unskilled blue-collar jobs (including nearly one half of the Puerto Rican workers); one fifth were in service jobs exclusive of domestic work. In these fields the national unemployment rates have been consistently higher than the overall rate.

Men and women in the labor force residing in New York City's major poverty neighborhoods were more likely than workers generally to be handicapped by poor educational background in obtaining good jobs at adequate pay. The average Negro worker (male and female) had completed about 11 years of school—which, while roughly in line with median years of school completed by Negro workers nationally, was significantly below the average for all of the Nation's workers. For Puerto Ricans, the medians were considerably less, with men having on average completed less than 9 years of schooling and women, less than 10 years.

For each level of education the unemployment rate of these workers considerably exceeded the corresponding national rate. For example, Negro men 18 and over with 4 years of high school were twice as likely to be jobless as men with comparable education nationally.

Copies of *Poverty Area Profiles: Characteristics Of The Unemployed* (Regional Report No. 14) are available without charge upon request from the Bureau of Labor Statistics, Middle Atlantic Regional Office, 341 Ninth Avenue, New York, New York, 10001.

PRESIDENT'S PROPOSAL TO LIMIT SALT TALKS

Mr. HARRIS. Mr. President, I am very much concerned that President Nixon may let pass an historic opportunity to slow the terrible arms race.

Mr. Nixon's recent instructions to the U.S. negotiators at the strategic arms limitation talks, in Vienna, to seek a limited, rather than comprehensive, agreement with the Soviet Union exclude the vital issue of multiple warheads.

We now have the chance to halt the proliferation of a new and powerful weapon which could further escalate the arms race and exacerbate the tensions of the cold war. We have been repeatedly informed by scientific experts that once American MIRV's and Soviet MIRV's are operational and deployed, verification of weapons levels will be much more difficult. The need for on-site inspection of MIRV's, rather than verification by satellites or other detection devices, will encounter the already expressed resistance of many nations.

While I am pleased that agreement on the limitation of anti-ballistic-missile systems and strategic missiles and bombers will be sought, I fear that failure to include MIRV's in these initial negotiations will foreclose the possibility of a long-range verifiable arms control agreement. The question is too critical to this Nation and the world to be excluded from the SALT talks.

On July 9, 1970, an article by Chalmers M. Roberts, published in the Washington Post, discussed President Nixon's goals for the strategic arms limitation talks. I ask unanimous consent that the article be printed in the RECORD.

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

PRESIDENT SETS GOAL FOR SALT—UNITED STATES TO SEEK A "LIMITED" ARMS TREATY

(By Chalmers M. Roberts)

President Nixon has instructed his negotiators at the strategic arms limitation talks in Vienna to seek a limited rather than a comprehensive agreement with the Soviet Union as their first priority.

Mr. Nixon's green light to chief negotiator Gerard C. Smith is expected to mean that Friday's SALT meeting will see the beginning of efforts to pin down an agreement.

The term "limited" is something of a misnomer since what is contemplated, if it eventuates, would be the most far-reaching curb on the nuclear arms race in the 24 years of Soviet-American negotiations beginning with the Baruch Plan in 1946.

The agreement Mr. Nixon has decided to seek involves these two points:

A gross numerical limitation on the total number of (a) rival land-based intercontinental ballistic missiles (ICBMs), (b) submarine-based missiles and (c) long range heavy bombers. One bomber equals one missile in this count.

A low level of rival antiballistic missile (ABM) defense systems. The Soviets have talked of "zero ABM," but the latest indications are that some ABM defenses would be permitted but no greater than the current Soviet level with an American right to match it.

The Soviet Union is judged to be recep-

tive to such a two-part pact, but how long it will take to wrap it up as an agreement in principle or an outline to be initiated by both sides, subject to later treaty drafting, is impossible to forecast with accuracy.

The President's decision means that the issue of multiple warheads, American MIRVs and Soviet MRVs, will be left to a later stage of what is expected to be a continuous series of SALT meetings betwen the two superpowers.

The United States has 1054 ICBM launchers, 656 submarine-based missiles and 581 intercontinental bombers, according to Defense Secretary Melvin R. Laird's February posture statement. As of Sept. 1, 1969, Laird estimated the Soviet Union had 1,060 ICBM launchers, 110 submarine based missiles and 140 to 145 intercontinental bombers.

However, while the U.S. force has been static in numbers the Soviet force has been growing. Mr. Nixon has projected a Soviet ICBM total of 1,290 by the end of 1970 plus 300 submarine missiles. On May 12 Laird told a congressional committee that of the Soviet ICBMs 220 were the huge SS–9s with 60 more under construction.

The net of these figures is essential parity in gross numbers which would permit a freeze. The proposed American level for such a freeze remains secret.

As to ABMs, the level to be agreed on will depend in considerable degree on how much of the American Safeguard system Moscow thinks it can accept and be sure that it is not part of a U.S. preparation for a "first strike" by protecting the population.

There is evidence, though it is not conclusive, of an American desire to retain part of Safeguard as a defense of the ICBM deterrent. There are some, however, who would prefer "zero ABM" or ABM limited to the two capitals, Washington and Moscow, and who hope for an agreement which in a series of cuts would eliminate most if not all of the Soviet system in exchange for American limitation or elimination of Safeguard.

"HAND-LOADERS" AND "MUZZLE-LOADERS" IN OREGON

Mr. HATFIELD. Mr. President, recently, I joined the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) as a cosponsor of amendment 728 to S. 3650, a bill designed to strengthen Federal legislation concerning the illegal use, transportation, and possession of explosives. I agree with Senator SCHWEIKER that a new provision in the bill is needed to protect the legal and lawful activities of one segment of our Nation's sportsmen—those who handload their ammunition.

I support the goals of the explosive control bill, for I am shocked at recent bombings across the country. The amendment does not conflict with this goal. It does allow, however, continuation of a long-established tradition by those who hand load their ammunition.

In addition, muzzle loaders are able to recreate a sense of history in their activities. In my State, there are five muzzle loading clubs, and I participated at one of their shoots at Banks, Oreg., while I was Governor. These clubs—the Multnomah Muzzle Loading Rifle Club in Portland, the High Desert Plainsmen, in Bend, the Little Butte Mountain Men, in Medford, the McKenzie Black Powder Club, in Eugene, and the Willamette Longrifles, in Salem—are attracting more Oregonians to their activities. Certainly the explosives control bill is not aimed at these sportsmen.

I believe the amendment does nothing to compromise the bill's goal, while allowing the sportsmen of the country to continue their activities.

A CHALLENGE TO AMERICANS

Mr. CASE. Mr. President, Americans have prided themselves on their magnanimity to others, on their sense of fairplay, and, above all, on their sense of common decency.

These virtues are real only as they are practiced. Like muscles, they atrophy without exercise. Like muscles, they show their real strength when challenged.

The reality of our possession of these virtues has most lately been challenged by the six letters of a remote island—Con Son.

Magnanimity, fairplay, decency, all dictate that the evils of this prison, and of other Vietnamese prisons, be eliminated. So long as the United States is in Vietnam, it shares the guilt for the existence of such conditions.

There are no excuses. We cannot claim ignorance. We cannot claim lack of responsibility. We cannot, in good conscience, claim that tiger cages are acceptable in South Vietnam because they may exist in the North. Our virtues are not relative; we practice them or we don't have them. I am shocked that anyone could even consider not reporting the conditions at Con Son prison to the American people. Our people need to know the facts so that they can be changed. Americans will be weak when they cannot face the truth. Americans will be evil when, knowing the truth, they do not act on it.

Beyond these most basic considerations, there are others. The brutal treatment of North Vietnamese prisoners of war at Con Son—or anywhere else—endangers allied POW's in the North. Can we honestly plead for better treatment of American prisoners in the North when tiger cages exist in the South? Can we really expect Hanoi to supply the names of American prisoners when on Con Son prisoners are lost to humanity in tiger cages?

U.S. policy toward prisoners of war in South Vietnam has long been misguided. We have disclaimed responsibility for prisoners of war because we hold none, having turned them over to the South Vietnamese. This policy must be changed. For these prisoners are our responsibility.

And do Americans accept the ugly equation of Con Son: that tiger cages equal "self-determination"? Are we to believe that the political prisoners at Con Son, in the tiger cages, represent the liberty for South Vietnamese that American men are dying for in Vietnam? Are the American people asked to support a war to preserve freedom, or to end it?

No man is an island. The bells on Con Son island toll for all of us.

The tiger cages, we are told, were built by the French when South Vietnam was their colony. Thus are the present Saigon regime and the United States linked to an imperialism we had told ourselves had disappeared into the past. Yet, does not Con Son make us the new imperialists? Can any prisoner come out of Con Son—if, indeed, he survives to come out—without hating those who put him there, without hating Americans who preach liberty but permit tiger cages?

No man, no nation, is an island.

As Americans we cannot simply call for an investigation. We cannot be content with the sequence of Bunker to Thieu to oblivion. The Con Sons of Vietnam must be eliminated. As decent human beings, as Americans, as members of the Government of the United States, we must see that this is done.

To fail to act would be to deny liberty and decency. It would be to deny ourselves.

SENATOR JAVITS REBUTS MAIN ARGUMENTS AGAINST RATIFICATION OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, many arguments have been advanced at one time or another against ratification of the genocide treaty. I have attempted to answer these objections during the course of my statements on the convention. Recently the Senator from New York (Mr. JAVITS) presented an excellent summary of the principal arguments and rebuttals concerning ratification of the treaty. Today, I wish to present two of the arguments and then quote Senator JAVITS' excellent replies.

First, it has been argued that it would be very unwise for the United States to ratify the Genocide Convention at a time when most Americans wish to reduce, rather than expand, our international obligations. In reply to this argument Senator JAVITS states:

> One must distinguish between different kinds of international obligations. It is true that many people have argued that American military commitments should be contracted. This view, however, does not entail the further argument that the development of international law should be halted. Treaties of a great variety of kinds not involving military commitments have been negotiated and they have provided for more ordered relations among nations. It is hard to imagine that one would argue against the Genocide Convention on the grounds that it expands American international obligations.

Second, it has been argued that under the Genocide Convention individuals as well as persons exercising governmental power would be subject to trial and punishment for offenses which have always been regarded as matters falling within the domestic jurisdiction of the various nations.

Senator JAVITS' reply disposes of this argument:

> The protection of human rights is indeed a matter of international concern. The United States has shown that it agrees with this view by ratifying the World War II peace treaties, the United Nations Charter, the Slavery Convention of 1926, and more recently the Supplementary Convention on Slavery (1967) and the Supplementary Convention on Refugees (1968).

Mr. President, it is high time the Senate acted on the Genocide Convention. We have an excellent opportunity to do so this year.

THE IMPORTANCE OF THE MURPHY BILL

Mr. DOLE. Mr. President, mechanization has shortened the harvest time of agricultural products. Harvests that once spanned a period of several weeks are now accomplished within a few days. During the period of mechanization, the needs of the agricultural labor force have also changed.

An editorial published recently in the San Diego Union explains the need for the special labor legislation which has been introduced by the distinguished Senator from California (Mr. MURPHY). So that all sections of our Nation may become aware of the succinct analysis of this editorial, I ask unanimous consent that it be printed in the RECORD.

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

MURPHY BILL IS NEEDED

Agriculture was excluded from the National Labor Relations Act of 1935 because the migratory nature of farm laborers and the perishable quality of what they produce gave farm work a unique character. The nature of agricultural employment has changed but laws have not.

Early this year Sen. George Murphy introduced a bill that would establish federal regulations tailored to protect both farm workers and employers.

The Murphy bill was clearly inspired by the irresponsible activities against California table-grape growers by Cesar Chavez and his United Farm Workers Organizing Committee over the last four years. The sudden emergence of Chavez' brother Manuel and a force of militant pickets in the melon fields of the Imperial Valley reminds us that adoption of federal law regulating farm labor is a vital national need of critical priority.

Melon-growers are especially vulnerable to the disruptions characteristic of Chavez' tactics. Melons must be picked within three days of ripening or they rot, and the vines must be harvested continuously or they die. Farmers faced with the choice between a ruinous harvest-time strike or surrender to possibly ruinous labor union demands are being denied any real freedom to choose.

Farm workers have the right to organize, if they wish. That right carries an equal responsibility to their employers that the Murphy bill would help enforce.

SHORTCOMINGS IN CHILD WELFARE

Mr. TALMADGE. Mr. President, plans are being made for the 1970 White House Conference on Children and Youth, to be held in Washington, December 13–18.

With all of the social and economic and international problems that plague our country today, the Nation's children seem to be caught in the middle. The needs of children, in education, health, social welfare, and in many other areas constitute what I regard as a problem of great seriousness to all of us in the Nation. Children, after all, are the most precious resource we have.

Earlier this month, on July 8, Mr. Stephen Hess, National Chairman of the White House Conference on Children and Youth, addressed the National Council of Juvenile Court Judges meeting in Atlanta. Mr. Hess discussed the shortcomings in child welfare and some of today's pressing problems and those that lie ahead, particularly as to the legal rights of children.

I bring Mr. Hess' address to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

HEARING THE SMALLEST VOICES

(Speech delivered by Stephen Hess, National Chairman of the White House Conference on Children and Youth)

It is a great privilege to be with you. If I have to face a bank of judges, I'm pleased it's this one.

My appearance here just happens to be with the benefit of counsel. A former partner in a distinguished New York law firm, Richard Nixon, has given me and the White House Conference on Children and Youth every measure of encouragement and support, so I feel quite comfortable as your witness this evening.

Last December, when the President announced my appointment as National Chairman, he indicated his desire that our Conference serve this country well. Acknowledging that ours was the oldest of all White House Conferences, having been launched by Theodore Roosevelt back in 1909, President Nixon went on to say, "Never has this White House Conference come at a time of greater national questioning. Long held attitudes on such subjects as family planning, pornography, health services, school curricula, sex education, family structure, drug abuse, moral standards, governance of higher education, responsiveness of government—all are now openly debated and challenged."

The President gave us the mandate to make an active contribution, not just talk about the problems. He obseved, "At a time when government often seems far way and immovable—when many of our youth are rightly asking, 'Who's listening? Who cares?'—I hope that this White House Conference, especially through the active involvement of a great many young people, will provide a positive answer."

We have, since December, directed all our efforts toward fulfilling this request of the President and, through him, of the Nation itself. The first result will appear in Washington, D.C., between December 13 and 18, at the Conference on Children. In February, 1971, at the Conference on Youth—the second half of this massive undertaking—we will gain the next real indication of how well we and our fellow citizens are doing on this matter of bringing young people and their elders together in a meaningful society.

Of course we are not exclusively concerned with the physical or biological well-being of the young. While these are important considerations, which we will explore, we must also be sensitive to the context in which youth grows—the social, economic, political, and juridical environments peculiar to our nation.

Therefore, we are approaching our assignment directly, building an issue-oriented Youth Conference, one that will address itself to the problems and the potential of young people in relation to our system of education, our cultural and racial pluralism, our sense of justice, and our commitment to individual strength and national unity.

This is ambitious, global, and quite possibly naive. We are sometimes advised by well-meaning friends to return to a more standard and, hence, safer Conference plan. But this we cannot and should not do. I can assure you that a more modest Conference would be far more consistent with our budget. And I can further assure you that many of us on the Conference staff now know that our kind of Conference does not roduce generous rewards to the ego. The reason we must "go for broke" is that the young people of this country themselves have assumed a go-for-broke strategy. Their approach to bringing about improvement and change in America is one of:

Total involvement in politics—doorbell ringing, tough campaign jobs, teach-ins, street corner debates, and even fund-raising.

Total involvement in popular culture—the folk and rock festivals, the schoolyard art shows, the sidewalk theater—an explosion of interest the likes of which this country has never before seen.

Total involvement in national concerns—vigorous arguments of U.S. foreign policy, domestic policy, urban affairs, the environment, race relations, economic opportunity, and social justice.

The degree of youth's intensity has recently been measured for the White House Conference by Gilbert Youth Research of New York. In a national sample of 3,000 young people, we discovered that 47 percent believe the achievement of equal rights requires drastic action. Eighteen percent felt that equal rights could *only* be achieved through violent revolution.

When the question was broadened to the achievement of social and/or political goals, nearly one out of four (23%)—believed that violence is sometimes justified. Probing deeper among these figures, we learn that the groups who are not shy of violence are out-of-school youth—mainly minority youngsters or those from low-income white households—and college students. A curious coalition, you might say, but one we must reckon with, nevertheless. Obviously they despair of the system. Equally obvious is the fact that the system must not despair of them.

Many of the things I have said thus far pertain mostly to older youth. They are the issues and events that involve youngsters of high school and college age. Their protests, their voluntarism, their singing, and their movies are everywhere. But not so visible are those under 14, America's children, totally dependent on our good offices, good intentions, and good judgment to protect them and prepare them for the 60 years or more of living yet to come. I'd like to speak of them, because—over the roar of youth—we barely hear these smallest voices in our land.

Few Americans are so victimized by free advice and good intentions as our children. This requires of us a very special effort to make the Conference on Children particularly productive. Senator Jacob Javits told me of his personal interest in the December Children's Conference. He said it would deal with what he terms "our most vital resource." His Senate colleagues have, at one time or another, given similar expressions indicating their depth of feeling and concern about how well America does by its children.

Nearly 30 percent of the U.S. population is under the age of 13. Close to 60 million Americans are children—dependent, trusting, hopeful, and desirous of a good life. There is no group of citizens—under any general heading—that has as much potential for peaceful, useful, and fruitful citizenship.

Yet recall that the United States ranks 15th in infant mortality, relative to other major nations. Among every thousand children who come screaming into life, about 23 never reach their first birthday. In poverty and minority areas, this figure is doubled and even higher.

If we are so great a nation, can't we treat human life with more care? We spend so much time studying people with peculiar hang-ups—hippies, racists, pseudo-liberals, right-wing extremists—that we seem not to have time for those who come into the world with no detectable hang-ups at all.

I am no expert on children. I am a parent and not a statistician. I come upon these

facts as a layman and as a concerned citizen. But they are now part of my daily life. I know that we bring our children into a society of laws, rights, and responsibilities. Yet too often they learn about law from the wrong sources. How much of a child's perception of law comes from television, and particularly from news coverage of demonstrations against "the pigs?" How many children grow up thinking of equity as a form of gamesmanship?

Not long ago, I was talking with Virginia's very able Governor, Linwood Holton. Governor Holton took office just recently. Among his primary objectives is to give the people of Virginia a better understanding of the law and of the state as their protector, not oppressor. He wants the children of his state to see the law as their basic and ultimate resource, their friend. And the Governor has pledged his help to our Conference on Children.

For such reasons, we are assigning one of the Conference Forums to the issue of children and the law. Our decision was influenced by a number of national organizations, not the least of them being the National Council of Juvenile Court Judges. And we are especially grateful to Bill Nuernberger who serves on our Technical Assistance Committee.

We also hope to raise the level of discussion surrounding the issue of the rights of children. As you know better than I, the *Gault* and *Winship* decisions have shifted rather dramatically the traditional concepts of the rights of children. As I understand it, there is now a constitutional protection for the child in adjudicative proceedings. But there remains the whole area of pre-court rights: the child is often a victim of those whom society has designated as his protectors—parents, guardians, teachers, physicians, and—yes—even lawyers.

The child in trouble cannot seek help on his own. Is the state and the family, therefore, a help or a hindrance today? For some of us here this evening, that is an interesting, academic question. For many children out there on the streets of Atlanta, the question is equal to survival.

I noted recently some figures that indicate the seriousness of this question. First, during the past three decades, the number of illegitimate births per 1,000 unmarried women has more than tripled. The estimates run from 7.1 children per 1,000 unmarried women in 1940 to almost 24 per 1,000 last year.

It would seem evident that we have a sizeable—and growing—segment of the children and youth population who may not have the traditional protections of home and family from the very day of birth. What then are their rights and protections?

As a second example, these are the figures on divorce in this country. Much has been published recently about the increased incidence of divorce and marriage annulment, but the figures that caught my attention had to do with the number of children involved in such events.

Back in 1922—balmier days I suppose—less than 100,000 children were involved in almost 150,000 divorces or annulments. By 1950, the number of children tripled and the number of such events nearly tripled. In 1965, the last year for which we seem to have complete figures, 630,000 children were involved in nearly a half-million (479,000) divorces and annulments. If you wish to figure this on a per-1,000-children basis, you come up with the rather sobering evidence that in 1922 only 2.3 of every 1,000 children were involved in a family break-up, while in 1965 8.9 of every 1,000 children were involved. And the figure is still climbing.

In one generation we have just about quadrupled this kind of personal tragedy for hundreds of thousands of children, leaving many of them—particularly the little ones—with only the mercy of society and of your courts to treat them with dignity and justice.

We know this cuts both ways. What are the rights of children in their standing before the family and the state? On the other hand, what are the responsibilities of each child to his family, his community, and his Nation? Ultimately, how do we inform all parties—child, family, state—of their rights and responsibilities so that our society can continue to move forward with equity, with mercy, and with humanity?

The figures on children of unwed mothers and of broken homes cause us to think about how well we are doing, in this year of 1970, to provide some kind of support for children so that they have real alternatives to delinquency, abuse, neglect, and disruption of their lives and the lives of their communities. Here, I believe, we are beginning to make some progress. We are taking to task our education system and our professional social workers. We are putting your courts and yourselves under the glare of both scholarly and popular examination. It is uncomfortable. It is often unfair. But it is absolutely essential.

A profession that cannot tolerate public scrutiny and that raises a protective screen of sanctity is already dead for all practical purposes. Fortunately, we are not attending a wake this evening. As practitioners of juvenile justice, you are very much alive and well, although sometimes roundly condemned by your fellow Americans.

But criticism is half the strategy of progress. The other half is action. Here in Atlanta I have been pleased to learn of the involvement of lay citizens as volunteer probation officers, working on individual juvenile cases in a kind of "Big Brother" capacity. Similarly, Atlanta is conducting citizenship training for children on probation, once again with the assistance of professionals drawn from the general public. Only through personal, local involvement by the public can we ever hope to correct many of our major social ills. I salute Atlanta's court and correctional personnel for their initiative and sense of mission. This kind of local leadership strengthens our communities and unites our nation. But of far more significance—it protects the liberties of the child.

At the December Conference we will address ourselves not only to what has gone before but what must come next. Last winter, President Nixon told us to "define problems, seek new knowledge, evaluate past successes and failures, and outline alternative courses of action." This last assignment—"to outline alternative courses of action"—is one which we at the Conference take very seriously. It is a feeling shared, I am happy to report, by the many experts and lay citizens who have been working diligently on the White House Conference through State Committees.

Your representatives, judges, counselors, and leaders from the great teaching institutions of law will share this assignment with us. Together we will examine the efficacy of present judicial, corrective, and rehabilitative processes for children. Together, we will propose what must next be done.

Change is in the air. It invades every area of social and political life. Why should the courts escape? Of course they will not and, from everything I gather in conversations with judicial and governmental leaders, the first ones to accept progressive change will be the courts themselves.

A judge who has been a great source of help to us, told me that we were sure to draw a good deal of fire if we met head-on the problems of law and children at the Conference. "But I trust you will do it anyway," he said. He pointed out that the failure rate among children arrested and convicted is about 50 percent. In other words, half of all youngsters under the age of 14 who were arrested, kept in custody, or put on parole or on probation get into trouble again. You are all familiar with this figure. This is twice the rate of offenders aged 21 or older.

What does this tell us? Perhaps that our correctional institutions are strengthening antisocial behavior and doing so in the name of *protecting* society.

I am confident that everyone in this distinguished audience shares this point of view to some degree. The National Council, like so many other responsible professional organizations, has responded to the appeal for good counsel from the White House Conference on Children and Youth. You have a stake in the development of a substantive report to the President and of a reasonable, useful plan of action for communities to follow in re-shaping and making more responsive their own juvenile court system.

Are para-professionals an answer? Are ex-addicts and ex-convicts really effective in preventive or rehabilitative programs? As we say in politics, "All the precincts haven't reported in yet."

We hope that the reporting will be done in depth at our December Conference on Children and in our February Youth Conference. With concerned citizens from all fields focusing on the issues, we have a chance to make some headway.

In this connection I am reminded of a comment made to me recently by Patricia Hitt, Assistant Secretary of Health, Education, and Welfare. I was briefing her on the interdisciplinary nature of the White House Conference, she nodded and said, 'Steve, I know what you're saying. I sometimes think that if all our programs at HEW were complete successes, we just might put the Department of Justice out of business. But until that time comes—if it ever does—we simply have to know what Justice and the Courts are doing, they have to know what we are doing, and we both have to be doing better."

Mrs. Hitt's point is well taken. The millenium isn't here. I frankly doubt that it is even just around the corner. But that's not at issue. We are dealing with the Here and the Now—and the possibilities for tomorrow. There is all sorts of talk about polarization and gaps. Those phenomena do exist. But we cannot allow them to persist and become the norms for America. The White House Conference is not going to contribute to the hardening of positions, as long as I am its National Chairman. Such a performance will be of no use to you in your important work and it will be of no service to the primary constituents of our Conference, the children and youth of America.

We would hope that our society can help its children mature with a respect and even a love for the laws that govern them. We do not advocate blind obedience to the law nor the disappearance of the adversary basis of the procedures we follow in gaining justice. But in the past we have not been sufficiently attentive to the cries of children in need. Much of the uproar among youth today can be traced to our own narrow view of their search for relief.

I appreciate very much your interest in and support of the White House Conference on Children and Youth. But I must remind you that we need that support not only through December, but most in the months and years that follow. Let us join together in creating an environment where we nourish and not mutilate the spirits of our children. In the words of the French philosopher, Albert Camus:

"Perhaps we cannot prevent this world from being a world where children are tortured, but we can reduce the number of tortured children. If we do not do this, who will . . .?"

AIRLINE TICKET TAX

Mr. TOWER. Mr. President, on June 30 I introduced a bill to permit the itemization of tax on airline tickets. Senators may recall that a prohibition of this was included in the Airport and Airway Development Act of 1970, which passed the Senate earlier this year. The bill I introduced was designated S. 4041.

The response—both from the traveling public and from within the airline and travel industry—has been more than I expected. I have received letters from all over the United States echoing my own sentiments on the matter and encouraging repeal of this provision.

The board of directors of the American Society of Travel Agents, Inc., meeting recently in Houston, passed a resolution on this subject. The president of National Air Transportation Conferences, Inc., Mr. Thomas S. Miles, has also written expressing the conferences' support of S. 4041.

I ask unanimous consent that the correspondence be printed in the RECORD.

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

WILKINSON, CRAGUN & BARKER,
Washington, D.C., July 6, 1970.

Re S. 4041
Hon. JOHN G. TOWER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TOWER: We are general counsel for the American Society of Travel Agents, Inc., a trade association representing in excess of 3,000 active travel agents in the United States and Canada.

We are gratified to note the introduction by you of S. 4041. We agree that the "single fare concept" was a "sleeper provision," that it is misleading to the public, and that it presents difficulties for the airlines and travel agents.

In a recent meeting of its Board of Directors in Houston, Texas, ASTA passed a resolution on this subject. A copy is attached for your information.

We wish you success in action on S. 4041 and pledge our help to you in this effort.

Respectfully yours,
GLEN A. WILKINSON.

The resolution follows:

The American Society of Travel Agents whose members are the primary source of air travel ticket sales in the United States, is deeply disturbed in the interest of its clients, the traveling public and the airline industry at the air transportation tax legislation which becomes effective July 1st.

To that end its Board of Directors, meeting in Houston on June 23rd, unanimously passed the following resolution:

The Congress of the United States recently enacted a law imposing an additional tax on air transportation in the amount of 3%, now making the total tax on air transportation 8%;

And, even though Congress has recently enacted laws which demand full disclosure of all financial facts, such as truth in lending, it has, in the case of the additional air tax, required by law that it be hidden in the total ticket price, and has made it a criminal act for an airline or travel agent to disclose the amount of tax as a figure separate and apart from the air fare on any ticket or in advertising.

Be it resolved, that the Congress be asked to amend this law so as to give the public the right to know which portion of the total cost of an air ticket is the actual fare and which is the tax.

NATIONAL AIR TRANSPORTATION CONFERENCES, INC.,
Washington, D.C., July 7, 1970.

Hon. JOHN G. TOWER,
The State of Texas, The U.S. Senate, Washington, D.C.

DEAR SENATOR TOWER: Congratulations on introducing S. 4041 to require that section 7275 of the Internal Revenue Code of 1954 (relating to penalty for offenses relating to certain airline tickets and advertising) be repealed.

If hearings had been held on this subject prior to passage of H.R. 14465, there are many reasons to believe that both the House & Senate would have supported the concept entitling the public to *continue to know* what they are paying for air transportation and what they are paying in taxes. And isn't that the American way of doing business? We think so!

For the reasons set forth in the attachment, N.A.T.C. members are unhappy with some of the tax provisions of the AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970 and favor appropriate amendments by the earliest possible date.

Thanks for leading the way. S. 4041 should receive strong support from so many. And their voices need to be heard in the public interest.

Sincerely yours,
THOMAS S. MILES,
President.

NATIONAL AIR TRANSPORTATION CONFERENCES, INC.,
Washington, D.C., July 7, 1970.

Hon. RUSSELL B. LONG,
The State of Louisiana,
The U.S. House of Representatives,
U.S. Senate,
Washington, D.C.,

DEAR SENATOR LONG: Attached is a self-explanatory letter to Senator John G. Tower concerning S. 4041 which was referred to the Committee of Finance on June 30, 1970.

The Airport and Airway Development Act of 1970 is an excellent piece of legislation in so many ways. And we appreciate the intent of the Congress to simplify airline ticketing by requiring one entry on an airline ticket (fare including tax) in place of three entries (basic fare, tax, total). But if public hearings had been held on this subject prior to the passage of H.R. 14465, there are many reasons to believe that both the House and the Senate would have supported the concept entitling the public to *continue to know* what they are paying for air transportation and what they are paying in taxes.

Mr. George G. Eisen, president, Tours, Inc., Chicago said: "We have 'truth in lending', 'truth in packaging', but when it comes to the government's packaging, we have mystery in taxation."

To be candid, we have other problems. As the airlines and their travel agents will tell you, simplification at the ticket counter has been offset by complications in the back room. Ask. They'll tell you. And please review page after page of complicated procedures issued by N.A.T.C. and ATA dealing with the new law. It's unbelievable!

Sincerely yours,
Mr. J. L. Seaborn,
Mr. J. W. Huff, Jr.,
Mr. Henry C. Wallach.

PROPOSAL FOR STUDENT PROTEST OF PRISONER OF WAR TREATMENT

Mr. JORDAN of North Carolina. Mr. President, the plight of American prisoners held captive in Southeast Asia and the uncertain fate of those listed as missing in action is a matter of deep and continuing concern to every Member of this body.

We all know of the repeated efforts which have been made by Congress, the President, and the Department of State to secure decent and humane treatment of captured U.S. personnel in accordance with the Geneva Convention—with the latest effort in the form of a letter to North Vietnam's Premier Pham Van Dong in which I signed with other Senators.

We all know how little success those efforts have produced.

Now I am going to propose a new approach.

It is not my own idea but one evolved by a long-time North Carolina friend, John Dortch Lewis of Goldsboro.

His suggestion is that student groups and others who have protested against the war now direct their efforts toward securing better treatment and early release of Americans now held as prisoners.

His concern for POW's is not an abstract thing. He was captured, and escaped, four times during World War II—the last time from the infamous Stalag III.

His idea makes a lot of sense to me.

Such an effort as he proposes on the part of students would, in the first place, offer clear proof to the country and the rest of the world of their sincere dedication to the cause of peace and humanity—and, I may add, I believe that is the aim of most of them.

It is also quite possible that their concerted voice may be heard and heeded by Hanoi and the National Liberation Front both of whom have so far turned a deaf ear to all other proposals.

The concept of a public appeal on behalf of these prisoners has already been adopted, I might add, in North Carolina in recent weeks in a somewhat different way than that proposed by Mr. Lewis but with the same objective. Petitions circulated in the State under the joint auspices of the North Carolina National Guard and the Jaycees have gained more than a million signatures and are going to be sent to embassies in seven countries—Sweden, Poland, Rumania, India, Russia, France, and Denmark—which are considered to have influence with Hanoi.

The student movement which Mr. Lewis suggests would, it seems to me, lend further strength to that expression of grassroots sentiment.

His suggestion was the subject of a recent editorial in his hometown newspaper, the Goldsboro News-Argus, the text of which I ask unanimous consent be printed in the RECORD.

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

PROTESTERS COULD HELP WAR PRISONERS

In a letter to the editor appearing in yesterday's News-Argus, John Dortch Lewis noted: "The war protesters have made their point. If they will now direct their protest against the inhumane treatment of prisoners of war held by the North Vietnamese they will better identify as concerned Americans."

Mr. Lewis was not being flip. He was sincere. He recognizes that many of the students demonstrating against the war are sincere.

He also feels that this group could have more influence than any other on pressuring

North Vietnam to either treat the prisoners humanely or, preferably, to release them.

The North Vietnamese and the Viet Cong have a strong affinity for the anti-war demonstrators in this country.

They regard them as a significant and possibly decisive second front against the United States effort in Southeast Asia.

Unfortunately, while the sincere doves, the radicals, the blatant communists, the professors and all the other protesters have decried every U.S. action, not a word has been raised by them in behalf of the prisoners held by the communists.

From the few who have been released—always for propaganda purposes—we know that the prisoners are being tortured and poorly fed. They are kept in solitary confinement. The vast majority have not been permitted to communicate with the families. Some of the men have been held this way for six years.

Mr. Lewis knows first hand of life in a prisoner of war camp. He was in infamous Stalag III, scene of "The Great Escape." Mr. Lewis, who twice was shot down while flying with the Royal Air Force, three times escaped only to be recaptured. On his fourth attempt, he made it to allied lines.

He is a member of a group of survivors of Stalag III who have concerned themselves with securing humane treatment or release of the downed airmen and other prisoners.

They question whether enough effort has been exerted and whether, indeed, if the effort that has been made has not been misdirected.

Mr. Lewis sees in the organization and the energy and enthusiasm of the students and other protesters the possibility of the first significant step toward decent treatment and possible release of the prisoners.

Surely if their cause is sincerely one of humanity, they cannot divorce themselves from this important aspect of it.

WASHINGTON WORKSHOPS PROGRAM

Mr. PERCY. Mr. President, there has been a great deal of discussion and debate in the past months about the youth of the Nation. The newspapers, radio, and television constantly report on their activities. Unfortunately, most of what we see and hear is the bad news—what the youth of today is doing wrong.

I should like to point out a group of young people who do things right, the participants in the Washington Workshops program. For several years this program has brought interested high school students to Washington for the summer so that they might learn about our governmental process. Under the guidance of competent instructors, approximately 2,000 students have benefited from this program.

One student in particular, Jim Lackner, of Highland Park, Ill., exemplifies the type of student who participates in the workshops. After a year of careful research and debate, he was able to put down on paper a plan to improve our welfare system. His plan reflects the great thought he has given to one of our most pressing social problems.

Jim Lackner's plan was approved by the model Congress of the Washington Workshops. We do not have to agree with every feature of it to commend him for his creative thinking about a difficult social problem. I ask unanimous consent that it be printed in the RECORD.

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

WELFARE REFORM

A.

(1) Government gives grants to business to build and operate plants in high unemployment rate area;

(2) Government would pay overhead costs for training of hardcore unemployed; and

(3) A tax incentive for keeping these former hardcore unemployed at jobs for two years or more.

This part would signify the building of more business, thus creating more job opportunities. Because there will be more people with jobs the factories built under this program will be successful in selling their products. (The Consumer Market will grow with more people working)

B.

(1) Agencies will be set up to obtain these new jobs for the unemployed;

(2) Those who are offered a job and are able to work, but turn it down for an unacceptable reason, will be excluded from the welfare roles;

(3) Day care centers will be available for one guardian-parent families, to enable those people to work, or anyone who requests their use;

(4) All those who take jobs, but whose salaries fall below the poverty level, will get compensation to that level by the government;

(5) Those who cannot work will be afforded more money than at present time, due to the shrinking of the welfare roles.

This part would mean anyone who at present wants to work can, and also those who can work (on welfare roles) will;

Enable those who do not have physical or mental handicaps that would make working impossible;

Unacceptable reasons—Use excuses given for not working but do not fit the above definition of work.

A CITIZEN LOOKS AT THE ABM

Mr. FULBRIGHT. Mr. President, the June 1970 issue of the Reader's Digest contains an article by the Honorable Henry Cabot Lodge entitled "A Citizen Looks at the ABM." The article makes a strong argument for the Safeguard system, emphasizing the Soviet threat. It concludes that "the evidence is persuasive that the President's requests are wise" and that what is at stake is "nothing less than protecting the deterrent forces of the United States and thus the survival of the country."

In the course of the final hearing in the series on "ABM, MIRV, SALT and the Nuclear Arms Race," held by the Subcommittee on Arms Control, International Law, and Organization, the two witnesses who were testifying were asked by the subcommittee to prepare comments on the article by Ambassador Lodge. These witnesses were Sidney D. Drell, deputy director of the Stanford Linear Accelerator Center, and Marvin L. Goldberger, professor of physics, Princeton University. Both men were, until recently, members of the President's Science Advisory Committee. They submitted their comments in a letter, dated July 6, to Senator GORE, chairman of the subcommittee, who has sent me a copy of their letter.

In the course of their letter Dr. Drell and Professor Goldberger express the view that Safeguard is "a cost ineffective response to the present or potential Soviet threat" and is also "technically incapable of preserving any substantial component of our ICBM force." They note that this opinion is "unchallenged by any studies of which we are aware" and add that they are "aware of no independent analysis of the Safeguard system by scientists outside of the Pentagon that endorses the proposed program for its stated missions." They conclude that "there is absolutely nothing in Mr. Lodge's article which makes a convincing case for the Safeguard Modified Phase II deployment."

I ask unanimous consent that the text of Mr. Lodge's article and the letter from Dr. Drell and Professor Goldberger be printed in the RECORD.

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

[From the Reader's Digest, June 1970]

A CITIZEN LOOKS AT THE ABM

(By Henry Cabot Lodge)

(EDITOR'S NOTE.—Henry Cabot Lodge—politician, soldier, ambassador, statesman—has served his country long and well. He was first elected Senator from Massachusetts in 1936, and as a much-decorated Army officer in World War II was the first Senator to see battle action since the Civil War. He served as U.S. Representative to the United Nations (1953–60), ran unsuccessfully for Vice President in 1960 on Richard Nixon's ticket, was ambassador to South Vietnam (1963–64, and again in 1965–67) and last year was chief U.S. representative at the Paris peace talks).

Once again the vexing question of how far and how fast to proceed with a defense of our country by anti-ballistic missile (ABM) is before Congress and the nation.

Last summer the decision to make a limited start with our anti-ballistic missiles—Safeguard—cleared the Senate by a single vote. That decision, fiercely disputed, authorized the Defense Department to go only as far as deployment of the first two anti-missile installations.

This summer Congress is debating whether to carry the deployment somewhat further. The Administration wants funds to add a third site and to do the advance work on five more sites so as to be ready should an urgent expansion of the country's defenses against a nuclear attack be needed.

Our security needs were stated by President Nixon on March 14, 1969, when he disclosed the three functions that a "measured" deployment of the Safeguard system was intended to serve. The system, if fully extended, would provide:

1. A shield, or cover, for the land-based Minuteman intercontinental ballistic missile (ICBM) force and the Strategic Air Command's B–52 bombers against a direct attack.

2. A defense of American cities from a terroristic nuclear fusillade of the kind that could be mounted with relatively primitive nuclear ICBMs during the 1970s by a nation not in the first rank of nuclear powers.

3. A guard to ward off a nuclear shot or volley fired by accident or as a demonstration of force, or a warning shot "across the bow."

For a number of reasons, including the hope that the current disarmament talks with the Soviet Union may eventually slow the accumulation of long-range nuclear weapons, the Nixon Administration has refrained from attempting to go to a full Safeguard system immediately.

Safeguard and Stabilization. Our current strategic land-based offensive systems consist of two main elements: SAC B–52 manned-bomber wings are deployed across the United States; the Minuteman force,

some 1000 ICBMs in deep concrete silos, are arrayed in six wide fields in five states. The first two Safeguard complexes are separately to cover the Minuteman squadrons in place around Malmstrom Air Force Base in Montana and around Grand Forks Air Force Base in North Dakota. The third complex called for in this year's budget is to cover the Minuteman field near Whiteman Air Force Base in Missouri. These three complexes protect about half of the entire Minuteman force.

While the major function of the Safeguard system that Congress is now being asked to strengthen is to defend Minuteman, there is also a need to provide cover for our manned bombers. They are increasingly exposed on their fields to missiles launched by submarines in positions just off our coasts. All that is requested in the new budget for this important function is funds for advance work on forward defenses.

Heretofore, one of the principal arguments against our investing seriously in a missile defense was that such an action by "destabilizing" (as the jargon goes) the condition of mutual deterrence, would "goad" the Soviet Union into still heavier deployments of ICBMs. It was argued that the Soviet Union was maneuvering only for ICBM equality with the United States, in the interest of making a condition of mutual deterrence absolutely certain.

The fact which challenges this assumption is that the Soviets show no signs of stopping the arms race.

In mid-1966, before the debate in the United States over the ABM became serious, our intelligence credited the Soviet Union with 250 land-based ICBMs, then deployed, with a growth rate of about 150 missiles a year. These reports said further that an unusually powerful new ICBM, the SS–9, was also undergoing test firing.

Only a year later the count rose to 570. Last September the Soviet ICBM force in being passed 1000. If Soviet deployments continue at the present pace (a new ICBM every other day), the ICBM force in operational readiness will number more than 1300 nuclear long-range attack vehicles by the end of this year. This compares with a total of about 1000 weapons in the U.S. Minuteman force, which was leveled off four years ago on the assumption that it was already big enough.

THE DEEPENING SHADOW

Numbers alone, however, are not the only reason for the deepening shadow which this expansion casts across the prospects for American security. Last year Defense Secretary Melvin Laird predicted that the Soviet force of huge and ready SS–9 missiles, which then numbered 150, could grow to about 230 missiles by this summer if the pace continued. The Soviets are reaching that goal. (Far bigger than the Minuteman, the SS–9 is believed to be able to hurl either a 25-megaton warhead or a cluster of three 5-megaton warheads more than 5000 miles and strike a target at a so-called miss-radius of less than half a mile.)

The experts believe that 400 SS–9s (with MIRV, independently targeted multiple warheads), launched more or less simultaneously, could with the benefit of surprise destroy 95 percent of the entire Minuteman force if it were left unprotected.

The continuing expansion of the Soviet land-based ICBM force has been paralleled by the growth of a Polaris-type submarine force, the so-called Y class. Last year the Soviet navy sent no fewer than six and perhaps as many as nine of these craft to sea. Since then, several more have been launched and as many more are under construction. Like our Polaris, the Soviet subs are each armed with 16 missiles. Military experts conclude that the Y-force is capable of destroying the SAC bombers, based for the most part only a few miles back from our coasts. The warning interval available to bomber crews on alert would be shrunk to minutes if the attack were to come from submarines launching a rain of flat trajectory warheads from concealments in the ocean close to the American shore.

The Soviets, according to reports, have also been experimenting diligently with a strategic-attack space machine, an orbiting version of the ICBM designed to respond on command and attack a ground target.

Nuclear Pearl Harbor. This fast-emerging threat last spring caused Secretary Laird to warn that the Russians seem to be headed for a first-strike capability; that is, the capability of destroying our total retaliatory force in one sudden strike—in a nuclear Pearl Harbor from which there could be no recovery. I know of no one who even suggests that the Soviets intend to do such a thing—to use a first-strike capability. What is important in maintaining world peace, however, is that no power have a capability such as this which it *could* use, without our having an adequate defense.

In the span of three or four years, while Americans have been absorbed in domestic strife and the Vietnam war, it appears to those in a position to know that our margin of strength in strategic-nuclear-weapons systems—the basis of our deterrent against attack—has been seriously reduced. It is thus no longer only the American cities that lie under nuclear threat, but our retaliatory defense as well. We thus can no longer afford the luxury of debating the ABM in abstract terms.

Obviously, the decision before us can be crucial to our survival. According to the respected Rand Corp. strategist, Dr. Alfred Wohlsteter, if the American Minuteman force should be left undefended; and if before 1975—the year the proposed initial elements of Safeguard should be in place—the Russians should match the accuracy and reliability already attained in our own systems; and if, too, the Russians should continue to add SS–9s while bringing on modest numbers of MIRV-type warheads for it—*then it is mathematically certain that by the middle of this decade virtually all the Minuteman force could be wiped out in a matter of minutes.*

Balance of Terror. A fresh look must therefore be taken at the two principal assumptions which, through the early and mid-1960s, regulated the U.S. approach to the strategy of mutual deterrence and which rejected the ABM as an essential reinforcing element in such a strategy.

One was the expectation that the Soviet Union would stop accumulating strategic offensive nuclear weapons as soon as equality was reached with the United States. Instead, as noted earlier, the Soviet Union is pushing ahead to numerical superiority.

The other assumption was that each nuclear super-power could achieve a balance of terror by leaving its cities in hostage to the other. So long as both the Soviet Union and the United States retained a capacity to retaliate by inflicting "assured destruction" equal to wiping out (by former Defense Secretary Robert McNamara's estimates) from one fifth to one third of the attacker's population, they would stand mutually self-deterred. Correspondingly, for one side or the other to start investing seriously in city-defending anti-ballistic missile systems would, by this theory, have the practical consequences of taking the hostages off the board. That would, presumably, unsettle the strategic balance, loosen the rein of self-deterrence, and spur the adversary into either following suit or putting more capital into the strategic strike forces. But now the argument that any ABM is "destabilizing" is, in the face of the rapid Soviet buildup of offensive systems, no longer valid.

The further argument that a decision by us to move ahead with an ABM would either frighten the Soviets out of discussing limitation of strategic offensive systems or would provoke them also has no validity. The Senate vote last year to proceed with the initial phase of Safeguard was followed by an immediate Soviet decision to join the disarmament talks at Helsinki in November. Indeed, one might argue that the U.S. decision helped bring about these talks.

GLASSBORO AND "GALOSH"

The most authoritative reports available of the meeting at Glassboro, New Jersey, in mid-1967 between President Johnson and Premier Kosygin are that the meeting was largely concerned with the ABM question. The year before, the Soviets seemed to be constructing around Moscow what was eventually identified as a full-blown and unmistakable ABM system, named "The Moscow System"; it materialized as a grouping of four huge installations, each intended to serve 16 "Galosh" anti-missile missiles, depending for guidance upon elaborate radar-computer combination.

That the Soviets became engrossed in the science of missile defense almost as soon as they grasped the science of offensive missiles was well known to American intelligence. Evidence gathered in the winter of 1961–62, after the Soviets broke the nuclear-test moratorium of 1958, establishd that their rocket forces had, with some success, attempted to intercept and destroy another rocket with a nuclear explosion at high altitude. There is also the so-called Talinn system, which became and remains, for American technicians, a subject of controversy: whether it is designed to shoot down U.S. bombers, or ICBMs, or possibly both, is in dispute. But it appears that there never was any serious doubt about the purpose of "Galosh," the first true anti-missile missile to become operational.

At Glassboro, according to the most authoritative reports, Secretary McNamara tried to persuade the Russians not to press on with the "Galosh" system. He is said to have made the argument against "destabilizing" the strategic balance. At that point, we Americans were holding back a prototype ABM system of our own. (This was the Nike X concept, from which have come most of the fundamental subsystems of Safeguard: the elaborate "phased-array" radars for tracking and identifying dozens of oncoming missiles individually; the long-range Spartan missile for intercepting and destroying nuclear warheads hundreds of miles out, above the earth's atmosphere; and the short-range, low-altitude Sprint for attacking nuclear warheads inside the atmosphere.)

Evidently the Soviets did not consider the ABM "destabilizing." Premier Kosygin was quoted in London in the same year as saying that a defense system had the merit of saving lives and that under no circumstances could such a mechanism be blamed for the arms race.

In the aftermath of Glassboro, the decision was made to deploy our first ABM system, named Sentinel. The deployment was aimed primarily at providing an area defense for American cities against the expected ICBM threat—albeit primitive—from other countries not in the front rank of nuclear powers. Secretary McNamara did, however, wisely foresee a possible need to provide a specific defense of the Minuteman force if the Soviet ICBM force kept expanding. That provision proved timely.

The Soviets, for their part, remain engrossed in the Moscow ABM System—probably to be refitted with a superior defense missile. They thus already have a fully operational system.

TIPPING THE BALANCE

Why have the Soviets invested so heavily in an ABM system of their own? Looking at it from their point of view, and setting aside

a possible intent to achieve a first strike, we see they may well believe it necessary to have protection against an irresponsible, terroristic attack from some "minor" nuclear power. This is quite understandable; our experts feel a similar need. For that reason, the Soviets do not view their ABM system as speeding up the nuclear-arms race, but rather believe their ABM to be essential to their defense.

But in a world where so much is delicately balanced, even an understandable action must be scrutinized. Even if we assume that the Soviet ABM is built as a protection against a near neighbor, its existence, coupled with the Russians' increasing offensive capacity, can upset the strategic balance between the Soviets and ourselves.

What can we do to stabilize the situation without provoking another step down a dangerous road? We could, if we had to, increase our offensive capability to compensate for the new Soviet offensive and defensive systems—an invitation to further escalation. Or we could, as the President wishes to do, "stabilize" defensively—by building an ABM system that protects the United States.

Amid all the confusing terminology and sophisticated chess-playing, a certain common-sense fundamental stands out: The only time an arms race can be controlled is when both sides feel "safe," and the only time both sides feel safe is when neither side has an offensive or defensive advantage.

Another basic question arises: can we afford it?

The best information available to me indicates that the Administration's ABM program, in its second phase, would not unreasonably burden the American economy. Capital outlays for the total system thus far requested add up to $5.9 billion. This compares with the cost of $20 billion for putting a man on the moon.

Meanwhile, the reviewing arrangements set up by President Nixon will allow him to halt the project completely, or stretch it out, or turn it in a new direction as the technological situation might require. Furthermore, this flexibility will enable him to try a diplomatic initiative in the current disarmament talks, or as world political conditions might dictate.

SUMMING UP

Judged by these standards, Safeguard seems a modest program. Defense Secretary Laird said in February that what is contemplated really represents "the minimum we can and must do, both in cost and system development, to fulfill the President's security objectives."

The case, then, for moving on with Safeguard seems clear-cut. Safeguard holds out these propositions:

It provides a shield for the Minuteman and B–52 forces at a juncture when their retaliatory credibility is coming into jeopardy.

It offers the President a hedge against a hostile threat at a time when he has deliberately withheld production money from new strategic offensive forces.

It protects us from "nuclear blackmail" and the possible catastrophe of an attack from an irresponsible third power.

It widens the choices open to the United States if the disarmament talks should fail or be extended for a protracted period.

Finally, maintaining the development of ABM should strengthen the American trading position in the disarmament talks. As it is, their ABM strength is now greater than ours.

For me, therefore, the evidence is persuasive that the President's requests are wise.

In sum, what is at stake here is nothing less than protecting the deterrent forces of the United States and thus the survival of the country. In the face of this awesome proposition, four arguments are heard.

The first is that the ABM is technically faulty. This is an argument on which no layman can pass. The judgment of the expert officials whose solemn duty it is to pass on such matters is clearly favorable to ABM. Furthermore, the Soviets have perfected such a system. Can it be that our scientists are any less capable?

The second argument is that both sides have so much capacity to "overkill" each other's populations that ABM is not necessary. This is the so-called "balance of terror." But if party A can actually overwhelm party B's weapons, party B will have lost his capacity to kill anything. There will be "terror," but no "balance."

The third argument is that it would be better to spend the money which is asked for ABM on domestic peacetime pursuits. We can all agree that it would be more satisfying to spend the money on housing or anti-pollution but, almost at the same moment that we say this, the question presents itself: If our country is not secure, what do domestic programs avail? Professor Hans Morgenthau, assuredly no hawk, was quoted recently as saying: "A nation which refuses to accept the primacy of foreign policy over domestic politics has doomed itself."

Much as we may hope that other nuclear powers will live quietly within their own borders, common sense tells us that we cannot accept a state of affairs in which these powers are superior to us in nuclear missiles. Surely in a matter involving the survival of the nation, the burden of proof must rest on those who contend that the international order is so lamb-like that such superiority is acceptable.

It is bleak to have to admit that the international order is dangerous, disorderly and complicated, and that we therefore must expect that life will consist of a series of alerts—as it has for a large part of the 20th century. It is only human to exclaim, as many have done: "I don't want to live out my life in this kind of a world!" This human cry is understandable, but our chance of survival is greatest if we see the international order as it is—not as we would wish it to be. In all of this we, of course, are keeping the door open in the event that the disarmament talks should produce some sort of an agreement or new opportunity.

Far from criticizing ABM, should we not recognize that it is perhaps the one glimmer of light in an otherwise bleak prospect? The ABM is defensive; it can attack no country. It can be actually "de-escalatory"; it could work toward a shrinkage—a slowing—of the arms race, an easing of the tension.

The fourth argument—that for us to undertake this ABM program would be provocative—seems unconvincing. Whatever force it may once have had has been wiped out by the Soviet gains, by their obvious determination to build a system for their own protection, by the defensive character of the ABM, and by the fact that the President can modify or suspend the program entirely if it seemed that by so doing he could reach a satisfactory international agreement.

It can thus be a force for peace making. It might even augur the beginning of a more stable international order.

This being said, can we prudently turn away?

JULY 6, 1970.

HON. ALBERT GORE,
U.S. Senate,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR GORE: In his article "A Citizen Looks at the ABM" appearing in the June 1970 issue of *The Reader's Digest*, Henry Cabot Lodge argues in support of the Administration's proposed program for expanding Safeguard in FY 1971. In this letter we present a rebuttal of Mr. Lodge's position. The technical basis of our arguments can be found in our testimony to your subcommittee on 29 June 1970.

We share Mr. Lodge's concern about the growing Soviet nuclear missile capability and the potential threat it may pose to our land-based retaliatory forces unless arrested. Although the growing numbers of Soviet ICBM's and missile-carrying nuclear submarines do not at this time pose a threat to the survival of the Minuteman component of our deterrent forces, they could indeed endanger Minuteman should the Soviets continue to increase their numbers and improve their quality by MIRV'ing the SS–9's or improving accuracy of the SS–11's. We disagree strongly, however, with the idea that Safeguard has any significant value in providing a defense of Minuteman. Mr. Lodge's article mixes elements of the Soviet threat, Soviet psychology, abstract ideas about ABM and offensive vs defensive systems. What is does *not* do is address the relevance of Safeguard to any of these questions.

In the absence of meaningful arms control agreements, we feel that it is important to maintain the invulnerability of Minuteman. It is precisely this issue, the ability of the system to defend Minuteman, against which Safeguard must be measured. It is our opinion, unchallenged by any studies of which we are aware, that not only is Safeguard a cost ineffective response to the present or potential Soviet threat but it is also technically incapable of preserving any substantial component of our ICBM force. The point is simply that a Soviet force large enough to seriously threaten more than seven hundred Minuteman missiles would scarcely be affected by the presence of Safeguard. Another way of saying this same thing is that Safeguard, working perfectly and with the full nationwide 12-site deployment costing in excess of $10 billion, can be effective in preserving 300 Minuteman missiles, which is deemed adequate as a retaliatory force, against only a very limited and narrow band of models of an assumed Soviet strike.

We turn now to a point by point analysis of Mr. Lodge's article.

1. Mr. Lodge asserts that a MIRV'ed force of 400 SS–9's could destroy Minuteman. Assuming the requisite combination of payload capability and accuracy, so that each MIRV'ed SS–9 can destroy three Minuteman silos, one cannot quarrel with this statement. We note that this postulated force is pure conjecture, unsubstantiated by any hard intelligence and is a very large extrapolation beyond the present threat. The Soviets are currently credited with about 275 SS–9's (both operational and under construction) and they have yet to demonstrate a true MIRV capability—their current multiple warhead program has not demonstrated the flexibility to target individual silos. But the point again is that Safeguard would have little to do with negating Lodge's conjectured attack: A system with the capability to destroy no more than 100 or so of the presumed 1200 incoming warheads, less than 10% of the threat, can scarcely be called effective.

If the arms race with the Soviet Union continues, what will be needed are (a) programs to preserve Minuteman which can be implemented if needed, in less than the 4–5 years required for the *initial* Safeguard deployment; and (b) programs that can realistically respond to a massive Soviet buildup of counterforce capability. Programs of both sorts exist. They include the following possibilities if needed:

(1) Increasing the size of the offensive ICBM force. If needed this could be implemented with a shorter lead time, and also at a much lower cost. Thus Secretary Laird testified before the House Appropriations Committee on November 17, 1969 that a buy of 300 new Minuteman III missiles in silos, complete with all required support equip-

ment is $2.5 billion, or $8.3 million per missile. In contrast, the cost of the proposed modified Phase II–A of Safeguard designed primarily for Minuteman defense is given by DOD as $7 billion. If it is effective in saving roughly 100 or so Minuteman silos, this works out to an expense of $7 million per successfully defended missile. Thus the cost to defend and save a silo is almost nine times the cost of each Minuteman saved. Moreover, this cost exceeds the cost of the enemy missiles that could be intercepted with confidence.

(2) Superhardening of the silos to withstand larger blast overpressures.

(3) Creating more aimpoints by dispersal of a missile into one of several possible launch positions.

(4) Developing more mobility of the missiles either on land or by going to sea with more Polaris/Poseidon boats or with new longer range underwater launched missiles.

(5) Developing and deploying the alternative technology of a dedicated hard point active ABM defense system with many simpler, cheaper, less vulnerable and smaller radars for the Minuteman silos. As we testified, this can be done.

2. Mr. Lodge comments on the growing Soviet nuclear submarine threat and remarks that the force of Y-class submarines ". . . is capable of destroying the SAC bombers based for the most part only a few miles back from our coasts." There are two points we would like to make on this point:

(1) *Technically* it is true that the expanded Safeguard deployment will offer *some* protection to SAC air fields against attack from the growing Soviet submarine-based threat, although penetration aids associated with the incoming wareheads can defect a system that relies only on an intercept capability above the atmosphere as is the case with Safeguard for this mission. However *strategically* a sea-launched attack against SAC bases is not realistic on grounds of the timing requirements for such an attack. If the submarine launch occurs at the same time as the Soviet ICBM launch against our Minuteman force, then there will be at least 15–20 minutes or so after the SAC bases have been destroyed to assess this fact and to launch the Minuteman force—in addition to the Polaris/Poseidon force—in retaliation. If, on the other hand, the Soviets launch their ICBM's and their submarine-based missiles in an attack coordinated to arrive on target at the same time, early warning of their ICBM launch will allow us enough time to get most of the SAC bombers off the ground.

(2) Currently, the U.S. has in progress an effective and more straightforward program to relocate some of the SAC aircraft in times of emergency to numerous subsidiary air fields further removed from the submarine threat.

3. Mr. Lodge remarks that the "fast emerging threat caused Secretary Laird to warn that the Russians seemed to be headed for a first strike capability . . . a nuclear Pearl Harbor from which there could be no recovery." We disagree with the implications of this statement. A threat against the Minuteman silos or the SAC air bases is not synonymous with a first strike capability against the U.S., let alone the intent of a first strike. A first strike against the U.S. would have to accomplish a simultaneous attack against Minuteman, the SAC bombers, and the Polaris/Poseidon fleet. Technically it is impossible to envisage this possibility because of U.S. early warning capabilities. Under existing U.S. policy, moreover, each of these three U.S. retaliatory forces is designed with the capability to inflict unacceptable damage on the Soviet Union and on Mainland China—i.e. each, even after absorbing a first strike, is designed to meet the requirements of a deterrent force.

In spite of this, Mr. Lodge says that "while Americans have been absorbed in domestic strife and the Vietnam war . . . our margin of strength in strategic-nuclear weapons systems—the basis of our deterrent against attack has been seriously reduced." He concludes that "we can thus no longer afford the luxury of debating the ABM in abstract terms." In our opinion, the U.S. deterrent is not *seriously* threatened by any combination of Soviet offensive or defensive weapon systems about which we have any intelligence. Furthermore, it is Mr. Lodge who is talking about ABM in abstract terms: Even if the Lodge allegations were correct, Safeguard would do virtually nothing to change the situation as we have argued. What could be more abstract than advocating the deployment of an ABM system that makes no sense?

4. Mr. Lodge quotes the concerns of Dr. Alfred Wohlsteter to the effect that the Safeguard decision is crucial to our survival: "According to the respected Rand Corp. strategist, Dr. Alfred Wohlsteter, if the American Minuteman force should be left undefended; and if before 1975—the year the proposed initial elements of Safeguard should be in place—the Russians should match the accuracy and reliability already attained in our own systems; and if, too, the Russians should continue to add SS–9s while bringing on modest numbers of MIRV-type warheads for it—then it is mathematically certain that by the middle of this decade virtually all the Minuteman force could be wiped out in a matter of minutes."

While we agree that the Soviet threat could evolve during the next three or four years in such a way as to endanger survival of our Minuteman force, we have argued above that Safeguard is not effective for meeting this threat. We oppose the proposed extension of the Safeguard deployment neither because we disregard Dr. Wohlsteter's concerns nor because we oppose the concept of ABM. We oppose the administration's proposal because we believe that Safeguard, which is made of equipment engineered for city defense and not for hard point defense, will not be effective in accomplishing the defense of Minuteman. DOD spokesmen who defend Safeguard on grounds of its multimission capabilities (defense of the land-based retaliatory forces; thin area defense against China; defense against accident) ignore the fact that the compromises in the system that are designed to enable it to meet all these missions have made it relatively ineffective in accomplishing *each* one individually.

5. Mr. Lodge comments on the Soviet ABM system around Moscow, noting that "The year before, the Soviets seemed to be constructing around Moscow what was eventually identified as a fullblown and unmistakable ABM system, named "The Moscow System"; it materialized as a grouping of four huge installations, each intended to serve 16 "Galosh" anti-missile missiles, depending for guidance upon elaborate radar-computer combination"; and later on "The Soviets, for their part, remain engrossed in the Moscow ABM System—probably to be refitted with a superior defense missile. They thus already have a fully operational system."

Our comment on this is that a U.S. ABM is not necessarily the proper response to a Soviet ABM program. Our response to the 64 launchers around Moscow was to develop MIRV's for U.S. missiles to ensure their penetration of possible Soviet capabilities. In fact the present Soviet ABM ring at Moscow has very limited defensive capability and poses no significant threat to the U.S. deterrent capability. It follows in no way from the Soviet experience that deploying ABM is a useful course for the U.S. Indeed the Moscow ABM ring shows a major danger with going ahead with ABM. In this case, the Soviets gained no increased security—they merely triggered a U.S. response in the form of the MIRV program and thus simply perpetuated and escalated the arms race to a greater level of cost and destructiveness.

6. Mr. Lodge comments that "Judged by these standards, Safeguard seems a modest program. Defense Secretary Laird said in February that what is contemplated really represents 'the minimum we can and must do, both in cost and system development, to fulfill the President's security objectives.' "

As we have argued in this letter, the extension of the SAFEGUARD ABM system is not a wise course to follow simply because it is not responsive to projected or postulated Soviet threats, except for a very narrow band of threat models as we described in our testimony before your subcommittee on June 29, 1970.

7. Mr. Lodge dismisses the argument that the ABM is technically faulty by noting that: "This is an argument on which no layman can pass. The judgment of the expert officials whose solemn duty it is to pass on such matters is clearly favorable to ABM. Furthermore, the Soviets have perfected such a system. Can it be that our scientists are any less capable?"

Our response to this is as follows:

(1) Concerning the statement that expert officials judge ABM favorably, we again remark that we are aware of no independent analysis of the SAFEGUARD system by scientists outside of the Pentagon that endorses the proposed program for its stated missions. Our own criticisms have been reviewed above in response to earlier comments by Mr. Lodge.

(2) By judging the Safeguard to be technically faulty for defending Minuteman silos, we in no way imply or agree that U.S. scientists are less capable than Soviet scientists. We are simply saying that the engineering solution of Safeguard, designed as it was for defense of cities which are soft and high value targets, is the wrong solution for hard point defense of Minuteman silos, which are very hard and individually low value targets. We indeed believe that we can build an effective and much cheaper hard point defense based on the alternative technology of small radars, each much simpler, cheaper, and less vulnerable than the very expensive $200 million dollar MSR engagement radar which in SAFEGUARD is the single "eye" responsible for defense of an entire wing of 150 Minuteman missiles. We believe that the U.S. should be "getting on" with the job of designing this dedicated hard point defense system so that we can have it if needed in the face of a growing Soviet threat. SAFEGUARD in our view is an engineering mistake grafted from the city defense role in the old Sentinel system, and is ineffective for hard point defense.

8. Mr. Lodge asserts that ". . . it (ABM) is perhaps the one glimmer of light in an otherwise bleak prospect. The ABM is defensive; it can attack no country. It can actually be de-escalatory." He goes on to say the argument that ABM is provocative is "unconvincing."

This argument is contrary to U.S. experience of the past 10 years. We have already commented that our decision to go ahead with our MIRV program was provoked exactly by Soviet ABM activity at Moscow. Should the Soviets respond to the deployment of Safeguard by a similar substantial ABM deployment with large radars throughout the Soviet Union, this would certainly be interpreted as a threat to our deterrent. To be specific, a deployment of large radars comparable in capability with the full 12-site Safeguard installations would cause grave concern to U.S. planners. It would also lend credence to the possible utilization of their extensive air defense systems in an ABM role. The capability of such a defense to deal with a U.S. force degraded by a Soviet first strike would surely cause us grave concern and would provoke a response involving expansion of our offensive forces. Why should

the Soviets react any differently to our deployment of a nationwide ABM system?

In summary, we find that there is absolutely nothing in Mr. Lodge's article which makes a convincing case for the Safeguard Modified Phase II deployment.

Very truly yours,

MARVIN L. GOLDBERGER,
Deputy Director,
Stanford Linear Accelerator Center,
Stanford University.

SIDNEY D. DRELL,
Professor of Physics,
Princeton University.

NASA BUDGET

Mr. DOLE. Mr. President, the proposed curtailment of the already reduced NASA budget was debated last week in the Senate. Although attempted reductions were defeated, the voting clearly indicated that support for the space exploration program is less than enthusiastic.

In light of the realities of American life in the 1970's, the Nixon administration has reevaluated our national priorities, but direction of efforts toward solving the country's domestic problems does not demand that we turn our backs on space exploration. The manned space program should not be regarded as a national luxury—rather, as an integral part of our country's progress. NASA has brought pride and the benefits of its technology to our country in the past and shows every promise of being one of the major links to our future progress.

The lead editorial in the Washington Post of July 12 clearly points out the value and necessity of continuing the NASA program. Mr. President, I ask unanimous consent that the editorial be printed in the RECORD.

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

THE CADILLAC IN THE SKIES

Just a year ago, the manned space program was riding high. Apollo 11 was waiting on the launch pad at Cape Kennedy for its crew and the world was waiting for the most spectacular trip in history to begin. The excitement and the glamor passed quickly and the manned space program is now in trouble. It came within a handful of votes last week of being strangled by the Senate and if the debate there is any indication more troubles are ahead. The psychology that sustained the program during its heydays of the 60s has been reversed and manned space flight is now regarded by many people as the Cadillac in the skies.

This psychological shift is understandable. To many of those who are deeply concerned about the quality of life at home, about the educational level of our children, the housing conditions of our poor, the pollution of our surroundings, supporting manned space flight is a provocation as riding in a chauffeured limousine through the slums. The country has so many problems, the argument goes, that it must divert the money that might be spent on manned space flights to programs that will aid more directly and more quickly the people who now inhabit the earth.

This is a hard argument to answer for to answer it fully and logically (or, for that matter, to make it fully and logically) requires a prescience that none of us has. No one really knows what is to be gained by going on with manned space flights and no one really knows what is to be lost by stopping them. There is a universe out there that we don't know about. There is, of course, the argument that unmanned space probes can tell us all we need to know about it for as far into the future as we now care to think. But it is difficult, if not clearly wrong, to accept the idea that machines can totally replace men in so delicate a task of exploration.

We raise this now because the debate in the Senate last week, while cast in terms of merely slowing down the pace of the manned space program, was in fact a debate over halting it. The cuts already made in NASA's budget have built in a halt to manned space activities from 1975 to, probably, 1978. To expand that period of inactivity to four or five years, it seems to us, is to kill the program. So long a pause would mean the dismantling of the teams of experts and probably of the equipment that put Apollo together and controlled its flights. Rebuilding those teams would be a long, arduous and costly process.

Thus we were pleased that the Senate did not go along with its liberal bloc which voted almost to a man to curtail NASA's funds even more. Many of the arguments made by NASA's supporters seem to us quite irrelevant—curtailment would mean unemployment in the aerospace industry, the Russians will be out there, and so on. But so did the basic argument made by the programs critics—that the funds should be used at home. We all know that cutting NASA's budget by $100 million or $500 million or $1 billion does not mean that the government is going to spend that much more on pollution control, education, housing, urban renewal and all the things that we ourselves place high on the list of national priorities. The fact is that if Congress really wanted to do all the things its members talk about, and postpone each year because of fiscal restraints, it wouldn't have turned last year's tax-reform bill into a tax-reduction bill.

The basic issue involved in NASA's appropriations this year, as it will be next year and for many years to come, is whether this country should give up something it has done and which is going well, something that has brought it great international prestige and internal pride, and something that we believe may well hold the key to man's future.

OLDER AMERICANS ACT: 5 YEARS OLD

Mr. WILLIAMS of New Jersey. Mr. President, the Older Americans Act became 5 years old on July 14. This anniversary is worthy of notice by all Americans, no matter what their ages. We can take some pride in achievements thus far, even while we raise questions about future directions and possible restructuring of the apparatus created a half decade ago by that pioneering legislation. Under the Older Americans Act, the Administration on Aging was meant to provide a Federal focus for services, programs, and research to improve the lives of the elderly. To date, 53 States and Territories have established units on aging and are receiving allotments through AOA.

Some idea of the range of objectives and activities under the Older Americans Act may be seen from the following list of AOA priorities in 1970:

Strengthened State agencies.

Development of more comprehensive coordinated local and State programs.

Use of talents, skills, and experience of older Americans in volunteer Service and employment activities.

Inclusion of services for the elderly in the Model Cities program.

Improved nutrition and transportation.

Development of truly multipurpose senior centers as vehicles for delivery of services and opportunities.

An all-out attack on isolation.

Development of a national policy on aging.

To many supporters of the Older Americans Act, it appeared that the legislation would offer a fine vehicle for Federal-State cooperation. And, to judge by testimony I have received as chairman of the Special Committee on Aging, this is quite often the case. In my home State of New Jersey, for example, the Administration on Aging and the State Division on Aging have worked together on many worthwhile projects, all of which have intensified local and State interest in the elderly.

Under title III of the act—the grant program which makes Federal funds available to States—for a 3-year period—to aid communities in providing service programs for the elderly—New Jersey has developed an outstanding network of offices, councils, or centers on aging and by creating a firm liaison with other service agencies in these communities, such as welfare, social security offices, housing authorities, and health care facilities.

Today, 16 offices, councils, or centers on aging are located in Ocean County, Union County, Middlesex County, Cape May County, Bergen County, Sussex County, city of Camden, Camden County, Hudson County, Paterson City, Mercer County, city of Trenton, Passaic County, Jersey City, Woodbridge Township, and Cumberland County.

It is significant that these agencies are action oriented to provide vital services to the older members of the community. Through senior center recreational activities elders are brought out of isolation into the mainstream of daily activity; meal service programs provide hot meals, nutrition education and companionship; health counseling, medicare and medicaid counseling provide needed awareness of existing services, as well as pointing up to authorities those services that are lacking or nonexistent; senior aides programs and employment of oldsters at senior centers provided the added income necessary to the well-being of those living within limited means.

The basic purpose of the 3-year Federal participation in title III programs is to assist States through additional funds to demonstrate to respective communities that a particular service can be provided effectively. Then the community may take that service and make it a continuing program.

In New Jersey many of the title III programs have been continued by the communities when Federal funds are no longer available. I think this is due, in large part, to the extremely able administration of the State director on aging, Mrs. Eone Harger, who left her position on June 30, Mrs. Harger has insisted from the beginning of the Older Americans Act programs in the State, on the development of strong local responsibility within the various communities through local organizations for aging

John B. Martin, U.S. Commissioner of Aging, cited the New Jersey program in a speech presented before the Paterson Office on Aging this past March. According to Commissioner Martin:

In the early days of the Older Americans Act program, this organizational beginning (Title III) and this quiet program were perhaps not as showy as direct services to older people. But for New Jersey it has I think now come into its own and has given a firm foundation to all future activities, extension development and refinement of programs throughout the State.

The occasion for Commissioner Martin's speech was another anniversary—a very special one—the celebration of the end of the 3-year Federal involvement in Paterson's title III programs—and the fact that the community had enthusiastically embraced the program and was continuing it.

Recently, New Jersey was the recipient of a title V training grant under the Older Americans Act. Seminars in gerontology are being offered to university faculty throughout the State at Rutgers University, thereby developing trained instructors who will be able to transmit their knowledge to practitioners in State and local programs in the field of aging.

On this fifth anniversary of the Older Americans Act we can, I believe, look back with some pride at the accomplishments in New Jersey—and the same can be said of many other States.

As the White House Conference on Aging in 1971 approaches, however, it is also clear that careful attention should be paid to certain issues which have arisen about the role and range of the Administration on Aging.

Congressional intent on the AOA is clear. We thought that we were establishing an agency which would have high visibility and direct access to the Secretary of Health, Education, and Welfare. Almost 3 years ago, however, the AOA became a subordinate unit of the Social and Rehabilitation Service in a major HEW reorganization. This step caused widespread concern by leaders in the field of aging, but it has remained in effect.

Additional concern about the situation was voiced a few weeks ago in the report of the President's Task Force on the Aging:

The experience of the Administration on Aging during the last four years, however, makes it abundantly clear that interdepartmental coordination cannot be carried out by a unit of government which is subordinate to the units it is attempting to coordinate. Nor does the experience of the President's Council on Aging suggest that such coordination can be accomplished effectively through a Committee.

We therefore, recommend that the President establish an Office on Aging within the Executive Office of the President. We recommend that the President seek statutory authority for this Office through an amendment to the Older Americans Act but that until such authority can be obtained the President create the Office by issuing an Executive Order.

The task force statement is similar to many voiced by the Senate Committee on Aging and by individual members of Congress. Such recommendations should receive careful attention by the White House.

It is hoped, however, that any reorganization will retain the best features of the existing Federal-State relationship which has been so carefully established within the past 5 years. Many skilled and resourceful people have made major efforts on behalf of the elderly under the Older Americans Act; their achievements should not be minimized.

Mr. President, to conclude this discussion of the July 14 anniversary, I ask unanimous consent that a fact sheet prepared by AOA for this occasion be printed in the RECORD. It provides a useful summary of progress thus far.

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

ON AOA'S FIFTH ANNIVERSARY

For the first time in history, every Older American has a State agency on aging to act as his advocate, representative and supporter.

All 50 States, District of Columbia, Guam, Puerto Rico, Virgin Islands, and Trust Territory of the Pacific Islands are participating in the Older American Act program.

Major emphasis is being given to: Use of skills and experience of older people as a community and national resource. Comprehensive, coordinated local services, including a major attack on isolation of the elderly through such programs as nutritious meals in group settings, improved transportation, and use of multipurpose senior centers for service delivery.

New legislation has strengthened State agencies on aging.

State Older Americans Act programs are taking meals to homebound thousands, giving phone reassurance, shopping, friendly visiting and homemaker services, health information, counseling, referral and consumer aid.

A million older persons have been directly served by the program.

AOA's research and demonstration projects are stimulating new approaches to serving older people and providing new knowledge important to people working with and for the elderly.

AOA training programs are graduating students trained to fill critical manpower shortages in the field of aging. This Fall, 364 students will be enrolled in long-term degree courses in 17 American colleges and universities. More than 6,200 men and women have been given short-term training.

The Foster Grandparent Program, which began in 1965 as a limited demonstration of 21 projects, now supports 68 projects in 40 States and Puerto Rico—with men and women 60+ (the oldest 93) serving disadvantaged children.

Models for the RSVP Senior Volunteers Program and for area-wide services are being developed.

AOA, working in cooperative programs with other Federal agencies, is helping strengthen services to the elderly in Model Cities, employment, and retirement preparation.

The Presidential Task Force on Aging's recent report and the forthcoming 1971 White House Conference on Aging offer opportunities for further major advances.

STUDENT PARTICIPATION IN POLITICAL CAMPAIGNS THIS FALL

Mr. TOWER. Mr. President, following the late spring upheavals on campuses around the country, a number of universities resolved to alter their schedules for the fall semester in order to allow students to participate full-time in the political campaigns this coming November. This proposed practice has been criticized and questioned by many as perhaps undue involvement by the universities in partisan political processes.

I believe that universities should carefully guard against even the appearance of such involvement.

The policy adopted by my alma mater, Southern Methodist University, with regard to student political activity seems to me to be a reasonable one. Southern Methodist will continue classes as scheduled this fall. The decision to do so was the result of a careful analysis of the role of the university. I believe that the policy adopted by Southern Methodist University deserves the attention of all Senators. I ask unanimous consent that the policy statement concerning student political activity be printed in the RECORD.

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

SOUTHERN METHODIST UNIVERSITY POLICY STATEMENT CONCERNING STUDENT POLITICAL ACTIVITY

Throughout this nation many students are manifesting a commendable interest in finding the means of knowledgeable and effective involvement in political processes at various levels. We at Southern Methodist University affirm that it is both the privilege and the obligation of each citizen of this country to be so engaged, and we stand ready to encourage this interest among our students in all appropriate ways.

In this instance, as in so many others, what is deemed useful and appropriate at one institution may not be so considered at another. Although several of the nation's universities have announced that they will reschedule classes to permit students to work in political campaigns for or two weeks prior to the November elections, other universities have announced that they will not follow this lead.

At Southern Methodist University, the decision has been made to continue classes and other academic programs as scheduled and publicized for the fall semester. This decision, in which the Administrative Committee, the Council of Deans, members of the Executive Committee of the Faculty Senate, available student officers, and alumni concur, is being announced at this time as a courtesy to students, faculty, staff and parents of students in order that they may make their plans accordingly.

This decision reflects the conviction that the basic purpose of the University is academic endeavor—study, teaching and research—and that the organized programs of the University are too important to be readily expendable in favor of other activities. The faculty and staff of SMU have been engaged to provide the essential leadership and supporting services for a major educational enterprise. They are expected to fulfill their roles as scheduled. In accepting the registration and tuition of students, the University is obligated to provide the educational program as contracted. This it will do.

This decision, however, reflects full awareness of the importance of political know-how and involvement on the part of students. Any student wishing to participate in political activity may do so—as may any other citizen—on his own time and initiative. If such involvement is so extensive as to result in absence from class or failure or delay in completing assignments, the individual student must then make his own arrangements with his instructors for satisfying the requirements of his academic program.

In addition, this decision recognizes the

legitimacy of the University's role in contributing to the political education of its students. While the University cannot offer itself as a staging area for specific and concerted political action, it can and must provide opportunities for students to learn the nature of political institutions and processes and to analyze political issues and ideologies. Some such opportunities are provided through curricular offerings and through student organizations. In view of the special circumstances now extant, something more may be required. If the organization of nonpartisan political workshops would render academic life more meaningful at this juncture, ways should be sought to develop such programs, and hopefully the entire campus community will prove resourceful, cooperative and responsible in this endeavor.

CAPTIVE NATIONS WEEK

Mr. PERCY. Mr. President, on the occasion of Captive Nations Week, 1970, I want to state clearly and unequivocally and for the record that America has not forgotten the subjugated peoples of the world, and that America must never forget them.

I think of the Poles, the Czechoslovaks, the Hungarians, the East Germans, the Bulgarians, the Albanians, and other peoples of Eastern Europe whose freedom was lost after World War II.

I think of the Lithuanians, the Latvians, and the Estonians, whose nations have been forcibly incorporated into the Soviet Union.

I think of the Ukrainians, the Armenians, the Georgians, and other nationalities within the Soviet Union, whose quest for independence has been thwarted.

I think of the Chinese, the North Koreans, the North Vietnamese, the Tibetans, and the Cubans, who must live under oppressive Communist rule.

Let us here and now rededicate ourselves to the enduring ideal that all men, under God, have a right to liberty and self-determination, and to freedom from foreign subjugation and domestic repression.

Let us pray that somehow, some day, justice will prevail in all nations and that oppression and hate and war will be no more.

AMERICAN PRISONERS OF NORTH VIETNAM

Mr. DOLE. Mr. President, 89 U.S. Senators have sent a letter to North Vietnam insisting that U.S. prisoners of war in Southeast Asia be treated in accordance with universal humanitarian principles as outlined in the Geneva Convention.

The letter, circulated by the junior Senator from Kansas and the junior Senator from Indiana (Mr. BAYH) was sent Monday to North Vietnam Premier Pham Van Dong.

The North Vietnamese have blatantly ignored the standards set forth in the Geneva Convention—a treaty they signed in 1957.

It is my hope that this concerted effort by Senators from both sides of the aisle will bring to the North Vietnamese the realization that Americans and the American Government will not let this issue rest until all American prisoners have been returned.

I ask unanimous consent that the text of the letter and a list of those signing it be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., July 13, 1970.

His Excellency PHAM VAN DONG,
Premier, Democratic Republic of Vietnam, Hanoi, North Vietnam.

DEAR MR. PREMIER: We, the undersigned members of the United States Senate, feel compelled to personally express our outrage at the persistent, callous attitude manifested toward United States personnel missing in action and the inhumane treatment of United States prisoners detained in Southeast Asia.

In obvious disregard of human decency, the Democratic Republic of Vietnam continually has refused to adhere to basic humanitarian obligations concerning detained prisoners.

As Senators, while we have differed over policies pursued by the United States in Southeast Asia, we wish the Democratic Republic of Vietnam to recognize that we are of one mind and one voice in insisting that United States prisoners be treated in accordance with universal humanitarian principles. It is also our belief that release of all American prisoners would be a most significant step toward bringing peace in Southeast Asia.

Birch Bayh, Robert Dole, Gordon Allott, Clinton Anderson, Howard Baker, and Henry Bellmon.

Wallace Bennett, Alan Bible, Caleb Boggs, Edward Brooke, Quentin Burdick, Harry Byrd, Howard Cannon, Clifford Case, Frank Church, Marlow Cook, and John Sherman Cooper.

Norris Cotton, Alan Cranston, Carl Curtis, Thomas Dodd, Peter Dominick, Thomas Eagleton, James Eastland, Allen Ellender, Paul Fannin, Hiram Fong, Barry Goldwater, and Charles Goodell.

Albert Gore, Mike Gravel, Robert Griffin, Edward Gurney, Clifford Hansen, Fred Harris, Philip Hart, Vance Hartke, Mark Hatfield, Spessard Holland, Ernest Hollings, and Roman Hruska.

Harold Hughes, Daniel Inouye, Jacob Javits, Everett Jordan, Len Jordan, Warren Magnuson, Mike Mansfield, Charles Mathias, Gale McGee, George McGovern, Thomas McIntyre, Lee Metcalf, and Jack Miller.

Walter Mondale, Joseph Montoya, Frank Moss, Karl Mundt, George Murphy, Edmund Muskie, Gaylord Nelson, Robert Packwood, James Pearson, Claiborne Pell, Charles Percy, and Winston Prouty.

William Proxmire, Jennings Randolph, Abraham Ribicoff, William Saxbe, Richard Schweiker, Hugh Scott, Margaret Chase Smith, Ralph Smith, John Sparkman, William Spong, John Stennis, and Ted Stevens.

Stuart Symington, Herman Talmadge, Strom Thurmond, John Tower, Joseph Tydings, Harrison Williams, John Williams, Milton Young, John Pastore, Ralph Yarborough, and Stephen Young.

THE FACTS ABOUT "NO-KNOCK"

Mr. TYDINGS. Mr. President, now that the House-Senate conference on the omnibus District of Columbia crime bill is concluded, it is especially gratifying to report that the conference resolution of the so-called "no-knock" issue represents a major victory for the Senate position.

Specifically in the interest of safeguarding the individual rights of the residents of the National Capital and of forestalling repressive practices in the name of improved law enforcement, the Senate conferees insisted upon what I have for convenience summed up as five critical points:

First. The statutory exceptions to the "knock-and-wait" rule are strictly limited so as to confine "no-knocking" to those few circumstances where it is already permitted under existing law.

Second. Existing law is substantially improved by requiring that, when grounds constituting exceptions to the "knock-and-wait" rule are known in advance, then a police officer can "no-knock" only after obtaining court permission in advance.

Third. The conference report restores the classic standard of "probable cause," derived from the Federal Constitution, for testing the sufficiency of the grounds for police conduct in the "no-knock" area.

Fourth. It is expressly set forth in the statement of managers on the part of the House, as it is stated likewise in similar reports to the Senate, that advance permission is required, not only when the applicant literally knows of facts in advance falling within the exceptions to the "knock-and-wait" rule; advance permission is also required when the applicant should know of such facts, in the sense that minimal ordinary diligence on the part of the police would have alerted the applicant to the facts.

Fifth. It is also expressly set forth in the House statement of managers that the "no-knock" provision is not to be bound by or otherwise construed in light of the House District of Columbia crime bill report language which suggested that the mere destructibility of the evidence being sought might be grounds for departing from the "knock-and-wait" rule.

It is true that the conference substitute on "no-knock"—like the existing common law approved by the Supreme Court, and unlike the much more limited Senate version—applies to arrests as well as searches. Nevertheless, by insisting on the five points just mentioned, the Senate conferees have seen to it that the conference substitute contains nearly every safeguard in the original Senate version. We have seen to it that the conference substitute surpasses existing case law in the number and scope of the safeguards provided. In point of fact, the conference report conforms quite precisely to the recommendations of the Bar Association of the District of Columbia and is well within the parameters of the "no-knock" legislation supported by the District of Columbia government.

In all candor, I must inform you that the Senate conferees were not only mindful of the depth of opposition in the Washington community to the enactment of legislation touching upon the "knock-and-wait" rule; the Senate conferees were greatly disturbed by the general misinformation abroad in the District of Columbia community. We were concerned with the obvious diffi-

culties in presenting the facts in an unreceptive, hostile atmosphere. We determined to perfect the legislation, and to change that atmosphere through the process of public education. The need for stabilizing police practices in the "no-knock" area is too great, the safeguards of the conference substitute are too valuable and too many, for us to abandon the issue or temper our resolve.

In the judgment of the Senate conferees, it is far better to have the limited exceptions to the "knock-and-wait" rule spelled out and frozen on the statute books, instead of leaving the exceptions to grow in a disordered fashion and to change in Federal and local court case law. It is far better to have the limited exceptions spelled out clearly, statutorily, for the police to observe, instead of leaving police officers as at present to their own devices.

Similarly, in the judgment of the Senate conferees, any police encroachment on the privacy of the individual should issue where possible upon express judicial authority only. It is in the best interest of a just and ordered society that the conference substitute relieves the police officer in most situations of having to make the difficult decision of whether to "no-knock." As protection for the individual residents of the National Capital, the decision whether to "no-knock" is placed at the very outset in the hands of a judge.

What is equally important, at present the courts can supervise and limit police "no-knocking" only by means of the exclusion of evidence at a criminal trial. In contrast, by requiring judicial approval in advance for "no-knock," the conference substitute promises to add court supervision in the myriad cases where the defendant pleads guilty and there is no trial, or where there is no trial because the evidence is insufficient or simply not found. Under the conference substitute, in other words, court supervision is required on two separate occasions—at the time of the request for "no-knock" authority and at the time of the motion to exclude the fruits of any "no-knock" search. Likewise defense counsel, under the conference substitute, can move to exclude evidence on two grounds—the absence of facts comprising an exception to the "knock-and-wait" rule, and the failure of the police to ask the court for "no-knock" authority in advance.

Again, in many, many repects the conference substitute on the so-called "no-knock" issue—like the Senate-passed amendment to the crime bill—represents an important advance in both the stability of the law and in the protection afforded the individual under the criminal law of the National Capital.

Now that the conferees on S. 2601 are no longer enjoined from discussing the work of the conference, I am especially anxious to dispell the wealth of misinformation which has circulated in the past few months on the subject of "no-knock" and S. 2601. Time and time again, I heard it said that the District of Columbia crime bill gives the police the power to conduct "no-knock" searches and arrests. Once and for all, this statement as understood by most nonlawyers is 100 percent untrue; even as understood by lawyers the statement is misleading at the very least. The power to "no-knock" does not derive from this legislation or any other. "No-knock" searches and arrests have been permissable, have been authorized, since common law times, and have expressly been allowed in American criminal jurisprudence for 150 years. Regardless of what may have been in the House version of S. 2601, the Senate version and the similar conference substitute merely continue existing authority and add to it reasonable further safeguards.

Time and time again, I heard it said that the so-called "no-knock" provision in the District of Columbia crime bill experiments with the rights of the residents of the District and treats them as guinea pigs for the Nation. In this same vein, it has been charged time and time again that "no-knock" is designed to establish a precedent for the States. Again, nothing could be farther from the truth. An overwhelming majority of the States already have "no-knock" authority spelled out in their case law, and perhaps as many as a dozen or so of the States have "no-knock" provisions in their criminal statutes as well.

The "no-knock" law in my own State of Maryland was spelled out not long ago by the Court of Appeals of the State. In the case of *Henson* v. *State*, 236 Md. 518, 204 A. 2d 516 (1964), the police had probable cause to believe, on the basis of extensive, personal experience, that certain narcotics evidence would be flushed down the toilet or otherwise irretrievably thrown out if they were to adhere to the "knock-and-wait" rule; the police indeed had had the premises under surveillance for a week, during which time forty-three known addicts had visited the premises often comporting themselves in a manner bespeaking the transaction of sales of narcotics. The Maryland court ruled unanimously in the Henson case that the police had authority to "no-knock." The conference version of S. 2601 is intended merely to codify this and similar court rulings, and to add the further safeguard of a requirement of prior judicial scrutiny.

Last, it should be noted that the "no-knock" warrant provision in the conference report on S. 2601 is patterned after the equivalent "no-knock" warrant provision in the New York Code of Criminal Procedure, as well as comparable provisions in the codes of Nebraska, South Dakota, South Carolina, and Utah.

It has been suggested that the inclusion of the "useless gesture" in the list of exceptions to the "knock-and-wait" rule creates a loophole, permitting the police to take the law into their own hands, to "no-knock" pell-mell. Again, however, it must be understood that at least under the conference substitute the "useless gesture" exception positively has no such meaning. The term "useless gesture" under the conference substitute is specifically utilized as a legal term of art, with narrow and exclusive reference to prevailing case law. In this way the term is restricted to situations as where the officer's identity and purpose are already known to the occupant of the premises to be searched, or as where the occupant has failed to respond to a knock on the door and is known to be asleep and incapable of being given notice. See *Miller* v. *United States*, 357 U.S. 301 (1958); and *Bosley* v. *United States*, decided April 9, 1970, No. 21,513, U.S. court of appeals, District of Columbia circuit.

To the question, "Does the 'no-knock' provision give the police the power to enter over the occupant's objection?" the answer is decidedly, "No." Already the police may enter, even break and enter, over the occupant's objection, under a Federal statute applicable throughout the country (18 U.S.C. sec. 3109). Similarly, under the time-honored common law of warrants, when a court issues a warrant, it decides quite specifically that the interests of the public are such as to make entrance requisite regardless of the occupant's wishes. The complementary "knock-and-wait" and "no-knock" rules, to be exact, have nothing to do with whether or if the police may break and enter uninvited. Rather, they affect only the procedures by which the police execute said breaking and entering; the rules under discussion affect only the manner in which the police go about their rightful business.

Next, I have heard it argued that the exceptions to the "knock-and-wait" rule, the so-called "exigent" circumstances, do not admit of being known in advance. Despite its theoretical appeal, this objection finds no support in common sense or actual practice. In a gambling case, if it is known, for example, that the prospective defendants regularly use water soluble paper, that they conduct their operations near a disposal facility, that they have defeated searches previously by immediately and effectively disposing of all evidence upon receiving pre-entry notice from the police, and that the prospective defendants are aware of the police surveillance and are primed to effect the disposal of the necessary evidence—if these so-called "exigent" circumstances are known at the time of the execution of the search warrant, they are almost invariably also known at least 1 hour in advance of the execution, in time for the police to apply for court permission to depart from the "knock-and-wait" rule.

Let me give another example: in a case involving both armed robbery and murder, if it is known that the prospective defendant is armed and will shoot it out rather than surrender to the police, for example he has just shot and killed a police officer in the process of escaping, if his recent conduct in escaping has made it evident that he knows the police are hot on his trail—if these so-called "exigent" circumstances are known at the time of the execution of the arrest warrant, they are almost invariably also known the 1 hour or so in advance, in time for the court to rule on whether complete surprise is warranted and on whether the "knock-and-wait" rule must be complied with strictly.

S. 2601, as reported by the House-Senate conference, does not itself authorize "no-knock" in cases like those I have described. "No-knocking" in such

cases is fully and clearly authorized under the law today as it has been for many years. What S. 2601 does is to continue that existing authorization in clearer, statutory language, all the while enhancing the protection afforded in the interest of individual privacy by stipulating that where possible a judge and not the policeman in the street must make the "no-knock" or "knock-and-wait" decision. I submit that this course is both advisable as a matter of public policy, and, as my examples demonstrate, also feasible in actual practice.

Without question the most troubling criticism that has been leveled on the subject of the so-called "no-knock" issue in S. 2601 is the suggestion that the legislation will heighten the level of violence in this community. Critics have suggested that when police officers depart from the "knock-and-wait" rule, occupants of the premises to be searched will, and perhaps should, respond with a blast from a rifle. Mr. President, if I believed that the net effect of the conference substitute would be an increase in shootouts with the police, I would immediately aline myself in opposition to this bill. My support of the conference substitute, however, reflects my firm conviction that the effect of the legislation will not be what the critics have supposed; indeed, I am amply convinced that most of the critics address an issue not now before the Congress.

First, it is a simple fact, as well as a matter of commonsense, that the danger of shootouts arises more out of strict adherence to the "knock-and-wait" rule, rather than out of the limited "no-knock" authority in existing law codified in S. 2601. Shootouts, violence, death, occur more frequently when the police signal their presence and purpose, and give a dangerous suspect time to get his weapon—not when the police take the dangerous suspect by surprise before he can arm himself to shoot. We need only reflect on the recent, publicized case of the local bank robber, Billy Austin Bryant. Bryant killed two FBI agents at the door of his wife's apartment after the agents identified themselves as police—and clearly not because he mistook them for burglars. Again, I am convinced that on balance the consequence of limited "no-knocking" is less violence, not more. And I am equally confident that the police, especially with increased court supervision, will continue to utilize their law enforcement tools so as not to endanger human lives, including their own.

Next, it is essential that we keep in mind what the basic issue is now before the Congress. Opposition to the concept of "no-knocking" is deep and widespread, in the Congress and in the community. What we have pending before us, however, is not the general question of whether police officers may or should ever execute warrants without "knocking-and-waiting." That question was settled long ago in the recesses of our legal history, and has been reaffirmed and reaffirmed by the Supreme Court of the United States. Despite our cautious reservation, "no knock" has been for years now a fact of American life and law.

The issues that are before us, Mr. President, are whether the exception to the "knock-and-wait" rule should be stabilized, clarified, in legislative form, and whether prior judicial approval is feasible and well-advised. On these, the genuine issues before us, the Senate conferees have expressed their view and ask the concurrence of the Senate; public order and individual privacy merit the safeguards of codification and prior approval; prior approval, moreover, not only constitutes valuable protection, but also is practicable in fact. While I fully know the dangers of the broad concept and practice of "no-knocking," I count myself among the most vigorous supporters of reform of the manner of statement and procedures surrounding the "knock-and-wait" rule. Notwithstanding the "no-knock" slogans, disavowals, threats, and misstatements, the public must understand that it is only this reform that is to be found in the conference report on the District of Columbia Court Reform and Criminal Procedures Act, only codification and further protection by substituting an objective judge to make vital decisions in place of the police.

ALTON'S DR. ANDERSON

Mr. SMITH of Illinois. Mr. President, I desire to join the multitude of others in Alton, Ill., to extend my greetings to the Rev. Orrin M. Anderson, L.H.D., pastor, First Baptist Church, for the last 15 years and salute "Anderson Sunday." Because Dr. George S. Reuter, Jr. has been a deacon of Dr. Anderson's church, I ask unanimous consent to have printed in the RECORD the address "Alton's Doctor Anderson." Dr. Helen H. Reuter joins her husband in this timely article.

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

ALTON'S DOCTOR ANDERSON

(By Dr. and Mrs. George S. Reuter, Jr.)

INTRODUCTION

Western society is in ferment. If our own country appears to be more tumultuous and dangerous than others, it is only because we are further advanced along the course of modern life; and we have less of a common heritage to guide us, or to help absorb the blows.

In the opening lines of the first canto of *Lady of the Lake*, Sir Walter Scott spoke of "Harp of the North that mouldering long has hung," and he expressed his determination to strike a few chords upon it in commemoration of the ancient heroes of the clans of Scotland. We have come together to strike some chords upon the "Harp of the West."

Edmond Burke believed that values and existing institutions reflected the accumulated wisdom and experience of a people and could not be discarded to satisfy every transient impulse without rendering the fabric of society. He believed it was man's first duty to defend the values of decency, tolerence, reason, and respect for freedom against all onslaughts.

Yes, as we honor Dr. Orrin M. Anderson, Pastor, First Baptist Church of Alton, Illinois, and his family, we recognize the critical hour in which we all live.

Sunday, June 7, 1970, will be remembered as "Anderson Sunday." It represents the twenty-fifth wedding anniversary of Rev. Orrin M. Anderson, L.H.D. Also, it was twenty-five years ago that he was ordained as a minister, and he is in his fifteenth year at the First Baptist Church of Alton, Illinois.

Dr. Anderson has traveled far and wide across the face of this nation. He has served in a multitude of capacities, ministering to servicemen and private citizens, to the great and others. He has observed the problems of the people firsthand and participated actively and wisely in their resolution. He possesses in large measure the qualities which come from the full Christian experience of life. To help in this important journey in life, Dr. Anderson has an outstanding wife and family to work with him in achieving important goals.

WORTHY PRINCIPLES TO REMEMBER

1. Be willing to be classified as an American, even though some may consider you reactionary.

Dr. Martin Luther King, Jr., was given to America by the South. He was not a saint, he was a man; a whole and liberated man, while so many others, white as well as black, remained slaves. This was his greatness. Let's look at the weakness of others.

Brenda Kay Perkins, a high school student of Hutchinson, Kansas, wrote, "If Abbie Hoffman claims to be an American, he is absolutely wrong. An American would never do or say the things he has to many students everywhere . . . it is people like this one man who are ruining our Great American Heritage. We have really got the best of opportunities going for us here in the U.S."

Dr. Landrum P. Leavell, Pastor, First Baptist Church of Wichita Falls, Texas, recently stated: "Just for the record—and without apology—I am a reactionary! I react to sin and sadism, riots and revolution, gutlessness and Godlessness! I react to Hedonism and humanism; to philosophies and sophistries which seek to destroy those values which made this country great; which fashioned the fabric of civilized mankind. I react to dancing the permissive polka with those who'd whirl you all the way to Hell, while whispering that God is dead and the Devil is a myth; to those ministers who'd convert my house of worship into a hootenanny hall or political forum."

2. Be willing to be firm when stability is necessary.

Dr. Ross Toole of the University of Montana recently said: "I am forty-nine years old. It took me many years and considerable anguish to get where I am—which isn't much of anyplace except exurbia. I was nurtured in depression; I lost four years to war; I am invested with sweat; I have had one coronary; I am a 'liberal,' square, and I am a professor. I am sick of the 'younger generation,' hippies, yippies, militants and nonsense."

3. Be willing to oppose looting, regardless of opportunity.

Violence may not be "as American as cherry pie," as a militant leader puts it, but it is rapidly becoming a familiar experience to all of us, at least through the news media, if not directly as a victim. It is worth noting, too, that the average looter in the cities is not poor. Statistics showed that the typical rioter has eleven years of education, makes ninety dollars a week, and has never been in trouble with the law before.

4. Be willing to support those Americans who are in uniform.

Those who currently wear the uniform of the nation's armed forces are being branded as everything from idiots to conspirators. Military men—together with a large group of "conniving industrialists"—are charged with having formed an insidious coalition, designed solely to extract unending self-enrichment from the labors of the American people.

5. Be willing to have war when necessary.

The First Amendment was added to the Constitution to insure that citizens would have a lawful and peaceful means of ex-

pressing their dissent. This purpose is now being perverted by those who wish to make it an excuse for criminal behavior.

Mayor Richard J. Daley of Chicago called for public support of President Nixon on his decision to send troops into Cambodia, and said the President made his decision "on the best advice he could get." Former President Lyndon B. Johnson asked that "all who love freedom" give President Nixon support in the Southeast Asia crisis.

The "domino theory" so long scorned by the new isolationists—the concept that when the Communists topple one helpless country another topple will not be far behind—is being proved every day in Southeast Asia.

6. Be willing to recognize that the academic community can be wrong.

George Bernard Shaw once remarked that every profession is a conspiracy against the public. We take it that he meant that the members of every profession are so deeply involved in the institutional rigidities of their particular field that they overlook their responsibilities to society.

The vulnerability of the academic community to exploitation by the radical or criminal groups is based on the communal spirit and identity of interest of its members. Each year a malleable swarm of new undergraduates enters the hive and is immediately caught up in peer customs and permeated by peer opinions.

7. Be willing to support strong central government on major issues.

No nation can expect to survive, much less provide leadership, unless the character of its people is strong; and strength of character requires adherence to moral values—the same ones that inspired the Founding Fathers; courage, integrity, resoluteness, love of country and its people, and, above all, faith in God.

Our cities will survive and be governable only if those we elect have effective power over those who are supposed to do the work, only if those we elect are responsible and accountable to the people who elect them. Government operations are costly, too. For example, the cost of providing essential services in New York City goes up every year by about fifteen per cent, while revenues rise by less than five per cent.

8. Be willing to support quality education.

Recently, a study financed by the Carnegie Corporation compared the hourly earnings of individuals' education in the various states. Differences in age, sex, race and number of years in school were considered in making the comparison. The study indicated a year of schooling in the State of New York is worth almost two and a half times as much as a year of schooling in Alabama—in terms of the average hourly wage a pupil will command.

9. Be willing to support freedom of religion throughout the world.

In 1952, Archbishop Boris stated in New York that there were 24,000 open churches in U.S.S.R. Nine years later, in 1961, the Moscow Patriarchate told the World Council of Churches that it had 20,000 churches. The average number officially quoted by the Patriarchate during the last five years was 10,000. However, in 1966, in an official Communist Party publication it was stated that the Patriarchate has only 7,500 churches.

10. Be willing to strongly support peace and goodwill.

Pope John's encyclical "Pacem in Terris", or "Peace on Earth," is one of the most profound statements of our time. It ranges over the complex relationships which should govern between man and state, between states, and among states. It came at a time when scientific breakthoughs seemed to offer mankind almost unlimited opportunities for material well-being on the one hand—or almost unlimited threats of extinction of the human race on the other, depending on how scientific developments are directed.

CONCLUSION

Dr. Anderson scores highly on these ten principles, but it is more than that. He is a friend of mankind. Let's conclude with a favorite poem, "The Heart of a Friend":

"The heart of a friend never wonders or doubts,
No matter if years intervene.
The old faith is there
And nought can compare
With the comfort it gives though unseen.
Yes, the heart of a friend is one thing I prize
As life lengthens and twilight descends,
It is the last boon I will ask
When I have finished my task,
That I live in the hearts of my friends."

"K" DAY—KICK THE HABIT DAY

Mr. TOWER. Mr. President, the mayor of Dallas, Hon. Erik Jonsson, issued a proclamation on June 21, 1970, designating Father's Day as "K" Day—Kick the Habit Day—to encourage all fathers to set a good example for their children by giving up smoking. Mayor Jonsson was encouraged in this endeavor by Dr. Paul Richburg, chairman of the smoking and health committee of the Dallas Area Tuberculosis Association. I believe this is an appropriate way to encourage personal efforts to warn young people of the dangers of smoking. I ask unanimous consent that the proclamation be printed in the RECORD.

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

PROCLAMATION

Following the lead of The American Thoracic Society and leading opinion which gives evidence that the smoking of cigarettes represents a clear and present danger to the health and lives of our citizens, in support of a "Clean Air Campaign" for Dallas sponsored by the Smoking and Health Committee of the Dallas Area Tuberculosis Association, be it hereby proclaimed that Father's Day, June 21, 1970, be designated "K" Day—Kick the Habit Day—and that all fathers who smoke cigarettes be encouraged and helped in their efforts to "Kick the Habit" and that they be nominated as "King" for the day in tribute to their victory in the battle to turn off the destructive effects of smoking on their lives, thereby giving to their families the gift of good health so that their future may be filled with happiness instead of breathlessness and helplessness;

Now, therefore, I, Erik Jonsson, as Mayor of the City of Dallas, do hereby proclaim June 21, 1970, to be "K" Day.

ERIK JONSSON,
Mayor, The City of Dallas.

MIDDLE EAST SITUATION

Mr. DOLE. Mr. President, each day the situation in the Middle East becomes more tense. The intentions of the Soviet Union have become increasingly ominous and should the Soviets continue to pursue such a hazardous policy of deepening involvement with the Arab States, the situation can only deteriorate further.

The Nixon administration is doing everything within its power to discourage the Soviet Union from continuing such activities. At the same time, it is seeking, through all available means, to bring about negotiations for a peaceful settlement. The heightening crisis in the Middle East as it is related to the injection of Soviet weapons systems was analyzed by Joseph Alsop in the Washington Post of July 8, 1970. I ask unanimous consent that the analysis be printed in the RECORD.

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

ISRAEL'S SITUATION REACHING THE STAGE OF ACUTE CRISIS

Day by day, the ugly facts come in from the Suez front. Each new fact puts Soviet intentions in the Middle East in an ever-darker light. And each new fact means deeper and deeper peril for beleaguered Israel.

In this space last week, the first full report was given on the radically improved Soviet SAM–2 missiles, which are responsible for the tiny Israeli air force's hitherto unprecedented losses of Phantom fighter-bombers. It now appears, however, that this first report was sadly incomplete.

In the combat zone along the Suez Canal, the Israelis are fighting for their lives and national future. They must now face, not just the vastly more effective new-model SAM–2s, but an entire, carefully combined weapons system. And the new system ominously includes Soviet SAM–3 missiles manned by Russian troops.

The first component of the weapons system is an immensely dense deployment of ack-ack guns and other anti-aircraft weapons. These cover a strip along the entire Suez Canal and about 15 miles inland. And the deployment has been strengthened by another new Soviet missile, the Russian version of the American "Redeye," which is a light ground-to-air weapon with an efficient target-seeking device.

The second component of the weapons system is the line of SAM–2 missiles, emplaced on a line about 15 miles inland from the canal bank. With their 20-mile range, these improved SAM–2s are effective up to the canal itself. Thus any Israeli pilot, going in low to attack a target in the combat zone, meets the fiercest sort of anti-aircraft fire; and if the pilot goes in at high altitude, he is met with salvos of SAM–2s.

As to the weapons system's third component, it consists of at least two and probably three emplacements of SAM–3 missiles, complete with Russian crews as noted above. These have now been moved far forward from their former positions deep in the interior of Egypt, to new positions just outside the official combat zone. Here the SAM–3s can be used to support and protect the line of SAM–2s.

In a very real sense, therefore, Russian troops are already actively engaged in the great battle for control of the air over the combat zone along the canal. Yet even that is by no means the end of this grim story.

The evidence, albeit incomplete, is already clear that the entire vast weapons system above-described is now under direct Soviet control. The responses to the warnings of the radars; the management of the electronic counter-measures (and counter-counter measures!); the orchestration of the missile salvos and anti-aircraft fire—all these are now Soviet responsibilities in the vital canal-side strip, where the Egyptians were so recently alleged to be strictly on their own.

The effects to date, furthermore, have been desperately grave for the Israelis. The great majority of their aircraft—their supersonic Mirages, and their workhorse American Skyhawks, and naturally their wholly obsolete Mysteres, Vautours and Ouragans—can no longer be used to attack targets much beyond the bank of the Suez Canal itself.

Before the new weapons system was installed, these other planes ranged quite freely over the whole combat zone. Now, however,

only the Israelis' Phantoms can be used to attack targets at any distance from the canal. And considering the tiny stock of Phantoms that Israel possesses, three Phantoms downed in a single week add up to a cruelly heavy rate of loss.

By shining courage and superb efficiency, the Phantoms' fliers have scored some successes. Three or four of the SAM–2 emplacements have been so heavily damaged that they have been put out of action, at any rate for a while. This has further meant painful losses for both the Egyptians and the Russians, who are also present at the SAM–2 sites as "advisers," but in extra heavy numbers. (The Russian dead, by the way, are sent home for burial marked "killed in a motor accident!")

Even so, the situation is plainly reaching the stage of acute crisis, with Israel's whole future ultimately at stake. Equally critical, moreover—and for President Nixon as well as for Israel—are the time factors.

The new weapons system was obviously put in along the Suez front, to coincide with Gamal Abdel Nasser's long visit to the Soviet Union. He and his Soviet masters are now assessing the first combat-results; and above all they are assessing the U.S. response to this further Soviet move forward. And God knows what the next move forward may be, if further dithering is the only real U.S. response!

RETIREMENT OF AMBASSADOR EDSON O. SESSIONS FROM THE FOREIGN SERVICE

Mr. SMITH of Illinois. Mr. President, Ambassador Edson O. Sessions retired from the Foreign Service in early 1970. During his distinguished career in Government which began in 1942 he has served as Ambassador to Finland, Deputy Postmaster General, and Associate Administrator for AID. His last assignment was U.S. Envoy to Ecuador from August 1968 until his retirement.

At the time of Ambassador Sessions' departure from Ecuador, the Apostolic Delegate to Ecuador and Dean of the Diplomatic Corps there, Dr. Giovanni Ferrofino, made a brief address commemorating the outstanding service of Ambassador Sessions and at the same time highlighting the challenging work of American Ambassadors throughout the world. I ask unanimous consent that excerpts from Dr. Ferrofino's remarks be printed in the RECORD.

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

One year and five months after his arrival in Quito, Mr. Sessions is leaving us. His stay with us, as Ambassador of the United States of America, may seem short to us, but our opinion in this case is modified by two considerations:

The first is this, that Mr. Sessions, in his by now long career in public service for the administration of the State, never remained for long at any post. We are familiar with his curriculum vitae, which has been published in the national press. Personally, I was impressed by the variety and number of the experiences that have filled and enriched his public life.

The other consideration, while as pragmatic as the first, has a highly spiritual foundation. Long ago, the Bible praised the man who knows how to make his life full, to the extent of making a long time out of a short time. This is precisely what has happened to Mr. Sessions: a diplomatic mission may be outstanding even because of its brevity. And there is no one among us who, when reading the words spoken by Mr. Sessions on February 4 at the office of the President of the Republic, has not admired the deep knowledge of the country he has gained, the sincerity and wholesome realism with which he has outlined a definite program of development for Ecuador. On the other hand, I know that the Government has valued highly the evidence of understanding and good will given by Mr. Sessions.

Therefore, while we can complain that Mr. Sessions is going all-too-soon, we must acknowledge that his mission was as successful as he wished it to be. And this is saying a great deal!

As a rule, when a colleague departs, I take advantage of such opportunity to bring to light less well-known aspects, and nonetheless interesting, of the country he has represented and served among us. I will restrict myself to emphasizing the fact that it is very difficult for a United States diplomat to represent his country in the world and, particularly, in Latin America.

The tremendous development of the United States, which is the result of its natural riches, exploited by generations of immigrants who distinguished themselves—and they still do—for their talents, their love of work, a high specialization, and all of this accompanied by a spirit of free initiative and competition . . . that tremendous technical and financial progress that made it possible to conquer the moon . . . that unmistakable dawning of a new civilization which will be called the American civilization . . . while these things can, on the one hand, give to an American diplomat a feeling of legitimate satisfaction and an understandable pride, they, on the other hand, do not make it easy for him to carry out his mission to the extent that he would expect. It is not only a matter of the human fact that few people can forgive those who make a quick ascent and dominate from on high. We are all familiar with the story of Joseph, the son of Jacob, and his eleven brothers! Ideally, the leadership of the United States is accepted, but it is asked to do what it possible as well as what is impossible; a boundless generosity is demanded of it, an uncontrolled generosity, and it is even blackmailed! On the other hand, the history of the people who successively ruled the world shows that it is difficult, if not impossible, to be powerful and well-beloved at the same time. As a rule, economic and political power engenders military power, and this assemblage of forces would remain in the sphere of the idea if individual passions would not destroy the virtues of the community.

In view of all of the foregoing, it is difficult to represent the United States. . . . We thus pay highest tribute to Ambassador Edson O. Sessions who has served in this difficult and challenging capacity with distinction and as an inspiration to American Ambassadors throughout the world.

DISTRICT OF COLUMBIA CRIME LEGISLATION

Mr. TYDINGS. Mr. President, tomorrow the Senate is scheduled to begin consideration of S. 2601, the President's District of Columbia crime legislation. I ask unanimous consent to have printed in the RECORD at the conclusion of these remarks a statement of the managers on the part of the Senate explaining the action of the conference on S. 2601. I commend this document to all Senators and their staffs and urge that it be examined closely.

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

(See exhibit 1.)

Mr. TYDINGS. Mr. President, the Senate managers have prepared this statement to explain in considerable detail the actual results of the conference and the actual contents of the conference bill. We have taken this step in response to the widespread misunderstanding regarding this bill's provisions and in order to clarify the legislative history regarding the bill.

Copies of the Senate statement of managers were mailed to every Senator's office on Tuesday, and copies of the House statement of managers were personally delivered to every Senator's office this morning. These additional and extraordinary steps have been taken to insure fully the availability of all pertinent documents for every Senator before the debate begins.

EXHIBIT 1

STATEMENT OF THE MANAGERS ON THE PART OF THE SENATE SUBMITTED REGARDING THE CONFERENCE ACTION UPON S. 2601, THE PRESIDENT'S CRIME LEGISLATION FOR THE DISTRICT OF COLUMBIA

INTRODUCTION

A crime crisis grips the Washington area. This crime plague, which hits the inner-city resident with particularly relentless ferocity, is ripping the social and economic fabric of the entire metropolitan area.

The Capital and much of its surrounding suburban area have become a virtual ghost city by night. Law-abiding residents fear for their lives and property both on the streets and in their homes. Robbery and commercial crime are so out of control that many businesses have either curtailed their operations or left the city altogether.

The perpetration of serious crimes in the District of Columbia is increasing at a rate of 22% a year.

The number of felonies reported in the National Capital annually has doubled during the last five years. Yet felony convictions in D.C. courts in fiscal 1969 represented only 2½% of the 56,419 felonies reported here in that year (down from 3.8% in 1965). In contrast, in the past 5 years the number of reported felonies in the District has risen 122%.

The felony court in the National Capital, the Federal district court, continues to suffer from substantial delays in criminal trials, from inordinate time lapses between filing and disposition. Notwithstanding an exemplary implementation of the visiting judges program, an unsurpassed number of days on the bench per district judge, and the successful institution of an individual calendar system, the felony case backlog in the District of Columbia nevertheless stands currently at more than 1,600 cases. The current felony backlog in the district court nearly matches in size the total number of criminal cases disposed of in the district court in 1968.

In the search for some legislative solution to the crime crisis, the Senate District Committee has labored for sixteen months toward this conference report on S. 2601. In the first session of this Congress the Senate Committee conducted 36 days of hearings on crime in the National Capital, and published 2,500 pages of testimony with an appendix of 1,000 pages. (See the 10-volume Crime in the National Capital series. Hearings before the United States Senate Committee on the District of Columbia, 91st Congress.)

Further hearings were conducted during the four-month period between Senate passage of the last of the President's D.C. crime package and the commencement of the conference on S. 2601 on April 14 of this year. Moreover, the Senate and House conferees have now labored for three months, holding 24 sessions, often into the night, in an effort to resolve the 174 major differences

between the two versions of S. 2601 and at the same time in an effort to perfect the legislation.

By way of background, the Senate District Committee conducted hearings in the first session of the Congress which preceded by nearly four months the introduction of the first of the President's D.C. crime legislation. The first of the President's bills, S. 2601, moreover, was in large measure based on other bills relating to court reform—S. 1066, S. 1067, S. 1214, S. 1215, and S. 1711—introduced by Senator Tydings and Senator Bible, and which were already pending before the Senate District Committee.

It should also be noted that, while the Senate District Committee held hearings last year on legislation introduced by Senator Tydings on the subject of pretrial release and detention, the President's proposal for the District of Columbia was never submitted to the Senate District Committee; and, indeed, the Depatrment of Justic declined to support local pretrial detention legislation at the time of the Senate hearings.

The truly revolutionary court reforms contained in the conference report on S. 2601 are calculated to reinstitute swift and fair trial in the District of Columbia. The court reforms contained in S. 2601 are calculated to restore the spectre of certain justice, the deterrent impact of speedy disposition, the keystone of the criminal justice system in any free society.

The conference report provides—

An efficient, merged local court system with divisions of flexible size capable of adjusting to exact court needs.

A nearly two-thirds increase in the number of local trial judges, along with numerous other means for expanding the city's judicial resources.

Increased tenure, salaries, retirement benefits, and the like, to attract high quality personnel to the local bench.

A refined mechanism for ridding the bench of unfit judges,

Modern court management, with the centralization of non-judicial, administrative duties in a top-level court executive,

A modern juvenile code codifying recent developments in the law of juvenile court proceedings,

A telescoping of numerous juvenile proceedings, and other means for assuring juvenile court expedition,

Three distinct modes of adjudication and treatment for three distinct categories of juveniles,

A full-fledged Public Defender Service for the District of Columbia, greatly expanded beyond the size and scope of the operation of the existing Legal Aid Agency,

An expanded bail agency, with new supervisory capacity and functions regarding persons released prior to trial,

Improved sentencing procedures, including discretionary, repeated-offender penalties and procedures, and a mandatory minimum sentence for second-offender armed violent felons only,

A general reorganization and revision of the District of Columbia code of criminal procedure,

Authorization for interlocutory appeals by the government from orders suppressing evidence,

Authorization for the issuance of "no-knock" warrants,

Revision of certain rules of criminal evidence, making insanity an affirmative defense and repealing the so-called "*Luck*" doctrine,

A comprehensive local wiretapping law, with penalties and safeguards in addition to those available under the Federal wiretapping law,

Authorization for pretrial detention, in lieu of bail, for certain persons charged with dangerous or violent crimes,

Authorization for increased police mutual assistance between the District and the suburbs, and

A Federal payment of $5,000,000 to assist the District of Columbia Government in meeting the costs of S. 2601 and certain other crime-related programs, notably the city's Narcotics Treatment Agency.

This legislation is unique in several ways. It will be the first of President Nixon's crime bills to pass the Congress. Second, this bill is the only local crime legislation Congress can enact for any particular jurisdiction in the Continental United States. The provisions of this bill will apply only in the District of Columiba—nowhere else. Third, it is a specific answer to the particular problems of the District of Columbia. It is not a model for other jurisdictions. In fact, in many provisions, such as wiretapping, "no-knock" warrants, and court administrations, it borrows from the time-tested experience of other jurisdictions. Whereas this legislation does contain many meaningful reforms in the criminal justice system, the legislatures of each state must answer the special problems each faces, just as Congress must meet its reponsibilities to the National Capital.

II. SUMMARY OF MAJOR DELETIONS

After nearly three months of conference sessions and countless hours of negotiation in 24 meetings, the Senate conferees are finally able to return a bill to the Senate floor and to urge its passage. The lengthy delay in the conclusion of the conference is in large measure attributable to the great array of questionable provisions which the House of Representatives appended to an otherwise non-controversial and urgently needed court reorganization and criminal law reform bill. The Senate conferees are now able to report that the vast majority of these provisions have been eliminated in the conference substitute.

Court Reorganization

Briefly, the conference report omits the House provision which made the day-to-day operations of the new court system subject to the direct influence of the executive branch of government. In the interest of a separation of governmental powers and of sound court management, the Senate conferees insisted on the deletion of the House provision whereby the President of the United States was charged with the power both to appoint and to remove the chief administrative officer for the local judiciary.

Also, by disapproving the fixed-amount determination of the salaries of local judges—that is, by making the judges' salaries in effect subject to periodic automatic review and revision—the conferees assured the time-honored independence of the judiciary and enhanced the attractiveness of service on the local bench. In the view of the conferees, better qualified judges enable greater efficiency and expedition, and the latter in turn assures prompt trial and the deterrence of much of the city's crime.

Juveniles

The Senate bill included a completely revised code of juvenile procedure for the District of Columbia, designed to alleviate the crippling backlog of juvenile court cases and to modernize juvenile proceedings in conformity with the safeguards required, under recent Supreme Court decisions, to be afforded juvenile offenders. Many of the provisions in the House version of the juvenile code, in contrast, were not focused upon these goals, but constituted a step backward in the handling of juvenile matters.

The conference version greatly reduces the number of cases which the House bill would have automatically transferred to the adult court for trial. The conference report eliminates a clear majority of the offenses from the list of offenses which would qualify a 16 or 17 year-old for treatment like an adult. Whereas the House bill would have shifted the burden of proof to the child in juvenile "waiver" proceedings, the Senate conferees insisted that the inappropriateness of juvenile treatment must be established in each case without placing any burden on the child. With the help of a timely Supreme Court decision, *In re Winship*, 397 U.S. 358 (1970), the Senate successfully preserved the requirement that delinquency involvement (guilt) must be proved beyond a reasonable doubt instead of by a mere preponderance of the evidence as in the House version of S. 2601.

The Senate also prevailed in requiring separate treatment for different categories of juveniles rather than permitting the court to order a child once found to be "in need of supervision" (for example, a habitual truant) to be placed in a facility for delinquent children (criminal law violators). Nor will authorities be allowed, under the conference report, summarily to transfer an obstreperous delinquent to an adult prison without the affirmative protection of an adult criminal trial. The House version in contrast indulged the summary procedure. The conferees disapproved the House provision which made "waiver" of a juvenile to adult court permanent with respect to subsequent offenses regardless of the outcome of the trial after "waiver". Also, the Senate conferees insisted upon deletion of the House provision which forbade the setting aside of the adult criminal conviction of a juvenile in cases of genuine mistake as to age.

Sentencing

The Senate conferees further refused to accede to many of the self-defeating and inflexible provisions in the House bill on adult sentencing which have been severely criticized by penologists and other law enforcement officials as unwise, unworkable, and obsolete. The provision which made larceny from any vending machine (such as theft from a gum ball machine) equivalent to second degree burglary, carrying up to a 15-year penalty and many collateral consequences such as eligibility for pretrial detention, was rejected. A more appropriate penalty of up to three years' imprisonment is provided for this crime in the conference report, and the panoply of collateral consequences will not attach.

The Senate conferees would not yield to pressure and violate basic precepts of criminology and sound criminal justice penology, by agreeing to House requests to expand mandatory minimum sentencing to first offenders. Rather, the Senate conferees heeded the counsel of their own Panel Against Armed Violence and eliminated all of the House-passed mandatory minimums except in the case of second-offender armed violent crime. For example, the most misguided provision in the area of sentencing in the House bill—the provision for mandatory life sentences, with twenty years' imprisonment required prior to eligibility for parole—was struck from the conference version of the legislation. The Senate likewise insisted that a person may not be subject to recidivist penalties unless he has received pretrial notice of the prosecution's intent to rely upon prior convictions and to request recidivist treatment.

Other provisions deleted

The conference substitute does *not* include numerous other House provisions on criminal procedure which have been the subject of particularly severe criticism among others, "moot" appeals by the Government from judgments of acquittal, permission for police officers in executing search warrants to conduct scientific tests or experiments on persons, and the requirement that a plaintiff pay the attorney's fees for a police officer defendant in a wrongful arrest suit regardless of who wins the case.

Lorton

A major victory for the Senate, relating to the gathering process of correctional reform in the District, was the elimination of the House provision which would have transferred Lorton Reformatory to the Federal Bureau of Prisons. Senate recession on this issue would have gutted the move toward effective, coordinated correctional services—emphasizing rehabilitation and the reintegration of parolees into the community—and would have interposed, ironically, a stumbling block in the local war against crime.

III. COURT REORGANIZATION AND GENERAL PRACTICE REFORMS

a. Courts and court resources

The conference report, like the Senate version of S. 2601, recognizes that, in striving to meet the crime problem in the National Capital, primary emphasis must be placed on eliminating court congestion and assuring speedy trials. Until means are provided for restoring the specter of swift and sure judgment, the criminal justice system in the District of Columbia will never regain its rightful deterrent effect.

Accordingly, the conference report on S. 2601 provides for a streamlining of the judicial system of the District of Columbia, with an efficient centralization of local judicial authority, and an unprecedented increase in local judicial resources.

Pursuant to the conference report, the three trial benches of the District of Columbia (the general sessions, D.C. tax, and juvenile courts) are to be merged into a single local court, the Superior Court of the District of Columbia. The superior court is to have exclusive, general jurisdiction over all local matters, civil and criminal—consistent with the move toward home rule in the District as well as for purposes of efficiency and expedition. Likewise, the local appellate court, the District of Columbia Court of Appeals, is to be the highest court of this jurisdiction, the final authority, as to purely local matters and for purposes of appeal to the Superior Court of the United States.

Jurisdiction over local matters is to be transferred from the Federal district court to the new superior court, as indicated in the table below. (See Table 1.) Commensurately the Federal district court for the District of Columbia is to regain its rightful status as a Federal tribunal, devoted on a full-time basis to Federal business, like all other United States district courts.

TABLE 1. *Transfer of local jurisdiction from Federal district court to merged local trial bench (District of Columbia superior court)*

First Stage (6 Months After Enactment)

(1) Merger of all general sessions, D.C. tax, and juvenile court jurisdiction in the new superior court.

(2) Civil controversies up to $50,000.

(3) Quo warranto, land condemnation, change of name, contractor's bond, real property, habeas corpus, commitment of drug addicts, etc., proceedings.

(4) Local felonies punishable by up to 15 years' imprisonment.

Second Stage (2 Years After Enactment)

(1) Hospitalization of the mentally ill, certain other commitment, conservatorship, etc., proceedings.

(2) Remaining local felonies.

Third Stage (3 Years After Enactment)

(1) Remaining civil proceedings, including probate and controversies over $50,000.

Most important, the conference report creates 17 additional local judgeships for the new superior court, bringing the strength of the local trial bench to 44. (Presently, the law provides for 27 local trial judges—23 in general sessions, 1 in D.C. tax, and 3 in juvenile court.) Ten new judges are to be added immediately upon enactment; and 7 are to be added eighteen months thereafter, in anticipation of the second stage of jurisdictional transfer. To meet the increased workload resulting from the expanded trial bench and jurisdiction, the D.C. Court of Appeals is increased by 3 additional judges, all to be appointed immediately, bringing the strength of that court to a total of 9.

Again recognizing the primary importance of assuring adequate judicial manpower to meet the demands of the city's crime crisis, the Senate conferees would have preferred to authorize an even larger trial bench of 50 positions as the Senate bill provided, with more judges to be appointed in connection with the third stage of jurisdictional transfer. After protracted negotiation the conferees agreed on a number of judges which is four greater than the House version, but six less than the Senate had provided. As to the six additional judges in the Senate bill, the Senate deferred to the House view that the need for additional judges in connection with the last stage will be assessed in a later Congress (after court reorganization has gotten under way). Nevertheless, it was the understanding of the conferees that expansion of the local trial court in the pending legislation shall in no way prejudice—indeed the Senate conferees affirmatively anticipate—full consideration of the need for additional judges as the need appears.

The Senate conferees insisted upon an innovation in the Senate version of S. 261 whereby the chief judge of the Federal appellate Court in the District is authorized to assign Federal trial judges to serve temporarily on the local superior court, whenever a certified need arises. This provision is designed as assurance that the manpower needs of the local court will be met on at least a stop-gap basis, even if the size of the new superior court proves to be inadequate and also notwithstanding any future emergencies.

Adding flexibility to the new court system, the conference report, like the Senate version of S. 2601, authorizes the temporary assignment of judges of the D.C. Court of Appeals to sit on the trial bench when necessary, and likewise authorizes judges of the Superior Court of the District of Columbia to sit on the local court of appeals. The conference report furthermore authorizes the assignment of general sessions judges pending the effective date of the court merger (6 months after enactment) to sit in juvenile court to assist with the latter court's unprecedented, crippling backlog.

Once the court reorganization and attendant merger have come into effect, all juvenile matters will be handled in a consolidated Family Division of the superior court. Enhancing the effectiveness as well as the efficiency of the new local court, the Family Division will at the same time have jurisdiction over all "family" matters—including all matters formerly brought before the Domestic Relations Branch of the general sessions court, and civil proceedings for protection in cases involving intrafamily offenses.

Like the Senate version of S. 2601, the conference report does not fix the size of the new Family Division or of any of the superior court's divisions (including the civil, criminal, and tax divisions). Rather, the conference report permits the chief judge of the superior court to assign as many associate judges to handle juvenile or other Family Division business as may be necessary at any given time. The profound significance of this feature of S. 2601 is made especially apparent by comparing the previously authorized size of the District's juvenile court—consisting of only a chief judge and two associates—with the fact that perhaps as much as 50% of all serious crime in the District is presently being committed by juveniles.

The Senate conferees insisted that additional support from law clerks is essential in increasing the output of appellate judges, and that, without enhanced judicial "productivity," the 3 additional judges for the local court of appeals would hardly suffice to absorb the enormous increase in local appellate cases and over-all responsibility. The conference substitute provides 2 law clerks for the chief judge of the D.C. Court of Appeals, 1 personal law clerk for each of the associate judges, and 3 additional clerks for the court as a whole. Similarly reflecting the enhanced responsibility of the local trial court—now to be a court of general jurisdiction—the conference report provides that each of the superior court judges shall have a personal law clerk.

b. Judges.

As important as any element in assuring the National Capital of an effective system of criminal justice is the process of attracting and retaining on the local bench well qualified, hard-working members of the legal profession. Accordingly, the conference report adopts numerous provisions contained in the Senate bill which are designed to facilitate this latter process.

The conference substitute adopts the innovation in the Senate version of S. 2601 whereby the salaries of local judges are fixed as a percentage of the Federal judicial equivalents. With the assignment of comparability with Federal judicial officers, the local judges are accorded greater prestige commensurate with their grave new responsibilities. Similarly, since the salaries of Federal judges are reviewed on a regular, quadrennial basis by the so-called "Kappell commission" and can be appropriately raised without affirmative congressional action, the percentage method of computation promises to relieve the local judges of the ignominious task of importuning in the halls of Congress in the interest of their rightful compensation.

The salaries of the local judges specifically are set at 90% of the Federal equivalents. In this way, the trial judges will earn $36,000 per annum—that is, more than the $34,000 salary enacted for the general sessions trial judges as part of the recent pay raise, and $8,000 more than the $27,500 salary which remained effective until April of this year. The appellate judges will earn $38,250 per annum—that is, $2,250 more than the $36,000 salary enacted for the D.C. Court of Appeals judges as part of the recent postal pay raise, and $9,750 more than the $28,500 salary which remained in effect until April of this year.

The conferees anticipate, as a consequence of the new salary provisions, that the local courts will be able to attract judicial candidates who are both successful and skilled, and compete favorably with the Federal courts of the District in obtaining judicial personnel. The conference report also accepts the principle of the Senate bill of increasing the tenure of local judges. The conference report increases the present ten-year term by 5 years—in the hope that the new 15-year term will offer a more attractive promise of security to candidates hesitant to risk failure of reappointment in addition to the loss of a successful practice.

Even further enhancing the attractiveness of service on the local bench, the conference report provides that local judges may aggregate judicial and non-judicial service—including military and civilian service, with the Federal Government or with the government of the District of Columbia—for purposes of determining retirement eligibility and benefits. In addition, the conference report provides that retired local judges are to be granted proportionate increases in retirement benefits in the event of any increases in the compensation of active judges.

Correcting a grave flaw in the judicial code of the District of Columbia, the conference substitute, like the Senate version of S. 2601, creates a further substantial judicial resource by removing the 60-day limitation on the fully compensated, annual service of re-

tired local judges. The new local courts are permitted to utilize the talents of the city's older, most likely more experienced jurists, much in the way that the Federal judicial system looks to an active corps of senior Federal judges. It has proved to be common, after all, in the Federal system for the so-called "retired" judges to serve as diligently and efficiently as their regular active brethren.

On a related matter, the House conferees receded to the Senate position whereby local judgeships are made subject to mandatory retirement at 70 years of age. Local judicial positions are to be regularly and automatically freed for the appointment of additional (and younger) judges. Thus, with the combination of mandatory retirement and the possibility of unlimited annual service after retirement (as aforementioned), even the new increased number of authorized judicial positions may be substantially exceeded in terms of the number of judges actually on duty on a full-time basis.

Meanwhile, the most obvious effect of provision for mandatory retirement is to remove the semblance of a "right" to judicial office notwithstanding advancing, possibly debilitating age. In a similar manner, the conference report alters the tenure and selection of the local chief judges, so that the President is now to designate a chief judge from among the associate judges of the relevant court to serve for a renewable 4-year term only. In this way, designation and redesignation as chief judge is more securely tied to performance, to demonstrated administrative skill. Designation ceases to constitute a "right" persisting throughout the judicial term of a single individual.

Recognizing that no judicial system can function effectively unless it is free of corruption and incapacity, the conference report creates a local Commission on Judicial Disabilities and Tenure to oversee the integrity of the local bench. The 5-man commission—consisting of at least one lawyer, one layman, and one Federal judge—is patterned largely after the successful removal commission of the State of California. The D.C. Commission is authorized to retire involuntarily any judge who is mentally or physically disabled, and to remove involuntarily any judge who is guilty of misfeasance or nonfeasance in office. As a further aid in freeing the bench of unfit judges, the House conferees receded to the Senate position, original in the Senate version of S. 2601, eliminating the 5-year service requirement for retirement benefits in case of involuntary retirement for disability. The Senate conferees successfully urged that even removal commissions are reluctant to remove a disabled judge without the assurance that he will receive adequate retirement benefits.

The conference report adopts a further Senate innovation in the form of a requirement of detailed, financial disclosure on the part of all local judicial officers. The rules of financial disclosure are patterned after those in force in the United States Senate. Information concerning income, property and trust interests, and gifts is to be filed on a confidential basis with the D.C. removal commission; while information concerning business and charitable associations and honoraria valued at $300 or more is to be filed with the commission and made available to the public. Both failure to comply and the filing of fraudulent information constitute grounds for involuntary removal from judicial office.

Lastly, with respect to guaranteeing the highest quality in local judicial appointments, the Senate conferees at the outset looked principally to the Senate-approved Advisory Committee on Judicial Selection. This innovation was urged upon the Senate by the District of Columbia Bar Association, and was modeled in some measure after the well-known and successful "Missouri plan." The Senate receded on the issue of the creation of such a committee with only the greatest reluctance. Indeed, the Senate conferees would have insisted upon this feature (1) were it not for persistent opposition to this provision by House conferees and the Department of Justice, and (2) were it not for assurances that appropriate high quality will issue from presidential appointment without institutionalizing outside advice. In short, the Senate conferees receded on this issue only with the understanding that the forthcoming nominees will be exceptionally learned in the law (see the provision in the conference report facilitating appointment of local professors of law and government lawyers, as well as experienced local practitioners), sensitive to the particular nature of the local community (see the provision requiring prior and continued residence in the National Capital area), and not favored unduly on the basis of political or other nonmeritorious affiliation.

Clearly, in the view of the Senate conferees, if this understanding is not borne out in fact in the qualifications of the actual nominees, the entire court reorganization will have been instituted for naught, and the battle against crime and toward greater judicial effectiveness in the District may well be hindered rather than helped.

c. Court administration

As was stressed in the original Senate-passed S. 2601, improved court administration must lie at the heart of any plan for eliminating court congestion. The criminal case backlog and regular criminal caseload in the District of Columbia are of such proportions as would quickly overwhelm any number of additional judges in the absence of court management reform. By the same token, the striking benefits of such reform can be seen in the recent heralded deployment of the individual calendar system in the District of Columbia's Federal trial court.

Most notably, the conference report, like the Senate version of S. 2601, creates the position of Executive Officer of the District of Columbia courts, in an effort to bring modern court management to the new court system.

Moreover, the conference report adopts the Senate provision regarding the appointment of the executive officer. The Senate conferees insisted that control over such appointment be retained in the judges themselves (through the Joint Committee on Judicial Administration, see below), since, without the assured cooperation of the bench, court management could not be improved.

Likewise the Senate conferees insisted that the clear, paramount authority of the respective chief judges be undisturbed in the individual local courts, and that the chief judges be given the power to disapprove the appointment of any court executive. This course was adopted in the interest of orderliness in administration and out of respect for the particular confidence which society reposes in judicial as opposed to non-judicial personnel.

The Senate conferees strongly objected to the provision in the House version of S. 2601 for presidential appointment and removal of the executive officer. The latter course was deemed destined to place the executive officer outside of or above the court system, in a wasteful confusion of chains of authority. The House provision was viewed as destined to drive a wedge between the court manager and the judges, instead of enhancing cooperation. Most important, presidential appointment and removal of the court's day-to-day administrator was viewed as a grave encroachment upon the independence and integrity of the judiciary, and a source of persistent violation of the rightful separation of powers.

The conference substitute, like the Senate version of S. 2601, creates a Joint Committee on Judicial Administration in the District of Columbia to act as a final authority over matters affecting the local court system as a whole. The committee is to consist of the two local chief judges, an associate judge of the D.C. Court of Appeals elected by the members of that court, and two associate judges of the superior court elected by the members of the local trial bench. It bears reiteration, however, that final authority over matters affecting, that is over operations within, a single court is vested without exception in the chief judge of that court.

The executive officer is principally to serve as chief administrative assistant to the respective chief judges and to the Joint Committee on Judicial Administration. In a more immediate or day-to-day sense, however, the executive officer is himself to exercise control, pursuant to the conference report, over the non-judicial personnel of the local courts and over the non-judicial aspects of court administration. To assist with this professional management, the Senate conferees insisted that the number of supergrade equivalents among the court employees be increased beyond the 4 allowed in the House version of S. 2601. The doubling of this number in the conference report will enable the local courts to compete not only with the Federal courts in the District, but also with other branches of government and with private industry, in obtaining the services of experienced executive and other specially trained personnel.

The conference report specifies that the rate of compensation of the District of Columbia Register of Wills shall be fixed by the superior court with a ceiling consisting of the maximum rate prescribed for GS–16 (presently $33,627). Otherwise, the executive officer is free to assign the supergrade equivalents as he deems best in the interest of effective and efficient court management. The following court officers among others, envisioned by the conference report, might warrant such assignment: the principal assistant or deputy to the executive officer, the clerks of the respective local courts, the Director of Social Services in the superior court, and the Fiscal Officer and the Auditor-Master for the District of Columbia court system.

Further aiding in the elimination of court congestion and in the interest especially of improved judicial efficiency, the conference report adopts certain further provisions originally in the Senate-passed version of S. 2601 and based on the extended hearings in this Congress before the Senate Committee on the District of Columbia. These Senate provisions include a requirement that the judges of the superior court meet not less than once each month to consider "matters relating to the business and operation of the court." Another such provision details the minimum information (for example, regarding times and attendance in court) which each judge is to submit to his chief judge and to the Commission on Judicial Disabilities and Tenure. Also, the Senate conferees prevailed on the issues of continuing a statutory limitation on the annual vacation of local judges and admonishing the chief judges to schedule the judges' vacations so as not to leave the respective courts under-manned at any given time.

d. Public Defender Service and Bail Agency

One of the most significant provisions of the conference report is the conversion of the existing pilot project Legal Aid Agency in the District of Columbia into a full-fledged public defender program. The Public Defender Service established by this bill will provide legal representation for a clear majority of the District's indigent criminal defendants, will expedite criminal trials by assuring experienced counsel in such cases, and will assist the private bar and aid the court in establishing an adequate system for the appointment of private counsel for the remaining indigent defendants not directly represented by the service. The public de-

fender concept promises a double benefit, in that it not only better safeguards the rights of defendants, but also aids the process of swift justice by speeding up criminal proceedings, cutting down case backlog, and thus preserving the deterrent impact of prompt trial.

The Constitution requires the free appointment of defense counsel to persons who are financially unable to retain their own attorneys. The conference report on S. 2601 in turn provides that the Public Defender Service may furnish such representation at any stage of a criminal proceeding. The authorization of revenues in the conference report contemplates an eventual complement of 50 or more lawyers (1) to handle up to 60% of the total number of cases where the public defender is authorized to act, and (2) to assist the courts in creating a private appointment system to serve the remaining 40% of indigency cases.

The conference deleted the House provision which would have limited the Public Defender Service to representation of 60% of the eligible persons in each individual category of cases. The House provision would have impeded a flexible allocation of public defender resources. Instead, the conference adopted a provision, original with the Senate D.C. Committee, which will aid flexible allocation—a provision limiting representation to 60% of the cases in all of the categories combined. Thus, under the conference report (like the Senate version of S. 2601), if the private bar is more willing to undertake representation, for example, in adult felony matters, the Public Defender Service can limit felony representation hypothetically to 40% of these cases and shift its attention to 80% of the juvenile cases (where greater expertise is required).

The Senate conferees found persuasive the House provision which adds authority to represent chronic alcoholics in commitment proceedings. The other categories where representation is authorized include criminal cases punishable by at least 6 months imprisonment, parole and probation revocations, mental health and narcotics addict commitment and release proceedings, and juvenile delinquency and "need of supervision" cases.

The service will be governed by a Board of Trustees appointed by the chief judges of the local and Federal courts, and will be run by a Director and Deputy Director with salaries, following the model of the Senate bill, geared competitively to civil service supergrades in order to attract talented attorney-administrators in the top leadership positions. The conference report, deferring to the Senate position, provides a compensation ceiling equal to GS–18 (presently $35,505) for the Director of the Public Defender Service, and a GS–17 ceiling (presently $34,810) for the service's Deputy Director. The Senate conferees prevailed likewise in assuring that the service will be authorized to accept public grants and private contributions, to facilitate research and continuing educational assistance on the part of the Public Defender Service for members of the private bar inexperienced or otherwise untrained in handling indigency cases.

The conference report takes an important step toward the full implementation of the Bail Reform Act of 1966 by greatly expanding the size and functions of the District of Columbia Bail Agency. Under existing law the agency merely provides pre-bail information on arrested suspects to guide the judicial officer in setting release conditions. Although in many instances the D.C. Bail Agency would wish to recommend release under third-party supervision, the severely limited resources in the community for such supervision, however, force the courts to a choice between the risk of release without the necessary supervision, on the one hand, and, on the other hand, the imposition of money bond which is most often equivalent in actual effect to ordering outright pretrial detention.

An answer to this dilemma is the requirement in the conference report that the bail agency supervise, or coordinate the supervision by others of, suspects released on conditions other than money bond. The agency will hereafter make recommendations from the entire range of bail alternatives, follow up and supervise these defendants to assure that they conform to release conditions, notify them of appearance dates, and assure their appearance as required. Even further expanding the bail agency's positive role, the conference report requires that the agency assist persons on court-order release in securing employment or needed medical or social services.

e. General civil practice reforms

Rules of Procedure. The new local courts will continue to operate on the basis of rules of procedure familiar to the local bar. The Federal Rules of Appellate, Civil, and Criminal Procedure will apply in the local courts unless the court of appeals approves specific modifications of those rules. As in the Senate version of S. 2601, the new courts may adopt local rules of procedure supplementing the Federal rules, and the superior court is authorized to appoint a committee of lawyers to advise the court with respect to the adoption of local rules.

The conference report contains several provisions, dealing with service of process and interlocutory appeals, of major importance to the jurisdiction of the new local courts. The conference report provides for the first time in the National Capital a modern "long-arm" statute. The particular statute, based upon the Uniform Interstate and International Procedure Act, grounds personal jurisdiction generally upon the extent of contacts with the forum, and authorizes service of process outside the District of Columbia by reasonable means calculated to give actual notice. In addition, with regard to criminal cases the conference report encourages the service of process by summons instead of by warrant, and continues nationwide service in felony cases. Misdemeanor service, following the Senate version of S. 2601, is limited to the District of Columbia. These provisions reflect the best elements of modern jurisdictional statutes and place the new local courts on a parity with courts in the States.

Finally, the bill provide for interlocutory appeals in civil actions where the trial certifies a controlling question of law upon which there may be substantial difference of opinion and immediate resolution of which on appeal will advance the ultimate termination of the case. The provision is modeled upon the Federal statute, 28 U.S.C. §1292, which has worked well in the Federal courts. Each of these provisions constitutes an essential tool for a fully developed local court system.

Intra-family matters. The Family Division of the superior court is authorized to implement a new informal and civil process for the resolution of family disputes. This statutory alternative to criminal prosecution, a major innovation, is designed to heal family disharmony rather than invoke the criminal process which can bring about permanent family breakdown. The Director of Social Services in the superior court is authorized to provide marital, family and juvenile counseling, and in consequence can be expected to attempt to effect informal conciliation even short of resorting to the new civil procedure. In appropriate cases, however, the Director of Social Services may recommend the filing of a petition for a civil protection order, in the nature of an injunction, which may direct the respondent to refrain from injurious conduct or to perform or refrain from appropriate specified acts in order to restore family order.

Another important reform—originating with the Senate D.C. Committee—consists of the elimination of the criminal or quasi-criminal incidents of nonsupport and paternity proceedings. Under current law and practice such matters create considerable congestion in the trial calendar of the juvenile court, and are regularly "prosecuted"; most important, fathers who should be supporting their families are made subject to criminal sentence. The new proceedings, in contrast, will be entirely civil in nature and will change the focus from punishment of the putative father to provision or support of the minor child or children. Contumacy will be dealt with through the more effective tool of civil contempt, which the putative father can purge by making the required support payments.

The conference report provides that separate counsel may be appointed by the court in child custody proceedings to represent the child. Also, the conference report, like the Senate version of S. 2601, makes discretionary with the court the appointment of an attorney for the defendant in an uncontested divorce case, and relieves indigent plaintiffs of the present requirement of paying the attorney's fees of opposing counsel in such cases. Subsequent to Senate passage of S. 2601, the latter provision was apparently made requisite in the case of *Harris* v. *Harris*, No. 22, 266 (D.C. Cir. Jan. 14, 1970).

Small claims reforms. The conference report continues its emphasis upon the conciliation process by expanding the jurisdiction of the Small Claims and Conciliation Branch of the Superior Court five-fold to encompass claims up to $750 as provided in the Senate version of S. 2601. This amount reflects, generally, modern costs and values; and will permit the expeditious and yet fair treatment of the greatly increasing number of small claims. The Senate conferees moreover insisted upon making the jurisdiction of the Small Claims Branch exclusive. Also, to accommodate small businessmen and other persons who cannot afford to miss work, the conference approved the Senate requirement that the Small Claims Branch hold at least one evening session each week.

Register of Wills; Medical Examiner. In recognition of the critical importance of the District of Columbia Register of Wills to effective probate practice in the District of Columbia, and also in recognition of the high quality of the service performed by the register's office in recent years, the Senate version of S. 2601 provided for an upgrading of the qualifications for the office of Register (which the new court is to maintain following transfer of probate jurisdiction). The conference report, which approximates the Senate provision in this regard, requires a minimum of five years' membership in the D.C. Bar, as well as broad experience in probate matters.

The conference report also substitutes a modern office of medical examiners for the ancient coroner system retained in existing law. The report provisions contemplate that the medical examiner will be concerned strictly with medical matters and will not become involved in legal and quasi-legal inquiries included in the coroner's present functions. Following recommendations of the D.C. Bar Association, the new legislation sets forth clearly the deaths to be investigated by the medical examiner and establishes high medical qualifications for the office of Chief Medical Examiner for the District.

Retarded persons. Although the substitution of the term "substantially retarded" for "feebleminded" in the revision of the D.C. Code is of no functional impact, it deserves mention simply to emphasize the dominant concern in this legislation for reforms in institutions, practices, and even language. The new characterization, adopted from the Senate version of S. 2601, is designed to refer, pursuant to chapter 11 of title 21 of the D.C. Code, to persons who are afflicted with mental defectiveness from birth or early age, so

pronounced that they are incapable of managing their own affairs or of being taught to do so, and who require supervision, control, and care for their own welfare, the welfare of others and the community. The use of the term "substantially" was considered important by the Senate conferees, first, in order to eliminate from the law of the District the insensitive, outmoded term, "feebleminded." Secondly, the Senate conferees insisted upon "substantially retarded," instead of simply "mentally retarded," in order not to reflect harshly upon the many independent and productive citizens in society who are to a lesser degree or at least educably mentally retarded. Lastly, the conferees consciously opted not to employ a clinical term (such as "severely retarded") so as to avoid confusing the precise statutory or legal standard with a medical concept.

f. Juvenile proceedings

The need for a complete overhaul of the District's system of criminal justice is nowhere as clear as in the area of juvenile proceedings. As is indicated in the recent Court Management Study of the D.C. Juvenile Court (prepared under the auspices of the District of Columbia Judicial Council's Committee on the Administration of Justice), juvenile court procedures and management practices in the National Capital have been decidedly without success in meeting the problem of mounting juvenile crime.

Just as the need for reform of the District's juvenile court system is eminently clear, similarly the possibility of long-range benefit resulting from such reform is uniquely great. Juveniles by their nature are more impressionable than adults; the capacity of juveniles for rehabilitation is more pronounced. What is most obvious, failure to mend the ways of a juvenile necessarily imposes a detriment more lasting than in the case of an adult.

For these reasons the conference report, like the Senate version of S. 2601, places special emphasis on juvenile code revision. Positive reforms are most numerous and bold in this area. And the Senate conferees in the area of juvenile code revision most of all were successful in insisting upon a host of innovative amendments originating in the work of the Senate Committee on the District of Columbia.

The conference report, like the Senate version of S. 2601, institutes specific statutory criteria of screening both detention and shelter care cases to reduce the number of juveniles unnecessarily or inappropriately detained. The report envisions around-the-clock screening of such cases; and likewise provides for prompt screening by the arresting officer, by the intake officer (ordinarily at the juvenile detention facility itself), and by a judge of the Family Division. With repeated screening, moreover, in accordance with the new, specific criteria, the margin of traumatic error or unnecessary expense (of detention or preliminary shelter care) can be expected to diminish appreciably.

The Senate conferees insisted on the Senate position requiring a hearing to determine the need for detention or shelter care, no later than the next day after the child is taken into custody, and with no possibility of a continuance. Indeed the conference substitute incorporates important time limitations for many juvenile proceedings or stages thereof. The Senate conferees insisted upon the institution of some time limits as the appropriate response to the unparalleled problems of delay and recidivism detailed in existence hearings on the new juvenile code before the Senate D.C. Committee.

The Senate conferees were convinced in effect that justice or treatment delayed in the case of a juvenile is justice (or treatment) without effect. The Senate conferees did finally yield to the House view that statutory limitations on factfinding and disposition should not yet be imposed. Nevertheless the conferees agreed that, as a matter of general policy and for most juvenile cases, a time schedule approximating that which follows is practicable and desirable, and indeed is in the long run to be expected:

Factfinding within 30 days for custody cases, 60 days for community cases.

Thereafter, disposition within—15 days for persons previously known to the juvenile system, 21 days for custody cases for persons new to the juvenile system, 30 days for community cases for persons new to the juvenile system.

As the Statement of the Managers on the Part of the House suggests, the conferees agreed that the imposition of statutory limitations should be promptly reconsidered in the event that, two years hence, the amount of time consumed in reaching the factfinding and dispositional stages continues to extend beyond the ideal time limits suggested above.

It bears mentioning that the Senate conferees do not recommend enforcement of the several limits, statutory and otherwise, by the dismissal of cases or the disallowance of proceedings. The Senate conferees oppose "punishing" the juvenile system and society for these failings. Rather, the recommendation and the concern are that the Commissioner in budgeting and in the deployment of city personnel, the Corporation Counsel in the management of his office, the court executive and the Director of Social Services in the allocation of non-judicial personnel in their charge, the chief judge of the superior court in assigning judges to the Family Division, and the associate judges of the division in ruling on requests for continuances, all take heed of the degree of compliance or non-compliance with the limitations and made any adjustments necessary to meet the timetable as mandated in the conference report or suggested in this statement. Again, in view of the Senate conferees, the price of non-fulfillment in the unique case of juveniles is the total voidance of the benefit of adjudication and treatment, of maintaining a juvenile court system.

The conference report provides that juvenile disposition orders shall remain in force for an indeterminate number of years not to exceed 2 years (in cases of probation or protective supervision, 1 year). While the child may ordinarily be discharged at any time prior to the expiration of the order, the time limitation provides the safeguard of a requirement that a court review its determination after such time as a child may be expected to have appreciably changed and been rehabilitated.

The conference report institutes a voluntary consent decree process designed to avoid formal adjudication in appropriate cases. Similarly reflecting the rehabilitative potential of juveniles, the conference report institutes a procedure for sealing juvenile records in addition to the customary rules of confidentiality. Sealing may be ordered in the case of any neglected child who has reached his majority, or, in the case of a delinquent child or person in need of supervision, two years after the completion of treatment and provided that no further juvenile court adjudication or criminal has intervened.

By providing that all juvenile hearings and proceedings shall be recorded, the conference report builds into the new juvenile code the basic for appellate monitoring essential for just and efficient supervision. Likewise it is to be expected that the requirement of written findings following a transfer or factfinding hearing will similarly provide the juvenile with a record adequate to give meaning to his right of appeal.

The new juvenile code approved as part of S. 2601 authorizes interlocutory appeals by a juvenile from any detention or shelter care order, and from any order of transfer for criminal prosecution. In this way, a juvenile may speedily be released from an unlawful detention or spared the trauma of inappropriate adult criminal trial, without having to wait until after the termination of all proceedings against him (several months later) for a determination of his rights.

What is at least equally notable, by the same token, is the approval in the conference report of the basic provision developed by the Senate District Committee requiring special expedited handling of these interlocutory appeals. The conference substitute requires that notice of appeal be filed within 3 days of the entry of the order being appealed from; argument on appeal must be heard within three days of the filing of such motion (a requirement made practical by the further direction that no written briefs are to be required beyond the documents earlier submitted to the Family Division); and appellate decision must be rendered on the next day following argument (made practical by authorization for dispensing with the issuance of a written opinion).

The conference report, like the Senate version of S. 2601, envisions a telescoping of juvenile proceedings. A juvenile is to have a single preliminary hearing comparable to a combined presentment and arraignment—a detention or shelter care and probable cause hearing in the case of juveniles in custody, and an initial hearing in the case of juveniles released into the community. A juvenile ordinarily is to have in addition only an adjudication hearing (including consideration of all "pretrial" motions) followed by a dispositional hearing.

The predisposition study, necessary for the dispositional hearing, is not ordinarily to be prepared until after factfinding has been completed and the juvenile found involved. In this way the juvenile does not suffer the distinct stigma of having investigators probe into his background (for example, questioning associates) with a view toward recommending appropriate correctional treatment unless and until his guilt (technically, his involvement) has in fact been established. In addition, the temptation for the factfinder, the judge, to look at the comprehensive report prior to finding involvement is necessarily diminished.

The exceptional case where the predisposition study must be prepared earlier is when a motion for transfer (for criminal prosecution) has been filed. In such instances the study is essential to a fair resolution of the transfer issue. Should transfer be denied, however, the earlier preparation of the study also should eliminate the need for appreciable delay after factfinding before commencing the dispositional hearing. With the necessary information already on hand—as likewise in the case of juveniles whose prior studies plainly do not require revision—the dispositional hearing could possibly follow factfinding immediately, as part of a continuous judicial proceeding.

The conference report like the Senate version of S. 2601 institutes for the District a system of separate and distinct adjudication and disposition (treatment) for three distinct categories of juveniles—(1) delinquent children consisting of the principal juvenile law violators, (2) persons in need of supervision consisting of juveniles who are guilty of minor non-criminal violations or who are simply "ungovernable," and (3) neglected children. In this way only that degree of stigma (arising from, for example, the label "delinquent") which is appropriate need be allowed; and correctional therapy likewise can be more strictly required to be tailored to the exact needs of any given case.

What is most important in this regard, the Senate conferees prevailed in mending critical defects in the three-way system of adjudication and disposition as provided in the House version of S. 2601. The conference substitute states that any child found for the first time to be a person in need of super-

vision may not be treated alongside delinquent children. For the conferees to have permitted otherwise would have altogether eliminated the rationale for creating the separate category of persons in need of supervision.

Similarly, the Senate conferees insisted upon the deletion of the House provision authorizing the expedited transfer of obstreperous delinquents to adult correctional facilities without the protections of criminal trial or even adjudication upon fresh charges in the Family Division. In the view of the Senate conferees, the latter provision was itself singularly unconstitutional and moreover threatened to undermine the constitutionality of the entire D. C. juvenile court system. In the absence of the Senate amendment it might have been successfully argued that, since the stakes involved in being adjudicated a delinquent include incarceration in an adult criminal correctional facility, then juveniles must be afforded the full panoply of adult criminal safeguards (including, for example, the rights of presentment by grand jury indictment and of trial by jury).

The conference report, like the Senate version of S. 2601, assures the juvenile's right to counsel at all critical stages of Family Division proceedings. More specifically the conference substitute adopts the precise Senate formulation which is broadly worded to accord with any court requirement affecting the right to counsel, including any requirement of counsel prior to the time of admission or denial of guilt, at for example the detention or shelter care hearing.

Pursuant to the conference report on S. 2601, jury trials are no longer to be allowed in juvenile proceedings; however, the standard of proof for purposes of factfinding in delinquency proceedings is raised from by a preponderance of the evidence to beyond a reasonable doubt. In the view of the conferees, the reasonable doubt standard renders jury trial unnecessary as protection against judicial predisposition. Equally important, again in the view of the conferees, the jury has no function to exercise as a buffer of broad community judgment between the accused and some prescribed statutory punishment (that is, a specific range of penalties), since under the juvenile code there are no prescribed punishments as such; disposition, treatment, in juvenile proceedings uniquely lies, and in theory is intended to lie, within the sole discretion of the judge. In the view of the conferees, any benefit lost in the elimination of jury trials is more than offset by the gain in expedition essential in juvenile cases. It is the case, furthermore, that jury trials may prove unnecessarily traumatic for the immature persons, children, in the juvenile system. Also, a peculiar need for expertise in factfinding may arise in juvenile proceedings as the testimony of juvenile parties and witnesses must be assessed from the often unusual juvenile perspective.

In providing the reasonable doubt standard for factfinding in delinquency proceedings, the conference report adopts yet another amendment which originated with the Senate Committee on the District of Columbia. It should be noted, however, that the United States Supreme Court several months after Senate passage of the new juvenile code held that this standard of proof where criminal law violations are at issue is constitutionally requisite. (See *In re Winship*, 397 U.S. 358 (1970).)

The conference report, however, departs from the Senate recommendations, notably regarding the standard of proof in cases involving persons in need of supervision. While the Senate conferees would have preferred to apply the same standard to all juveniles accused of reprehensible conduct, they recognized that the conference substitute alters the definition of persons in need of supervision, limiting the category to persons not charged with criminal law violations as such.

In defining "child" for purposes of establishing juvenile court (Family Division) jurisdiction, the conference substitute adopts a compromise. The limit of 18 years of age is lowered to 16 only in cases involving murder, forcible rape, first-degree burglary, and armed robbery (also felonious assault with intent to commit one of the aforementioned grave offenses). Unlike the House version of S. 2601, the list of offenses for which the age limit may be lowered does *not* include manslaughter, mayhem, arson, kidnapping, second-degree burglary, breaking into vending machines, assault with a dangerous weapon, or "unarmed" robbery (including common purse snatching and yoking).

As in the Senate version of S. 2601, even if a person between the ages of 16 and 18 is to be tried in criminal court on one of the limited number of qualifying offenses, he is not to be sent to a criminal correctional facility such as Lorton unless he is in fact *convicted* as a result of the grave charges against him. Briefly, the basic thrust of the new definition of "child" is to see to it that 16 and 17-year olds convicted of first-degree murder, forcible rape, first-degree burglary, or armed robbery are treated for purposes of rehabilitation like 18-year olds.

In the area of the formal transfer of juveniles for criminal prosecution (until now referred to under the law as "waiver"), the Senate conferees prevailed on the most controversial issues in disagreement. First, the Senate conferees insisted that a juvenile cannot fairly be required to bear the burden of disproving the appropriateness of transfer. Placing such a burden on the child (as under the House version) would have contravened the general rule of law that a moving party, here the government, must establish the grounds for his motion; the House version would have placed the burden on the party, the juvenile, least able to bear it; moreover, the House version overlooked the fact that the new definition of "child" already rids the juvenile system of most of the so-called "hardened" juveniles—thereby eliminating any need for raising expedition to a level of harshness.

The conference substitute still provides (as in the House version of S. 2601) that transfer shall be ordered unless the judge finds that there are reasonable prospects for the juvenile's rehabilitation prior to his majority. In the context of shifting the burden away from the child, however, this provision is not to be construed to imply that transfer pursuant to a motion therefor is in any sense automatic. Rather, the Senate conferees understood and intend that before transfer can be ordered the Family Division shall affirmatively determine whether transfer is appropriate or inappropriate. Transfer is to be ordered only if the court finds it appropriate—or, what is understood to be the exact equivalent, unless the court finds the opposite and finds transfer inappropriate. Again, consistent with all of the authorities in juvenile court law, the transfer determination is intended very much to remain within the discretion of the court (now supplied with explicit statutory criteria).

A second controversial issue on which the Senate conferees prevailed relates to the restoration of exclusive Family Division jurisdiction over a child who has been improperly transferred for criminal prosecution. Under the House version of S. 2601, notwithstanding the fact that the court was permitted to consider the nature of the pending charges in determining whether to order transfer for criminal trial and punishment, a juvenile once transferred was thereafter to be excluded from the juvenile system even if the charges proved at trial in the Criminal Division to be unfounded. The Senate conferees urged successfully that if the grounds for transfer prove to be without foundation, then logically and in all fairness Family Division jurisdiction must be restored; and any subsequent case against the child must be brought in the juvenile court (Family Division).

It bears mentioning that the latter concept in the conference substitute is intended to operate even more completely in cases shifted to the criminal court by the operation of the new definition of "child". If a 16 year old is charged with armed robbery, he is to be tried in the Criminal Division. But trial once in the Criminal Division has no bearing on his trial on subsequent charges, even if he is convicted. So, for example, were a 16 year old first offender armed bank robber to receive a suspended sentence only to be subsequently charged with a later unrelated purse-snatching, he would nevertheless be tried in the Family Division unless specially ordered by the court to be transferred.

Here as elsewhere in dealing with the juvenile code, the object of the Senate conferees was not to defeat the prosecution of juveniles, but rather to facilitate appropriate, expedited adjudication and the best available correctional treatment in the interest of permanently reducing crime. It remains the conviction of the Senate conferees that, once the management and resource needs of the city's juvenile court system are met (as they should be under court reorganization), adjudication within the juvenile system will become without question the most expeditious means of bringing juvenile offenders to trial and of deterring juvenile crime.

The conference report, meanwhile, like the Senate version of S. 2601, significantly facilitates transfer where transfer is appropriate. The conference report suggests specific criteria upon which transfer must be based. Most important, the conference report shifts the fundamental standard underlying the transfer determination. Recognizing that the courts have labored unsuccessfully with a standard having to do with the appropriateness of criminal prosecution, the new juvenile code bases the determination on a standard having to do, instead, with the inappropriateness of juvenile correctional treatment. In brief, while the rationale behind the juvenile system is relatively clear, even fresh in the memories of many judges and practitioners, the rationale behind criminal prosecution is confused at best and lost in the recesses of history.

An important collateral aid for the successful operation of the District's juvenile court system is provided in the conference report on S. 2601 in the form of authorization for the District of Columbia to enter into the Interstate Compact on Juveniles. Briefly, the compact provides for the interstate rendition of runaways, escapees, and absconders; the removal of juveniles from one jurisdiction to another as their rehabilitative needs require; the separate detention of juveniles apart from criminal or vicious persons; and interstate cooperation in the operation of juvenile rehabilitation programs.

Lastly, the Senate conferees insisted upon including in the new juvenile code the original Senate provision for setting aside criminal judgment or sentence on the ground of genuine mistake of age. In this way, if a child has been improperly sentenced in the Criminal Division—other than in cases of conscious deceit—the court may order resentencing, literally juvenile disposition, in the Family Division (the new juvenile court).

IV. CRIMINAL LAW AND PROCEDURE

a. Sentencing

The basic approach of the Senate version of S. 2601 to the general problem of sentencing was to provide new tools and sentencing alternatives to the trial judge to protect society and to secure certain additional safeguards, due process rights, and the re-

habilitation of the convicted offender. The House version departed from this approach in many instances by substituting mandatory minimum sentences for sentencing flexibility and demonstrating only a limited concern for assuring defendant rehabilitation through the sentencing process and for the procedural rights of persons convicted of crime. In large measure the conference version of the bill eliminates interference with sentencing discretion and achieves the objectives, the flexibility and protection, intended in the Senate bill and urged by law enforcement authorities.

Recidivist penalties. In addition to the existing 50% increased penalty for offenders twice convicted of the same criminal offense, the conference agreed that the trial court should have the discretion to impose a triple penalty on the habitual offender who is convicted three or more times for the same criminal offense. For the conviction of a third or subsequent felony, the court may, in its discretion, impose an indeterminate sentence up to life in lieu of the regular penalty. Consultation on sentencing has increasingly become the practice in the Federal district court, and it is expected that creative approaches to informing the sentencing process, especially when recidivist options are at stake, will continue to develop in the new local courts even in the absence of the statutory requirement in the Senate version of S. 2601.

The Senate conferees insisted that the House provision for mandatory life sentences for certain three-time offenders, with a minimum of twenty years' incarceration prior to eligibility for parole, be eliminated from the conference report. The President's Commission on Crime in the District of Columbia, the Senate District Committee's own Panel Against Armed Violence, and virtually every criminal law and penal expert has warned against self-defeating and inflexible mandatory sentencing provisions. The mandatory life sentence is an especially odious model of inflexibility, requiring the taxpayers to support a convict for life, regardless of the status of his rehabilitation, and as such was rejected by the Senate conferees.

For the same reasons the Senate conferees insisted upon the elimination of other mandatory sentencing provisions in the House bill. The conference bill contains no mandatory minimum sentences for first offenders in any case. The conference resulted in the approval of sentencing options to protect the public and to promote correction, not sentencing mandates unrelated to the individual offender. Mandatory sentences were limited to a provision for second-offender armed violent felons only, comparable to a provision already contained in Federal law (18 U.S.C. § 924(c)).

Sentencing safeguards. The conference version of the bill contains several major reforms of a procedural nature affecting the sentencing process. New D.C. Code section 23–103 permits the defendant to make a statement on his own behalf and present information in mitigation of punishment, as is the usual practice in the Federal courts, and further makes the rules of mutual discovery applicable to any information adduced by the prosecution or defense in connection with sentencing. The section also authorizes a trial judge to disclose to the parties the contents of any presentence report submitted to the court in the case. The language on presentence reports is expressed in permissive rather than mandatory terms, and leaves open for court decisions the extent to which report disclosure is required as a matter of due process and sound policy.

D.C. Code section 23–111 as approved by the conference establishes an important new safeguard for defendants who may be subjected to increased, recidivist penalties following conviction. The House provision permitted notice of reliance upon prior convictions to be given following conviction. However, unless such notice precedes trial, a defendant cannot assess the consequences of his pleading or defending at trial. The conference ultimately rejected the House provision, and adopted the substance of a provision originating with the Senate D.C. Committee. The Senate provision, now in the conference report, requires that notice of prior convictions to be relied upon be given *pretrial*, as a precondition for imposing any recidivist penalty. The Senate provision is consistent with the recent decision of the District of Columbia Court of Appeals in *Brandon* v. *United States*, 239 A. 2d 159 (D.C. App. 1968).

In addition, under the conference report, following conviction a defendant who may be subject to increased punishment will have the benefit of a hearing at which time he may challenge the accuracy of the information alleging prior convictions, and the burden of proof beyond a reasonable doubt will be upon the prosecution. The defendant is also permitted to establish that a prior conviction is void as obtained in violation of constitutional right.

Consecutive sentences. The provision in section 23–112 of the House bill, adopted by the conference, which makes sentences run consecutively unless otherwise specified, is designed to eliminate the result reached in *Borum* v. *United States*, 409 F. 2d 433 (D.C. Cir, 1967), *cert. denied*, 395 U.S. 916 (1969), where two sentences were required to run concurrently, although based upon entirely unrelated offenses, because the trial judge by oversight failed to specify that the sentences should be consecutive. The provision was approved to avoid the irreparability of such judicial oversight. Significantly, an oversight to the detriment of the defendant in failing to specify that sentences should run concurrently may be easily rectified on a motion to correct the sentence under Rule 35 or Rule 36 of the Federal Rules of Criminal Procedure which will govern the local courts.

b. General practice and procedure

Government appeals. Existing section 23–105 of the District of Columbia Code purports to give the government the same rights of appeal in criminal cases as are given to the defendant; however, Constitutional considerations of double jeopardy have demanded a more restrictive reading of the government's right to appeal. The Senate version of S. 2601 was designed primarily to codify these restrictions and to require further that such appeals as are permitted be resolved on an expedited basis. The House version would have extended government appeals rights even to include allowance of government test cases in the form of classic "moot" appeals.

The conference version preserves the government's right to appeal from a pretrial order suppressing government evidence where the appeal is not taken for delay and the evidence is a substantial proof of the pending charge. Similarly, the government may appeal from an order quashing an indictment. A motion to suppress evidence is normally waived unless brought in advance of trial. In extraordinary circumstances, as when the defense was not aware of grounds for suppression in advance of trial, such a motion may be brought during trial, but the prosecution will be accorded the same right of appeal from the interlocutory order suppressing evidence as from the pretrial order to prevent the tactical defeat of the government's appeal rights by the timing of the suppression motion.

The Senate conferees reluctantly agreed to permit a limited interlocutory appeal by the government to resolve substantial and recurring questions of law requiring appellate resolution. Such appeals are permitted only with leave of the trial court, and it is anticipated that such leave will be sparingly granted with due regard for the need not to delay criminal proceedings and for other opportunities for the government to resolve such questions.

A worse evil by far was provision in the House bill, and the seeming authority in the existing code of criminal procedure, permitting moot appeals by the government to resolve substantial questions in a non-adversarial process in which the acquitted defendant has no personal stake. At best, such an appellate proceeding would have been a waste of prosecutorial resources, since non-adversarial rulings might not be given appreciable weight as authority. At worst, such an appellate proceeding would have amounted to having the prosecution dictate criminal law to the appeals court on an effectively *ex parte* basis, and would have then bound future defendants on the basis of this one-sided law. In any event, in the view of the Senate conferees the moot appeals proposal was clearly unconstitutional and had to be eliminated.

The conference also adopted the Senate approach to setting specific time limits on interlocutory criminal appeals to preserve the integrity of the trial, conserve trial resources, and prevent the possibility of prosecutorial delay. Contrary to the House version which would have permitted the court to declare a mistrial and continue the case until the appeal was resolved, the Senate conferees prevailed in having the conference report require adjournment for no longer than 96 hours at the end of which time, if not resolved, the appeal would be void and of no effect.

Impeachment by prior convictions. Both versions of the bill on impeachment of a witness (notably the defendant) by evidence of prior convictions sought to curtail the case law authority for a trial court in its discretion to exclude evidence of conviction whenever the prejudicial effect of the evidence "far outweighs" its probative value as to credibility. See *Luck* v. *United States*, 348 F. 2d 763 (D.C. Cir. 1965). The Senate version would have codified the District of Columbia case law requirement that such conviction reflect upon the honesty or veracity of the witness; but the conferees receded to the House position which allows impeachment by proof of any felony conviction or any misdemeanor involving dishonesty or false statement. The House version—which is the rule in most states and which is supported by a draft of the Advisory Committee on Rules of Evidence to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States—is premised upon the conclusion that a felony conviction is "[a] demonstrated instance of willingness to engage in conduct in disregard of accepted patterns [which] is translatable into willingness to give false testimony."

The recession by the Senate conferees was explicitly conditioned, however, upon a conference agreement to reconsider the rule on impeachment if the Advisory Committee's draft is substantially modified in the Federal rule adopted and promulgated by the Supreme Court. It would be clearly antithetical to have one rule for the District's local courts and a different rule for the Federal courts. The Senate conferees would indeed urge the appropriate judiciary subcommittees to reconsider this provision when the new Federal Rules of Evidence are adopted and become subject to congressional disapproval.

Physician-patient privilege. The Senate provision eliminated the anomaly of a defendant relying upon physician-patient privilege to preclude the introduction of relevant psychiatric testimony in circumstances when the trial court is required to interject the insanity defense over the defendant's objection. The Senate would not recede to the further modification suggested by the House that the privilege be treated as waived in the

event that the issue of insanity is raised by the prosecution.

Vending machine larceny. The Senate conferees concurred in the House's concern that higher penalties should be available to deal with professional criminals who pilfer all types of coin-operated machines and who may take from each machine only an amount adequate to invoke the petty larceny law. The Senate would not agree to include such larcencies in the definition of second degree burglary, however, since the use of the word "burglary" would create distortions often inappropriate to the offense—including the allowance of wire interception and electronic surveillance in connection with the offense, the imposition of a mandatory minimum sentence for a second-offender armed violation, and pretrial detention of persons charged with the offense.

Unlawful arrests. The Senate conferees joined the House in prohibiting resistance to an arrest by a law enforcement officer on the expectation that adequate remedies by way of civil actions for damages are being developed by the courts to compensate for unlawful arrest. The patently unconstitutional and ill-advised provision in the House bill requiring a plaintiff to pay an officer's attorney's fees in a wrongful arrest action regardless of the outcome of the case, was eliminated, and a provision for defense by the Corporation Counsel's Office is substituted to protect the legitimate interest of law enforcement officers in defraying court costs which may arise incident to performance of official duties to make arrests.

Insanity defense and commitment. The conference adopted the House provision shifting the burden of proof on the insanity defense to the defendant, following the rule in effect in approximately twenty states. The Supreme Court previously had ruled that this result is Constitutionally permissible, in *Leland* v. *Oregon*, 343 U.S. 790 (1952). A salutory aspect of the new rule will require the defendant to establish, in the process of obtaining an acquittal on grounds of insanity, the exact quantum of proof that would justify a civil commitment.

The Senate conferees were not satisfied, however, that a person so committed would be capable of securing the necessary legal and medical assistance to test the continuing validity of his commitment, and accordingly, insisted upon provision for automatic judicial review within 50 days in order to continue such a commitment, and with mandatory assistance of counsel commencing at the outset, at the time of commitment, well in advance of the actual review.

Incendiary devices. The Senate conferees joined the House in the conclusion that stiff penalties should be prescribed for the possession of bombs and other incendiary devices. As previously noted, however, the Senate conferees refused to translate the need for penalties into a requirement that mandatory prison sentences be imposed regardless of the character of the case.

c. Warrants and arrest

A recurring issue in the various provisions of the two bills on warrants and arrest is the choice of language to express the classic quantum of proof or certainty required before a search warrant will be issued or an arrest upheld. The House version typically alludes to reasonable belief that specified circumstances are likely to obtain, while the Senate version adheres to the traditional expression in terms of probable cause to believe that specified circumstances will obtain. The conference compromise is to use "probable cause" in conjunction with "is likely," which recognizes that facts leading to arrest or search must withstand an objective test of probable cause but acknowledges that an officer's subjective belief cannot rise to an absolute certainty. The compromise version, by the same token, is intended simply to codify and not to increase or diminish the requisite certainty required by existing judicial decisions.

Tests on persons. The House version included a provision to allow an officer in the execution of a search warrant to conduct chemical, scientific, medical, and other tests and experiments on persons. No such authorization was included in the Senate bill. Although the House provision purported to be a mere codification of existing authority under *Schmerber* v. *California*, 384 U.S. 757 (1966), for intrusion into a person's body, a close reading of *Schmerber* will disclose that such tests may not be conducted specifically pursuant to the latter case authority unless (a) the tests are premised upon a search incident to a lawful arrest, (b) they are performed upon the arrested person, (c) they are conducted only after clear indication amounting to probable cause that the suspected evidence will be found, (d) an emergency situation threatens the imminent destruction of the evidence, (e) the tests are fully reasonable and are not subject to pain or indignity, and (f) the tests are performed in a reasonable manner by medical personnel in a hospital environment. None of these limitations were reflected in the House provision, nor did the House conferees adduce any authority other than *Schmerber* in support of their provision. For these reasons the Senate conferees insisted that the House provision be omitted from the conference report. Tests on persons, in other words, will continue to be subject to the constitutional limitations expressed in judicial decisions.

Nighttime searches. The conference report rejects the "positivity" test for execution of a search warrant in the nighttime. The requirement that an officer be "positive" that evidence sought is in the place to be searched before nighttime authority will be allowed is an expression of adversion to nighttime searches. Such searches are unanimously recognized to be more characteristic of a police state than of a free society. Yet, the existing "positivity" rule both falls short of and overreaches its intended mark. On the one hand, an officer's degree of certainty as to the location of evidence does not reflect special need to conduct a nighttime search. The new rule requires the existence of specific, compelling circumstances before nighttime search will be allowed. On the other hand, the "positivity" rule is completely unworkable since the human mind rarely achieves an absolute certainty of belief. The new rule in contrast expresses the requirement of belief that the compelling circumstances exist in traditional terms of probable cause.

Seizure of unspecified items. Unless the police are carefully limited in the execution of a search warrant to the seizure of only such items as are specified in the warrant, the process of prior judicial authorization is made meaningless. The broad provision in the House version of S. 2601, on the other hand, both would have defeated the particularity requirement of the Fourth Amendment and would have raised the spectre of the general warrant, one of the potent causes of the American Revolution. The House version permitted the seizure of any evidence "discovered in the course" of the search and which an officer reasonably believed to be subject to seizure.

The Senate version in contrast would have added the further requirement that such property be discovered by observation and as an inadvertent consequence of the search. The conference agreed to permit seizure of unspecified items "discovered in the course of the *lawful* execution of [a search] warrant." The intent of the conference substitute in the use of the word "lawful" is to incorporate present and future judicial interpretation of the requirements of the Fourth Amendment of the Constitution.

Preliminary police duties. The House version of S. 2601 provided that the police shall perform various preliminary police duties, such as booking, fingerprinting, and photographing, before taking an arrested person before a judicial officer. Although it is customary and acceptable for the police to perform such ministerial duties prior to presentment, the Senate conferees were concerned that the provision be expressed in permissive rather than mandatory language, and that the legislative history reflect that the term "preliminary police duties" refers exclusively to necessary, routine ministerial matters. "Preliminary police duties" should by no means be used as a pretext for conducting interrogations, lineups, or other investigations in advance of the prompt presentment of the suspect to a judicial officer. The new language of the conference substitute and the relevant statements in the House D.C. Committee report on H.R. 16196 satisfy these concerns.

"No-knock" warrants. The conference resolution of the so-called "no-knock" issue represents a major victory for the Senate position. Specifically, in the interest of safeguarding the individual rights of the residents of the National Capital and of eliminating any possibility of repressive practices in the name of improved law enforcement, the Senate conferees insisted upon what are here summed up as five critical points.

First, the statutory exceptions to the "knock-and-wait" rule are strictly limited in the conference report so as to confine "no-knocking" to those few circumstances where it is already permitted under existing law. The Senate conferees insisted, for example, that the danger of concealment be eliminated from the list of exceptions justifying service of a warrant without notice. The high regard traditionally accorded to individual privacy under our form of government dictates that notice be dispensed with only where to give it would make execution of the warrant impossible—not where notice would merely make that execution more difficult.

Secondly, existing law is substantially improved by the addition of the Senate-passed requirement that, where grounds constituting an exception to the "knock-and-wait" rule are known in advance, the police officer can "no-knock" only after obtaining court permission in advance. At the insistence of the Senate conferees, existing authority for police officers to "no-knock" on their own is eliminated in a great many cases. The difficult decision of whether to "no-knock" or "knock-and-wait" is shifted, where possible, from the police officers in the streets to the courts.

Thirdly, the conference report restores the classic standard of "probable cause," derived from the Federal Constitution, for testing the sufficiency of the grounds for police conduct in the "no-knock" area. The Senate conferees would have preferred to retain the complementary future indicative form of the verbs which follow in the list of exceptions to the "knock-and-wait" rule. The House conferees insisted, meanwhile, that use of the term "will" connotes certainty beyond that traditionally required in the law. The Senate conferees disagreed with the latter interpretation; and consented to language importing likelihood, only with the clear understanding that the language is to be construed to be in conformity with the Constitution, the well-settled law of warrants, and prevailing case law, specifically *Ker* v. *California*, 374 U.S. 23 (1963).

Fourthly, under the conference substitute, as in the final Senate version of S. 2601, the requirement that "no-knocking" be subjected to prior judicial approval is intended to be rigorously enforced by the courts. As the Senate conferees insisted be stated in the Statement of Managers on the Part of the House, it is not enough that judicial approval be obtained when facts falling within the exceptions to the "knock-and-wait" rule are known in advance to the officer applying for

the warrant. The basic thrust of the conference report, the intent of the conferees, is that judicial approval must be obtained wherever minimum ordinary diligence on the part of the police would have alerted the applicant to such facts.

In other words, the courts are not expected to impute to the applicant the knowledge of every member of the police force; nevertheless, in the interest of maximum judicial supervision, it is expected that the courts will impute information which the applicant might easily have obtained (or been given) and certainly any information intentionally withheld from the applicant in an attempt to avoid the requirement of prior supervision.

Fifthly, the Senate conferees did not recede from their original position that only particular facts, bearing upon any given particular case, may serve as grounds for "no-knocking." The House conferees urged to the contrary that particular facts are unnecessary, they urged, for example, that "no-knocking" would be appropriate in nearly all narcotics or gambling cases, based on the destructibility of the evidence usually involved. The issue was resolved in favor of neutral language, adaptable to either the House or the Senate interpretation; but with the limitation of specific reference to the *Ker* case. Just as the Senate conferees are of the view that the particularity requirement is affirmed in *Ker* and rooted in the Constitution, in like manner the Senate conferees contemplate implicit incorporation of the requirement in the S. 2601 provision.

It bears mentioning, to correct a popular misconception, that the conference report does not itself and of itself grant to the police the power to conduct "no-knock" searches. Police officers have had such authority since common law times. Regardless of what may have been in the House version of S. 2601, the Senate version and the similar conference substitute merely continue the existing authority and add to it reasonable further safeguards.

The "no-knock" law in the State of Maryland, for example, was spelled out not long ago by the Court of Appeals of the State. In the case of *Henson* v. *State,* 236 Md. 518, 204 A2nd 516 (1964), the police had probable cause to believe, on the basis of extensive, personal experience, that certain narcotics evidence would be flushed down the toilet or otherwise irretrievably thrown out if they were to adhere to the "knock-and-wait" rule; the police indeed had had the premises under surveillance for a week, during which time 43 known addicts had visited the premises, often comporting themselves in a manner bespeaking the transaction of sales of narcotics. The Maryland court ruled unanimously in the *Henson* case that the police had authority to "no-knock." The conference version of S. 2601 is intended merely to codify this and similar court rulings, and to add the further safeguard of a requirement of prior judicial scrutiny.

Lastly, it should be noted that the "no-knock" warrant provision in the conference report on S. 2601 is patterned after an equivalent "no-knock" warrant provision in the New York Code of Criminal Procedure, as well as comparable provisions in the Codes of Nebraska, South Dakota, South Carolina, and Utah.

d. Wiretapping and Electronic Surveillance

The Senate version of S. 2601 includes a comprehensive local "wiretapping" law for the District of Columbia, improving on the provisions of the Federal Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90–351), which now applies in the District, but with safeguards in S. 2601 even more extensive than under the Federal law. The House bill merely selected several provisions from the Federal act for local purposes but did not supplement the existing law by providing safeguards against purely local abuses of wiretapping and bugging. The Senate conferees were not content to accept the unsubstantiated assumption of the House bill that adequate safeguards would flow from the Federal statute. The conference version in nearly every respect conforms with the provisions of the Senate bill.

Penalty for unlawful interception and disclosure. The Senate bill prohibited unlawful wiretapping and bugging and the unlawful disclosure or use of such communications. The House bill contained no such provision. The Senate position prevailed in conference on the grounds that unlawful surveillance must be supervised by local courts and subject to local prosecution without having to establish an artificial connection with interstate commerce.

Penalty for commerce in interception devices. Similarly, the Senate bill and the conference report prohibit the local manufacture, assembly, possession, sale, distribution, and advertisement of interception devices. The provision will eliminate the need for the prosecution to prove the involvement of interstate commerce and will thus give the public additional protection from local commerce in such devices. The penalty provisions in the Senate bill as adopted by the conference will further permit the confiscation of interception devices used in the violation of those sections. Again, the Federal law leaves a void in the area of purely local offenses and provides no options for local prosecution and control.

Emergency surveillance. The House bill would have permitted interception in advance of judicial authorization in both organized crime and national security cases. The Senate bill contains no provision for surveillance with respect to activities threatening the national security, since the Federal law completely covers the national security needs. The Senate conferees felt that national security matters should be exclusively within the province of the Attorney General, the Federal Bureau of Investigation, and the Federal courts rather than permitting local officials to decide for themselves what activities threaten some undefined national interest with the risk that surveillance be imposed on groups which are simply unpopular with some elements in the community. The conference deleted the House provision. At the same time the Senate receded to the somewhat broader list of criminal offenses in the House bill for which surveillance could be authorized, with the exception of abortion and manslaughter which, respectively, infrequently or never involve concerted action in the traditional sense.

Grounds for suppression. The Senate bill contained, and the conference approved, a broader list of grounds for the suppression of intercepted communications than is in the House bill. In addition to the grounds that the communication was unlawfully intercepted, the court authorization or approval is insufficient, the interception did not conform to the authorization, and service of the inventory, order, and application were not properly made, the conference report includes the following ground: the absence (without satisfactory explanation) of a seal on the official court copy of the interception. The sealing requirement is essential as a guarantee of integrity against possible editing of the official record of interception. In addition to the suppression motion, available in a criminal trial, a person who is subjected to an illegal surveillance or disclosure will have the right to a civil action for damages against any responsible person or the District of Columbia.

Privileged communications. The Senate conferees insisted upon special new protection for certain communications—including communications between physicians and their patients, between attorneys and their clients, involving clergymen in their pastoral activities, and between husbands and wives in their places of habitation. No such protection exists in the Federal wiretap law now in force in the District. Under the conference bill, before a court can authorize an interception likely to intrude upon such communication, there must be a finding that the facilities are being used in connection with—that is, that the case involves—organized crime, *and* that the interception will be conducted so as to minimize interception of privileged communications not subject to surveillance. Even in the event that a privileged communication is intercepted, the conference report expressly provides that the communication shall not lose its privileged character, but shall remain privileged.

e. Pretrial release and detention

The House version of S. 2601 included a recodification of the Bail Reform Act of 1966 with amendments to authorize selective and limited detention of certain criminal defendants who may be dangerous to society if released, and with amendments establishing additional penalties for violation of release conditions or commission of crime while on pretrial release. Since no proposals for pretrial detention were made by the Administration in the Senate for inclusion in S. 2601, the Senate version had no corresponding provisions. Although the concept of formal pretrial detention has generated much controversy, the Senate conferees concluded that the House provisions, with certain important modifications, constitute not only an essential tool in fighting crime but a major reform of existing bail practice.

While considerable difference of opinion characterizes the various interpretations of available statistical evidence on the subject, recent studies have demonstrated, at least, that crime commited by persons on court-ordered release, or bail recidivism, is of large enough proportions to be considered of major consequence to law enforcement. The National Bureau of Standards report indicated that 25% of persons charged with dangerous crime and 17% of those charged with violent crimes can be expected to be rearrested for further crime while on pretrial release. These figures must be further adjusted to reflect the fact that many crimes are not reported to the police, and that only 30% of reported crimes, even, result in arrest and criminal charges.

S. 2601 provides several solutions to this problem in addition to the pretrial detention alternative: court reorganization to promote speedy trials and increased bail supervision by an expanded Bail Agency should have an especial impact. Pretrial detention remains as an essential technique, however, for dealing with certain incorrigible criminals who feel they have little to lose by committing more crimes while on bail or compulsive narcotics addicts who must engage in crime to support their habits.

The Bail Reform Act of 1966, while partially achieving its goal of decreasing reliance upon money bond as a condition for release, also deprived the courts of any legal authority to consider potential dangerousness in setting conditions of release. Examples of increased bail recidivism under the current law are familiar to nearly every citizen in the District of Columbia. The recent publicized shoot-out—discussed on the floor of the Senate—between a police officer and two armed robbers, and which resulted in serious injury to the patrolman and death to one of the suspects, is but one of many such cases. Franklin Moyler had previously been convicted of one robbery and, at the time of the most recent holdup in which he met his death, was on bail in connection with two other armed robbery charges. A narrowly confined and adequately safeguarded pretrial detention alternative, as approved by the conference, constitutes a significant part of the needed response to cases such as this one.

Equally important, if not more so, however, is the fact that enactment of the conference report will constitute a major reform in existing bail practices which, in conjunction with the Bail Agency expansion, will clearly result in a net decrease in the percentage of persons who are detained prior to trial. Historically, danger to the community has always been considered by trial courts in setting money bond which could be manipulated to effect complete detention prior to trial, unencumbered by procedural safeguards. Pretrial detention is not a new concept; the thousands of persons who have waited in the D.C. Jail, often as long as a year or more, for their trial dates to come can testify that pretrial detention is a daily reality. In spite of the Bail Reform Act of 1966, the practice of pretrial detention through high money bond persists on a large scale in the National Capital. This irony is attributable in large part to two shortcomings in existing law—(1) the failure of Congress to implement the Bail Reform Act by providing resources for supervision of persons who would be eligible for release were such supervision readily available, and (2) the prohibition against consideration of dangerousness in setting release conditions—which have forced actual and inevitable consideration of dangerousness to be shrouded in hypocrisy.

Recent studies of the bail practices in the District of Columbia show that over 30% of persons charged with criminal offenses are currently being detained because of their inability to post a money bond. The detention rate for felony suspects is 40%. Nor does money bond need to be high to be unreachable for the indigent defendant. These studies show that a sizeable portion of these detained defendants were merely charged with misdemeanors. These persons were held, not on grounds of dangerousness, but simply because court and counsel were not able to devise adequate release conditions. The expansion of the Bail Agency's functions to include supervision of persons on court-ordered release will provide an adequate release alternative in the vast number of marginal cases where personal recognizance is counterindicated, and will free other, more rigorously policed supervision resources for the more difficult cases.

The 30% figure for all arrests and the 40% figure in felony cases also represent, however, many persons who are currently detained on the basis of their dangerousness. Today when a trial judge is faced with a bail decision involving an extremely dangerous suspect, the judge is forced to choose between ignoring his better judgment and the consequence to the community upon the release of the suspect of engaging in the subterfuge of setting an intentionally high and unreachable money bond. Nominally the money bond is calculated to assure appearance at trial, but in reality it is designed to detain the defendant in order to protect the community from his dangerous or violent behavior. This practice can no longer be tolerated. It permits an approach to pretrial detention that is both overinclusive and underinclusive in effect. It is overinclusive because the process is committed solely to the unreviewable discretion of the trial judge's mental processes. As a result, through the lack of procedural safeguards many persons who should be released are often detained. It is underinclusive because the hypocrisy of present bail practices does not permit the courts to focus directly, forthrightly, and in an adversary proceeding upon the question of dangerousness. As a result, many persons are being released to commit new crimes while on bail. In both instances, in addition to being arbitrary, the present practice is totally discriminatory, since it permits the detention of the poor but allows the rich defendant to be released regardless of his greater danger to society.

Any objective appraisal of the bail policies currently in effect in the District of Columbia would dictate that another major reform of the bail laws is essential. The provisions approved in the conference report represent an important step in that direction. Reform is achieved first by making visible the consideration of dangerousness in setting release conditions or in ordering detention. Henceforth, the pretrial detention provisions of this legislation, not financial conditions, will be imposed to assure the safety of the community, and, conversely, high money bond may not be used as a means to deny release on the untested assumption of dangerousness. Second, if release is to be denied, it must be denied forthrightly in an adversary proceeding which fulfills the Constitutional promise of due process of law. The detention decision is surrounded by a panoply of safeguards including limits relating to detention eligibility, procedural due process, and the actual detention itself.

First, detention can be ordered for a limited number of categories of defendants of the type which available evidences demonstrates pose an appreciable danger to society. If charged with a crime of violence, a defendant is not eligible for detention unless he is currently on bail, probation, or parole or has recently been convicted of another crime of violence. The Senate conferees furthermore insisted that persons who are charged with an extremely dangerous crime—limited to forcible robbery, first degree burglary, arson, forcible rape, and felonious sale of narcotics—must be shown to have a pattern of dangerous behavior consisting of his past and present conduct. A confirmed narcotics addict charged with a crime of violence may be held for treatment, and any defendant who threatens or injures witnesses or jurors in order to obstruct justice may be held. None of these defendants may be detained unless, after a thorough and exhaustive exploration of alternative release conditions, the court finds that no condition would reasonably assure the safety of the community. Most important, with the exception of the obstructor of justice, the government must establish in each case that there is a substantial probability of the defendant's guilt.

Second, procedural due process is assured by the requirement that these findings be made after an adversary hearing of record with the defendant represented by counsel and with the right to present witnesses on his own behalf and to cross-examine witnesses against him. The government must bear the burden of proof, and a prompt appellate resolution of any detention order is provided.

Finally, additional safeguards are required in the event detention is ordered. The Senate conferees receded to the House limitation of any detention order to 60 days, but insisted upon an expedited trial calendar and an agreement to urge budgetary appropriation for 25 new prosecutors for the District, to assure that the time limits will be met and in most cases met in substantially less than 60 days. To this end the Senate conferees also insisted that the time limits not be extended by virtue of the filing and resolution of timely pretrial defense motions. In addition, during his confinement, the defendant should be set apart from convicted offenders, have liberal access to counsel, and be released for short periods in custody to secure witnesses and prepare his defense.

It bears mentioning that the Senate conferees were not unmindful of the serious Constitutional questions raised by any legislatively sanctioned pretrial detention on grounds of dangerousness. This concern should be fully aired in the decision to adopt the conference report; however, on the basis of existing authority the conferees could not locate persuasive evidence that a narrowly limited and fully protected detention alternative violates either the due process clause or the Eighth Amendment. The prohibitions against excessive bail cannot be read to mandate bail in all cases; it merely forbids the imposition of high money bail in cases where the defendant has a right to statutory bail. This reading is supported by the Judiciary Act of 1789, passed by the same Congress that adopted the Bill of Rights, which limited the right to bail to noncapital cases. Moreover, in the early days of the Republic capital offenses included many felonies not similarly classified today. The Eighth Amendment does not speak of exceptions for capital cases, nor does it authorize the detention of a defendant when witnesses or jurors are threatened or when a defendant is charged with an offense while on probation or parole or pending extradition. Yet these exceptions have repeatedly been approved.

In *Carlson* v. *Landon*, 342 U.S. 524 (1952), the Supreme Court observed:

"The bail clause was lifted with slight changes from the English Bill of Rights Act. In England that clause has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any different concept. The Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country. Thus in criminal cases bail is not compulsory where the punishment may be death. Indeed, the very language of the Amendment fails to say all arrests must be bailable."

This interpretation was reaffirmed in the recent case of *United States ex rel. Covington* v. *Coparo*, 297 F. Supp. 203 (S.D.N.Y. 1969), in which the court said:

"Congress could, without running afoul of the Eighth Amendment, . . . provide . . . that persons accused of kidnapping, bank robbery with force and violence, or other serious noncapital crimes are not entitled to bail as a matter of right."

The ultimate test of constitutionality is due process of law. It is inconceivable that for decades *de facto* detention through high money bond and absent any procedural protections could avoid constitutional condemnation, while a measured response to bail recidivism fully surrounded by due process protections, the net result of which will guarantee the release of many persons wrongfully detained, will not pass Constitutional muster. The amendment to the Bail Reform Act, as approved in conference, is such a measured response. The pretrial detention alternative, approved in the conference report, in fact, is much more carefully limited than actual practice in the Federal system or the practice as it has existed in virtually every State and most countries of the western world.

f. Other anticrime measures

Police Mutual Aid. The Senate amendment provided for, and the conference accepted, removal of the limitation on the Mayor's authority to enter into police mutual aid agreements with governmental units in the States of Maryland and Virginia. Comparable legislation already exists in Maryland. In this way, lawful cooperation between area police forces will not be contingent upon a formal declaration of a disaster or emergency. It should be emphasized that not only does the provision constitute mere enabling legislation, but indeed no jurisdiction will be involved except by voluntary agreement. No outside officers may be sent into any jurisdiction except upon the express request and under the supervision of the requesting jurisdiction.

D.C. Insurance Placement Act. The conferees agree that Section 1104 of the Senate

amendment to the House amendment to S. 2601, extending the definition of "basic property insurance" in Section 1203 of the District of Columbia Insurance Placement Act so as to include certain lines of crime insurance, is unnecessary because the District Insurance Commissioner already has unfettered authority to extend the definition to include such coverage under Section 1203(2) of the Placement Act and already has exercised such authority.

Section 1104 of the Senate amendment was drafted to dispel any doubts over the authority of the D.C. Insurance Commissioner to extend the definition of "basic property insurance" in Section 1203 of the D.C. Insurance Placement Act without prior identical action by the Federal Insurance Administrator, acting under Section 1203(a)(2) of the National Housing Act of 1968, to expand the definition of "essential property insurance."

The conferees agreed that the legislative history and statutory language of the National Housing Act clearly did not make expansion of FAIR plan coverage by the states dependent upon prior Federal action; rather, State initiative to increase coverage as a response to local conditions was encouraged. Further, the conference report of the D.C. Insurance Placement Act makes it unmistakably clear that this authority, free from Federal limitation, was given to the D.C. Insurance Commissioner.

The reference in Section 1203 of the Insurance Placement Act to Section 1205, referred to by some as authority for such limitation upon the D.C. Insurance Commissioner's power, was drafted to require only that promulgation of a new definition of "basic property insurance" be made according to the procedures governing industry participation in rule-making under the FAIR plans. There was no intention by Congress and no authority under the Insurance Placement Act that this reference in Section 1203 to Section 1205, when coupled with a further reference in Section 1205(b) to Part A of Title XII of the National Housing Act (to insure that all regulations would follow the purpose of the FAIR plans as outlined in the National Housing Act), be construed in any way as limiting the D.C. Commissioner's authority to expand the definition of "basic property insurance" to include crime insurance coverage without regard to similar action or lack of similar action by the Department of Housing and Urban Development.

Inasmuch as the D.C. Insurance Commissioner has acted under this section to expand the definition of "basic property insurance," and inasmuch as he had the authority to do so, the conferees are confident that District of Columbia statutes now require the writing of crime insurance coverage as part of FAIR plans in the District. Therefore, additional amendment to the Insurance Placement Act is not necessary.

Commission on Revision of D.C. Criminal Laws. The Senate conferees for a considerable time were insistent upon retaining the existing Commission on Revision of D.C. Criminal Laws or reconstituting the commission along the lines suggested by the D.C. Bar Association—in order to continue the necessary task of updating the District's outmoded criminal "code," of bringing order to the present disparate array of largely *ad hoc* criminal measures (like the prohibition against kite flying repealed only in this legislation).

The Senate conferees ultimately receded in the face of persistent insistence by the House conferees. Recession on the part of the Senate was based upon an understanding, however, that the respective committees on the District of Columbia will avail themselves of, and heed where appropriate, the same kind of expert advice in matters of criminal law reform as would have been institutionalized under the Bar Association's proposal for a reconstituted commission. Likewise, future consideration of a new Commission on Revision is not precluded by the elimination of the present body.

Lorton Reformatory. The Senate conferees were steadfast in their refusal to permit the transfer of Lorton Reformatory to the Federal Bureau of Prisons. Based on the advice of every penal expert who has addressed the question, the Senate conferees were confident that such a transfer would have spelled the end of the concept of coordinated correctional services with emphasis on rehabilitation and the successful reintegration of parolees into the local community.

The Senate conferees insisted that crime prevention, that local "law and order," in the long run depends in large measure upon such rehabilitation: nearly every person who is sentenced to a term of imprisonment must also be released in time back into the community. The Senate conferees insisted likewise that the recent implementation of correctional reforms at Lorton is to be encouraged, not dissuaded, and that available evidence suggests that the District's Department of Corrections is significantly more successful than the Federal Bureau of Prisons in averting recidivism among former inmates—a reliable index of overall success at rehabilitation.

Implied consent law. The Senate version of S. 2601 proposed a reasonable and Constitutional "implied consent law" to permit a police officer to require a chemical test of the blood, breath, or urine of any person whom he reasonably believed to be operating a motor vehicle while intoxicated. The House conferees were willing to accept a strict requirement of such tests, but not an "implied consent law" limited by appropriate and essential safeguards. The Senate proposal (1) allowed the driver the option of choosing any one of the three tests (blood test, the "breathylizer," or urinalysis), (2) required reasonable grounds for arrest before administering the test, (3) required that any blood test be administered by medical personnel, (4) permitted the accused to rebut any evidence from the official test with other test results, and (5) permitted the accused the option of surrendering his driver's license for six months in lieu of submitting to any test.

The House conferees refused to accept the five safeguards in the Senate version of S. 2601. Since the Senate conferees, on the other hand, believed these safeguards to be essential as a matter of sound public policy, and in some cases requisite for the provision to withstand Constitutional test, the entire provision had to be eliminated from the conference substitute.

Additional Federal Payment. In view of the financial crisis facing the District of Columbia Government, the Senate conferees deemed it unconscionable for the Congress to continue authorizing implemention of the President's crime program without taking steps to assure the financial means in fact for such implementation.

The Senate conferees receded from their position—favoring an increased Federal payment to cover the costs of the present Administration's crime program—only in light of assurances from the leadership of the House District Committee that the House Committee will hold hearings upon and otherwise give appropriate consideration to the city's revenue proposals now pending before the Congress.

In addition, the conference substitute provides for Fiscal Year 1971, a Federal payment of $5 million adequate to cover the first-year costs of implementing the legislation S. 2601 along with the cost of substantially expanding the District's Narcotics Treatment Agency.

JOSEPH D. TYDINGS.
ALAN BIBLE.
WINSTON L. PROUTY.
WILLIAM B. SPONG, Jr.

SEPARATE VIEWS OF SENATOR SPONG

Notwithstanding my reservations about certain of its provisions, I have signed this conference report because I believe there is a compelling need to begin doing something about the alarming level of crime in the District.

For all the questions that might be raised about the legislation, I believe the good far outweighs the bad and that such provisions as court reform, expansion of the bail agency and creation of a full-fledged public defender system are valuable and essential contributions to the system of justice in the District.

Despite the fact that the conference versions are more acceptable than the original provisions, I continue to have reservations about pre-trial detention and mandatory minimum sentences and would oppose these measures were they to be voted on separately.

WILLIAM B. SPONG, Jr.

As members of the conference committee on S. 2601, we are opposed to portions of the conference report and have not affixed our signatures to it.

THOMAS F. EAGLETON.
CHARLES E. GOODELL.
CHARLES McC. MATHIAS, Jr.

SENATOR BOGGS EVALUTES THE NEED FOR A NATIONAL MATERIALS POLICY

Mr. COOPER. Mr. President, legislation dealing with solid waste pollution will be reported to the floor of the Senate in the near future. A significant aspect of this bill will be a proposal for the establishment of a National Commission on Materials Policy.

Presented to the Committee on Public Works as an amendment by Senator BOGGS, the proposal authorizing a study of national materials needs and use was cosponsored by several Senators, including myself.

The subject of the need for a national materials policy is being discussed this week at a 5-day conference held at New England College at Henniker, N.H. The conference, sponsored by the Engineering Foundation Research Conference, has attracted more than 100 materials experts from the United States and abroad.

Senator BOGGS gave the keynote address at this conference. He spoke at some length on the need for a materials policy, and the important role that a National Commission on Materials Policy would play in articulating such a policy.

As this proposal may soon come to the Senate floor, I believe it would be helpful to my colleagues to have the opportunity to review Senator BOGGS' address on this subject.

I ask unanimous consent that Senator BOGGS' speech to the 1970 Conference on National Materials Policy be printed at this point in the RECORD.

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

ADDRESS BY SENATOR J. CALEB BOGGS

It is a great honor for me to visit Henniker, New Hampshire, and to participate in this seminar on National Materials Policy.

Each of you is an expert in the field of materials policy and materials use. I am not. When I first became involved in this question, I thought materials were something my wife stitched to make a dress. Now, I'm more sophisticated. In the work of our Public Works Committee, we are defining materials

as any natural resource, whether animal, vegetable, or mineral, that is intended to be utilized by industry for the production of goods, with the exclusion of foodstuffs. You will admit that my old definition was a lot easier to explain.

I shall not seek to delve any deeper into technical definitions or aspects of materials and materials utilization. Rather, I believe it would be worthwhile if I talked with you about some of the legislative history affecting materials policy in recent years.

The Committee on Public Works will this week report to the Senate a bill that amends the existing solid waste legislation. The bill includes a provision establishing a National Commission on Materials Policy.

It is significant, I believe, that this commission is a part of the solid waste pollution legislation. Materials and their processing are quite obviously the source of pollution, and if we are to improve our environment, we must establish a policy on the utilization of materials.

Moreover, the material policy commission is compatible with the concept of the proposed solid waste legislation, which emphasizes the recycling of solid wastes.

While the Commission proposal is not a part of the House-passed legislation, I am hopeful that the conferees from the House will see, as our Committee did, the need for such a commission to provide a fresh evaluation of the numerous components that make up the cycle of materials use and reuse.

Our concept calls for a commission to be composed of seven experts from the materials community. They would be members from within and outside the Federal Government, with the members selected to give as wide a diversity in background and expertise as is possible.

These experts would be appointed by the President, with the advice and consent of the Senate, and serve without compensation. The Commission would have a full-time staff to assist it in its work and the preparation of the Commission's report, to be due in mid-1973.

Now, what would the Commission do?

Maybe the goal of a commission was best expressed in a recent commencement speech by Dr. William Pecora, Director of the U.S. Geological Survey. Dr. Pecora was discussing mankind's accelerating demands for iron ore, copper, phosphates, water, energy, housing—a spectrum of materials and goods needed to sustain and improve our standard of living. He said:

"If we must, therefore, take from the earth to provide for ourselves, we must employ value judgment and trade-off concepts in deciding how much to take from our environment, where to take it, and how to leave it in the taking and using."

Materials policy should be a systematic route toward such a value judgment.

Specifically, the language of the legislation empowers the Commission to study and evaluate the following topics:

One would be the current and projected domestic demands for materials. President Truman's Materials Policy Commission—the Paley Commission—in the first sentence of its summary report posed this question: "Has the United States of America the material means to sustain its civilization?" That question is more evident today than it was 18 years ago. Therefore, a new materials policy commission should study national demand and supply of materials, as well as those international factors that have a direct impact on the availability of the materials to be processed within the United States. The economic factors affecting materials selection would be an aspect of this study.

A second point would be the relationship between demand for materials and questions of population growth, seeking to identify how this relationship affects foreseeable supplies and the enhancement of the environment. Our Committee hopes the Commission will give particular attention to the impact of materials on the environment—the removal of materials in their raw state from the natural environment and the effect of materials selection on environmental enhancement.

The next specific charge to the Commission would be an insistence that it consider methods for coordinating materials policy with the basic purpose of the legislation, which is the recycling of materials to prolong their usefulness. Recycling of used materials, of course, has the effect of enhancing environmental quality, as well as conserving virgin materials for future generations.

As President Nixon said in his Environmental Message earlier this year: "As we look toward the long-range future—to 1980, 2000 and beyond—recycling of materials will become increasingly necessary not only for waste disposal but also to conserve resources."

Another facet of the Commission's study would be an evaluation of methods that might be encouraged to exploit existing scientific knowledge in the processing of materials.

Another area of enquiry would be methods for enhancing the coordination and cooperation among Federal departments and agencies in materials demand, use, and study. This should be a major topic for study, as nearly every agency of Government has a materials-related function, either in research, planning, pollution control, standards, or supply. Any national materials policy must be woven from the threads of this existing knowledge and diversified policy.

A final point should be the study of the feasibility and desirability of creating—or fostering the creation of—computer inventories of national and international materials supplies and requirements.

What is particularly heartening to me is the fact that this is not a partisan issue. I happen to be a Republican from Delaware. But our proposal to establish a National Commission has received wide support from across the political spectrum. One of the strongest advocates of the idea is Senator Edmund Muskie, who is Chairman of our Subcommittee on Air and Water Pollution.

The involvement of our Subcommittee with this subject dates to 1965, when we reported and passed the first Federal solid waste legislation. This fact, and an increasing personal interest in the question of solid waste disposal led me in July 1967 to request that the Legislative Reference Service of the Library of Congress make a study of materials and their relation to the question of the accumulation and disposal of solid wastes.

Dr. Frank Huddle, in his position on the Science Policy Research Division of the Legislative Reference Service, prepared an initial study. It was titled, "Availability, Utilization, and Salvage of Industrial Materials," and was published by the Committee on Public Works.

Subsequently, the Library of Congress assisted in the organization of an ad hoc committee of materials experts to examine in greater detail the need for a national materials policy.

Most of you probably are familiar with the second and more thorough report, "Toward a National Materials Policy." It was published by the Senate Committee on Public Works about a year ago, and offered this observation: "It is of the utmost importance that, from the initial stages of production of materials through their ultimate use and disposal, we conduct our operations and activities in such a way as to minimize pollution of air and water to avoid despoliation of the environment, both physical and biological."

Then the report came to the conclusion that it was vital to create a National Commission on Materials Policy: ". . . it is judged timely and essential that a national commission be chartered and organized to study the present stance of the United States with respect to materials, and to make recommendations based on its findings."

Then the report listed what the objectives of the commission should be:

"1. To identify the relationship of the broad subject of materials in all their aspects to national goals and objectives;

"2. To define materials goals and objectives of the nation;

"3. To contribute to a broader understanding and awareness of materials problems and opportunities; and

"4. To maximize, to the extent permitted by the constraints essential to the national interest, the opportunities for free enterprise to function efficiently in the materials field. . . ."

The report of the ad hoc committee says, in effect, that if our nation takes a hard look at our materials requirements and use, we can catch a lot of problems of environmental degradation before they occur. The Committee suggests examination of the various factors affecting the selection and use of materials that would be placed into the economic stream.

That is what the Committee on Public Works envisions in supporting the amendment to create a National Commission on Materials Policy. The Committee of Public Works saw the need for a commission study and report seeking to identify and analyze the factors affecting the materials flow. This would be followed by a report that would chart the path the United States should follow toward a national policy on materials, and how that policy should be implemented.

The amendment to establish such a national commission was introduced on September 9, 1969, cosponsored by 11 Senators. The response was gratifying.

You are far more familiar than I am with the details of the Paley Commission's pioneering effort in this field. Mr. Paley continues to carry a deep interest in the materials field. He graciously wrote to me recently concerning the amendment. I would like to quote briefly from his discussion of materials policy:

"This is a matter that touches virtually all aspects of our national life. The availability of materials, and use and reuse, the development of alternatives, the disposal of waste products—all of these are of increasing urgency as our population grows and our society becomes more interdependent."

Indeed, this is an effective summation of what we need to do!

In an effort to gauge further the reaction to the concept of a National Commission on Materials Policy, I wrote to 100 or so individuals. I did not focus these letters to the materials community. Rather, I sent them to persons who had demonstrated an interest in environmental enhancement by participating in the Environmental Clearing House. This is a non-profit group seeking to increase the communications between the academic-scientific community and Congress.

Most of the gentlemen to whom I wrote were scientists in the university community, with a few experts from industry. I sent a copy of our amendment and the report of ad hoc committee to each of these men. I was astounded by their response.

About half of the recipients took the time to evaluate in considerable detail the report and the amendment. If you are interested, you can find copies of many of these letters in Part 3 of the hearings on the Resources Recovery Act of 1969, just published last week.

The tenor of the letters was enthusiastic, endorsing the need for the type of independent study of questions relating to materials policy that would be accomplished by the Commission.

William E. Martin, an Associate Fellow at Battelle Memorial Institute, wrote that "I don't know of any important issue under the general heading of national materials policy that is receiving sufficient attention today." This was echoed by many others.

He went on to say that "a national commission on materials policy, as described in your amendment, could make a significant contribution to the development of a comprehensive understanding of the various processes involved in materials production, utilization, and disposal, and such an understanding is prerequisite to the development of national policies and management procedures which are needed (a) to utilize the economic and other benefits of these processes and (b) to minimize their adverse effects on man's environment."

This quotation, and others, are not mentioned by me in any attempt to congratulate myself. Rather, they are offered to indicate the significance of a concept that was held by many men in this room long before I had the opportunity to bring it to the attention of the Congress.

And, I believe, these comments indicate the broad and strong support existing for the commission concept.

Before moving one, I would like to give you two or three other reactions to my letter. Lynton K. Caldwell of Indiana University wrote: "I believe the establishment of a commission would serve a useful purpose. There is no question but that the problems to which it would address its attention are of major and growing importance in our national economy and are major factors in the difficulties we are now having with the management of environmental quality."

Frank G. Golley, Executive Director of the Institute of Ecology at the University of Georgia, stated: "A national materials policy is essential for economic as well as for ecological reasons."

Richard S. Caldecott, Dean of the College of Biological Sciences, University of Minnesota, wrote of his "wholehearted support" for the establishment of the Commission.

Extensive testimony was also received on the need to articulate a national materials policy during Senate hearings on resource recovery legislation in 1969 and 1970.

Hans Landsberg, of Resources for the Future, offered testimony that was most valuable. I would like to quote one portion of it:

"If the proposed commission would accord high priority to laying the groundwork for the establishment somewhere in the federal government of a permanent home for questions of materials policy, I would welcome its establishment."

Robert Finch, when he was HEW Secretary, told our Subcommittee that "I don't think there is any question but what there is a necessity" . . . for ". . . . having a national materials policy. . . ."

Other witnesses representing the Executive Department also supported the concept of a national materials policy, but offered the opinion that its formulations should be accomplished through an exiting agency of government, rather than a special commission.

Dr. John Buckley of the Office of Science and Technology told our Subcommittee: "Our needs for the kind of information foreseen by the Boggs amendment will continue; we believe such a study must then, be a continuing process rather than an inventory at a particular time such as would result from the proposed commission."

The question of how to formulate a national materials policy was a major issue that the Committee on Public Works wrestled with at some length. There are advantages and disadvantages to the creation of a Commission. Dr. Buckley pointed out one of the problems. Another is the time needed to establish the machinery for a commission, and then staff it.

But the Public Works Committee came to the conclusion that the advantages of an independent commission outweighed any disadvantages.

Firstly, the commission concept calls for an evaluation of materials policy by exports from inside and outside the Federal Government. This is absolutely essential, I believe, to guarantee the broadest possible scope and study. This is vital if this study is to prove meaningful. It cannot be effectively accomplished by consultants to an existing agency of Government.

Secondly, too little knowledge currently exists to chart the directives needed to guide a permanent agency in the operation of a national materials policy. For that reason, a commission of materials experts that has a set 3-year life span will prove invaluable as a first step toward formulating a national policy and its installation within an existing agency of Government. The Commission will sharpen the focus on the issue far more effectively than an existing agency could.

That is how our Committee views the Commission. The Commission would, in effect, serve as the foundation upon which to raise the structure of a coordinated materials policy for our nation. Whatever permanent office for materials policy might be established at some point in the future would then serve a truly effective and beneficial role, allowing the United States to use its resources and technology more effectively and thus enhance environmental quality and conserve the finite supply of materials.

CRIME CONTROL

Mr. PEARSON. Mr. President, the problem of rising crime has long been one of the most pervasive in American society. Year after year the number of rapes, robberies, murders, and muggings increases. And year after year we hear a great deal of debate about how to control this spreading lawlessness or why we must endure it. All too rarely are positive steps taken to do something constructive about making our streets safe to walk at night again.

The dimensions of the problem are awesome. In just the first 3 months of this year, for example, FBI statistics indicate that serious crime has risen by another 13 percent. Rural crime went up by 19 percent during the same period. In my own State of Kansas, crime has continued to spiral. Last year in our State capital, Topeka, crime soared by a whopping 42 percent. In the city of Wichita crime rose by 20 percent and in Kansas City it increased by 14 percent.

Why have we had to endure this continuing wave of crime? At least part of the reason is inadequate police protection. In some cases this is due to the fact that there simply are not enough police on the streets. In other cases overburdened courts and outmoded prisons are to blame. I was shocked to read recently that experts claim that of all reported major offenses only 12 percent lead to arrests, 6 percent to convictions, and just 1 percent to prison. And of the few who finally do end up in jail, one-third later commit other crimes after they are released.

Mr. President, if the causes of crime are as many as the police and sociologists claim, then the cures are equally as numerous. The police, the prisons, the courts, and the laws themselves all demand our constant attention. As the aforementioned figures on arrest and conviction percentages indicate, though certain Supreme Court decisions have obviously made the job of the policeman harder, at least some of the blame for inadequate law enforcement must also rest with those local officials who have not moved to reform outdated police departments and clogged court systems.

A large part of the problem also rests with the role of the policeman as a social worker. Certainly the work that the police perform in the field of community relations is vital in preserving a harmonious police/neighborhood relationship. Nonetheless the fact is that some three-quarters of police effort is expended, not on fighting serious crime, but on administering first aid, quieting loud parties, rescuing stranded cats, and settling family squabbles. Mr. President, the maintenance of neighborhood harmony and the deliverance of prompt medical attention demand that these tasks be done. But need they be performed by our already overburdened police? I think not. Why not expand the services afforded by our social agencies, have them performed 24 hours a day and thus let the police devote most of their attention to direct crime fighting? This is only one of a number of ways in which the work of our law enforcement agencies can be improved.

Another area that needs immediate attention is the law itself. On both the local and Federal levels crime needs to be redefined. In this regard, the National Commission on Reform of Federal Criminal Laws was established in November of 1966. Composed of three Senators, three Congressmen, one circuit judge, two district judges, and three members-at-large, the Commission was charged to "make a full and complete review and study of the statutory and case law of the United States which constitutes the federal system of criminal justice for the purpose of formulating and recommending to the Congress legislation which would improve the Federal system of criminal justice."

The Commission has now submitted a study draft indicating several items on which the members of the Commission have reached an interim consensus. In this draft the Commission calls for the creation of a "systematic, consistent, comprehensive Federal criminal code to replace the hodgepodge that now exists." The Commission also recommends that a new approach to Federal crime jurisdiction be taken. Mr. President, it is obvious that we can no longer say the Federal Government is concerned only with "the use of the mails" or "interstate commerce." Clearly we must also help provide expanded law enforcement support for local efforts to curb such substantive problems as fraud, prostitution, gambling, drugs, firearms, and governmental corruption. In this I fully agree with the view of the Commission. I also share the view that a major overhaul of the sentencing system is overdue.

Mr. President, another step that should be encouraged is to devise procedures that reduce the amount of time a policeman needs to spend in court. In New York and Washington, D.C., for example, suspects in minor cases are checked out

at the station house and those with reasonably responsible backgrounds and credentials are issued summonses to appear. Records in New York indicate that approximately 95 percent of those released in this way do appear for trial. During the first 2 years this system was in operation throughout New York City, roughly 368,000 police man hours were saved—or roughly the equivalent of adding 209 men to the force. This approach applied nationwide where appropriate could significantly improve our crime fighting effectiveness.

Many other techniques must be developed and encouraged at all levels of government if we are to ever come to grips with the shocking and continuous use in criminal activity that has characterized the past decade. Frankly, Mr. President, the record of the Congress has been spotty in this regard. Some landmark legislation has been passed, but many other worthwhile proposals have languished in committee while citizens across the country have suffered the loss of hard-earned property or endured the heartbreak of broken bodies or lives that can never be replaced. Perhaps the most far-reaching legislation approved by the Congress in recent years was the Omnibus Crime Control Act of 1968 which has resulted in significant financial and training aid to our local law enforcement agencies. In my state of Kansas this year, for example, approximately $2,528,000 has been made available to assist our crimefighting efforts. All in all, the 89th and 90th Congresses passed 28 separate laws to fight crime.

These efforts have helped, of course, but obviously more action is needed if we are to successfully curb our shocking rise in crime. The administration is committed to do everything possible to win the war on crime, but unfortunately it has not received the congressional support it deserves. At least 25 crime bills have been introduced by the administration or received administration support. Of these, seven are aimed at organized crime, four are model acts designed to curb crime in Washington, D.C., three attack obscenity, two drug abuse, and two deal with preventive detention. Of all these proposals, only one has become law. The rest are bogged down in the legislative process. Among the many measures now stalled in Congress are such vital proposals as the organized crime control bill which represents a worthwhile attempt to halt the activities of the crime syndicate. It offers, among other provisions, further efforts to eliminate syndicated gambling and stiff sentences of up to 30 years for dangerous special offenders such as the organized crime leader.

This much and more must be done. The job will not be easy, but the chances of ultimate success are good. Just recently the Advisory Committee on Intergovernmental Relations said that the system of Federal block grants to State anticrime agencies had shown signs of beginning to work. Thus, if the Congress meets its responsibility to enact the badly needed anticrime legislation now stalled in committee, there is every reason to hope that our crimewave can be brought under control. Vigorous action at the local level coupled with strong Federal assistance should at last produce the "safe society" that all Americans have a right to expect.

WE MUST BE SURE HOW WE USE DRUGS

Mr. McINTYRE. Mr. President, the Washington Post of June 23 carried an article by the able and distinguished reporter, Mr. Morton Mintz, which disclosed the results of a recent court trial in which an Arlington, Va. woman, blinded by a drug known as Aralen, sued for damages both the drug's manufacturer, Sterling Drug Co., and the physician who prescribed it. The woman claimed to have lost 90 percent of her vision as a result of her long-term use of Aralen, the trade name for chloroquine phosphate, a drug used to relieve the symptoms of rheumatoid arthritis.

The implications of the trial reach far beyond the case in question, touching such issues as the promotion of prescription medicine and the methods used to inform doctors about the hazards as well as the benefits of drugs.

Aralen, approved by the Food and Drug Administration in 1946 as an antimalarial, was found by some physicians to be effective in the treatment of rheumatoid arthritis, and in July 1957, Sterling received permission from the FDA to make such claims. In the meantime, however, a number of physicians had begun to report visual difficulties in patients using Aralen on a long-term basis, and at least 300 cases of irreversible blindness concurrent with the use of Aralen have been reported. Despite this and other evidence that drugs of the quinine family, similar to chloroquine, had been known since 1906 to cause retinal damage, Mr. Mintz reports that Sterling made no attempt to undertake a comprehensive study, either on humans or animals, of the long-term effects of chloroquine phosphate on the retina. In fact, according to the prescribing physician in this case, the Physicians' Desk Reference, on which many—if not most—doctors depend for their drug information, and the Modern Drug Encyclopedia, both of which are supported by drug advertising, included no warning as to dangerous or irreparable side effects stemming from the use of Aralen. Instead, the entries implied that the side effects were minor and transitory.

The prescribing physician testified that he was totally unaware that Aralen could cause blindness. After reading the entries for Aralen in the Physicians' Desk Reference, entries written and paid for by Sterling, the doctor said he felt reassured about the safety of the drug and so prescribed it for his patient. Sterling's detail man assigned to the Arlington area testified that warning doctors about the drug's adverse effects was only a secondary responsibility, his prime concern being promotion of the product and stimulation of its sales.

It was not until 1963 that Sterling finally sent a "Dear Doctor" letter to physicians advising them of the harmful side effects. By that time, at least 80 articles warning about Aralen had been published, and Sterling had received several dozen reports from doctors about adverse reactions in patients. Moreover, the letter belatedly sent to the medical profession was described as confusing and more of an advertisement than a warning.

Physicians rely heavily for their information about drugs upon the detail men employed by the drug companies and upon advertising in medical journals. Since the journals depend for their existence on the advertising of companies like Sterling and since the detail men are instructed to concentrate on selling their products, the doctors are the targets of a constant barrage of nonobjective information and claims geared to the promotion of drugs, even at the expense of total honesty.

What is urgently needed, therefore, is a mechanism through which doctors can receive objective, scientific information about drugs—the hazards as well as the benefits. The recommendation has been made, that the Government subsidize independent medical journals, free of drug advertising and free of the influence and pressure of drug manufacturers. As Mr. Mintz has written in a second article, "The Stuff Doctors Read," published in the April 1969 issue of the Progressive, if the very roots of scientific integrity are to be protected:

> Physicians must eliminate or at least drastically reduce the addictive dependence of their publications on drug advertising. They must select and support editors who meet the highest standards of scientific excellence and independence—men who would, for example, be willing to criticize specific drug companies and specific drug advertisements. Such reforms would bring incalculable benefits to patients as well as to the medical profession.

In addition, consideration might be given to establishing independent county medical agents who, unlike company detail men, would be free of any financial interest in the promotion and sale of drugs. Such agents, perhaps working in conjunction with county medical societies, could supply doctors with the kind of unbiased and scientific information essential to sound medical practice.

Improper drug promotion and inadequate means of informing physicians fully about the medicines they prescribe pose a constant threat to patients and doctors alike. Unless some immediate steps are taken to reform the process of disseminating information to physicians, avoidable tragedies such as the Aralen case can be expected to occur.

I ask unanimous consent that the two articles by Mr. Mintz be printed in the RECORD.

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

HARM OF IMPROPER DRUG PROMOTION REVEALED IN ARLINGTON ARALEN CASE

(By Morton Mintz)

Ten years ago, an Arlington woman with painful symptoms of rheumatoid arthritis went to her physician to seek relief. He prescribed a drug called Aralen.

By mid-1967, the woman, Margaret B. Stumpenhorst, was irreversibly 90 per cent blind.

She is unable to read, sew, drive a car or

work—unable to do any of the things for which central vision is required. The 10 per cent vision left is peripheral.

Mrs. Stumpenhorst sued Aralen's manufacturer, the Sterling Drug Co., and Dr. Clarence J. Weimer, the physician who prescribed it for her, for $250,000 in damages, claiming the drug caused her blindness.

Last Tuesday, as a jury deliberated the evidence after a three-week trial, the defendants agreed in an out-of-court settlement to pay Mrs. Stumpenhorst $175,000 in damages.

Sterling and the physician denied the charges and the settlement was premised on no admission of liability by them.

The record of the trial surfaced new information that reached beyond her particular case and touched on issues about how prescription drugs have been promoted to physicians and about the mechanisms to give doctors information about hazards as well as benefits of medicines.

This account of how Aralen was handled is drawn not only from the trial record in the Arlington case, but also from a 1969 decision by the U.S. Court of Appeals, 8th Circuit, affirming a judgment of $180,000 against the same company awarded to a South Dakota woman in a similar Aralen case.

Other sources were a wide array of documents filed in both court cases—depositions, papers involved in a marketing application to the Food and Drug Administration (FDA), letters from physicians and company officials and representatives, congressional hearings and promotional materials issued by the manufacturer, the Sterling Drug Co., and its Winthrop division.

Mrs. Stumpenhorst is 59. She was in her 50s when she started studying for a college degree and completed two years' work. She had been secretary of the Trinity Episcopal Church Sunday School. A widow, she lives with her mother, who is 90, and a grown son, John, at 821 S. Glebe Rd.

Until blindness forced her to give up her job, Mrs. Stumpenhorst had been a civilian employee of the Air Force, which gave her a total of five commendations for her work.

She retired in March 1967. This was 13 years sooner than the mandatory retirement date. Her lawyer, Aaron M. Levine, calculates the premature retirement cost her $98,000 in future earnings.

The story of the drug—and the ultimate convergence of the diverse forces that led Mrs. Stumpenhorst to take it—began during World War II when it was developed as an antimalarial agent.

In this usage, the medicine, which has the public name of chloroquine phosphate, was wondrously successful. But a person seeking protection from malaria has a relatively limited exposure to the drug. He takes it daily for a couple of weeks before entering a malarial zone, and then takes it once weekly as long as he remains in the zone.

PROLONGED TREATMENT

In contrast, a victim of rheumatoid arthritis takes a pill every day for years, or even decades.

The FDA in 1946 approved chloroquine phosphate for sale and use solely as an antimalarial. One of the FDA's concerns was that members of the same chemical family—primarily atabrine, quinine and quinoline—were known to have caused visual difficulties in some users.

Under FDA rules in force at that time, prescription drugs were approved for use only when the applicant supplied substantial evidence of safety for that use. Sterling provided the required evidence only for use of Aralen in malaria.

Nonetheless, some physicians, trying chloroquine phosphate in other diseases, reported in medical publications and told Sterling Drug of good results in the treatment of lupus, a chronic skin affliction affecting mainly the face and hands, and rheumatoid arthritis.

According to records in the South Dakota case, Sterling officials testified they supplied money, information and services for research in the use of Aralen for treating rheumatoid arthritis by interested physicians. If a physician inquired about treating lupus with Aralen, for example, the firm sent him literature about it.

At that time, a company was not required by the FDA to get its clearance for recruiting or allowing physicians to try drugs in clinical tests for unapproved uses.

As often happens, Sterling praised its own product extravagantly. In 1952, when the firm unsuccessfully sought FDA approval for over-the-counter sales of chloroquine phosphate, it asserted, "Aralen is one of the least dangerous drugs in existence."

But by 1955, correspondence introduced into evidence in the Stumpenhorst trial shows, a number of doctors—sometimes directly, sometimes through salesmen—were making inquiries to the company about Aralen patients who developed visual difficulties.

In March, 1957, according to the South Dakota case records, three doctors reported side effects on the eye from chloroquine therapy in lupus patients.

In July, 1957, those records show, Sterling formally applied to the FDA for permission to label Aralen for one use in addition to malaria—rheumatoid arthritis.

On Aug. 22, of that year, according to the Stumpenhorst trial record. Sterling's Winthrop division announced the new use for the drug, saying it "effectively and safely suppresses crippling rheumatoid arthritis."

The press release announced a "crash program to build up adequate supplies of the drug to meet the anticipated demand," and cited as proof of the drug's effectiveness a four-year patient test program conducted by a Canadian physician, Dr. Arthur W. Bagnall.

Within two months of making the application, the appeals court record shows, FDA approved Aralen for treatment of rheumatoid arthritis.

During the following year, the South Dakota case record shows, there were at least three reports of cornea changes in patients taking Aralen.

And in October of that year, according to the Stumpenhorst trial record, Dr. Bagnall, whose Aralen therapy tests were touted by Winthrop's press release, reported to the firm's director of medical research of eye complications in two long-term Aralen users.

SOME BLINDED

An article in the Journal of the American Medical Association, introduced in the Stumpenhorst trial by the company, says that about 15 percent of the long-term users become permanently blinded.

The number of identified cases of irreversible blindness is about 300, some officials estimate, but adverse drug effects of all kinds are widely acknowledged to be grossly underreported, the FDA itself asserts.

At the same time, the company had commissioned no comprehensive long-term testing—in either animals or humans—on the possible effects of chloroquine phosphate to a Stumpenhorst trial witness.

Mrs. Stumpenhorst's general practitioner in Arlington, Dr. Weimer, testified he began to prescribe Aralen (although not to her) in 1958.

In testimony, he said he did so after consulting two reference volumes to reassure himself about his understanding that the side effects of Aralen were mild and transitory.

One of the volumes was the 1958 Physicians' Desk Reference, the most widely used prescribing guide. The entries are written and paid for by drug manufacturers. The other manual was the 1958 Modern Drug Encyclopedia, which also is supported by advertising.

Dr. Weimer's office is in the territory of a Sterling "detailman" named James N. Dickson. Dickson testified that his duties, set out in a Sterling manual for its field forces, including making an average of six calls a day on doctors to promote the firm's products.

"Physician coverage must include the known important prescribers and influential men," the manual instructed. "Maintain complete, up-to-date records on each physician detailed."

Physicians deemed "important" were to be seen monthly, but all were to be esen at least quarterly. The detailman, the manual emphasized, "is the physician's major source of information regarding his company's products."

How faithful was Dickson to these instructions?

Dickson testified in court that the greater an inclination of a physician to prescribe Sterling products, the more often he visited him.

SALES RESPONSIBILITY

He testified that stimulating the sale of these products was his primary responsibility. Telling doctors about newly learned adverse effects was, he said, secondary.

Dr. Weimer told the court he set aside an hour a day to see detailmen, but that Dickson had never told him of the possibility that Aralen could cause retinopathy.

Dickson testified he was uncertain whether he had called on Dr. Weimer, as his instructions required him to do. In the period 1957 to 1963. He said he was certain he had not called on the Arlington physician after 1963, the year Sterling Drug sent out a "Dear Doctor" warning letter to the medical profession.

But from 1957 to 1963, according to the South Dakota case records, Sterling had instructed none of its 500 detailmen to warn doctors that Aralen could cause retinal changes.

The failure of Sterling to tell its detailmen to alert physicians to the peril of blindness in long-time Aralen use led, in the South Dakota case, to the $180,000 judgment against the company.

The award, made in federal Court, went to Irene M. Yarrow, a Sioux Falls mother of four, who was permanently blinded by the drug.

The U.S. Court of Appeals in St. Louis, in a far-reaching opinion in March, 1969, upheld the award, saying that detailmen, as the major source of drug information for physicians, must tell doctors the bad news as well as the good news about the medicines they promote.

The company has not appealed the award further.

As early as 1958, the year in which Dr. Weimer began prescribing Aralen, a number of physicians already were telling of visual problems in chloroquine patients.

Here is a sampling of a letter introduced by Levine in the Arlington trial:

Feb. 8, 1958—Dr. Pierre G. Jenkins, an ophthalmologist in Charleston, S.C., inquired about three patients on Aralen "who complained of colored halos in their vision."

In Cincinnati, Dr. Leon Goldman was "in a quandary" about three lupus patients "tending toward blindness" because of eye changes that progressed even after use of Aralen had been halted.

May, 1959—Dr. Dale B. Pritchard of Ithaca, N.Y., wrote to the company about a 45-year-old woman who had lost her vision after taking Aralen for two years.

"I have been unable to find any reference in the literature . . . and wondered if you had heard of any retinal damage resulting from Aralen," he said.

A few days earlier, on April 27, 1959, the Stumpenhorst trial record shows, Sterling's English subsidiary, Bayer Products, Ltd., reported to the Sterling-Winthrop Research Institute on three cases of a relationship between chloroquine and retinopathy.

These cases were publicly reported five

months later in an article by Dr. H. E. Hobbs, of London, in Lancet, a British medical journal.

In a deposition read to the jury in the Stumpenhorst case, Dr. E. J. Foley, vice president and medical director of Sterling Drug, said the Hobbs report of Oct. 3, 1959, was the firm's first notice of a cause-effect association.

ADDITIONAL ARTICLES

But even the Hobbs report—and four other new articles in medical publications—did not prod Sterling into launching a major effort to warn physicians.

Dr. Howard Bernstein, Mrs. Stumpenhorst's chief medical witness, testified in the Arlington trial that drugs of the quinine family (similar to chloroquine) had been known to cause retinal damage since 1906. Despite this and related evidence, he said, Sterling put chloroquine on the market for long-term use without conducting long-term animal tests.

Bernstein, who spent two years investigating chloroquine retinopathy as a Public Health Service officer, also testified that the animal tests the company did conduct, in his opinion were inadequate in view of the reported dangers of this family of drugs.

During the following year, 1960, there were two more medical journal warnings on Aralen. The firm told the FDA is would reflect the new information in the labeling enclosed in the package (which is frequently overlooked or thrown away) and in brochures for physicians that would be published thereafter.

Negotiations for the "Dear Doctor" warning letter began, but were prolonged for more than two years.

PRESCRIBED IN 1960

And as late as 1960 Dr. Weimer, in Arlington, began to prescribe Aralen for Mrs. Stumpenhorst.

In the 1961 Physicians' Desk Reference, Sterling Drug was continuing to describe Aralen's side effects as "often transient" and claim that they "usually subside on withdrawal or dosage reduction."

A much different message was put out in the same book by Drug Specialties-Prane, Inc., of Winston-Salem, N.C. In its entry for Tritis tablets, whose principal ingredient, chloroquine diphosphate, is closely related to Aralen, the firm cautioned:

"Periodic ophthalmic examination should be made for signs of retinopathy. Discontinue medication, if signs of corneal edema or opacification (result). Do not prolong treatment unnecessarily."

Sterling made no entry at all for Aralen in the PDR for 1962, the year before the "Dear Doctor" letter was issued.

In February, 1963—3½ years after the Hobbs report in Lancet—Sterling's Dr. Foley sent the "Dear Doctor" letter to the medical profession.

By this time between 70 and 80 articles questioning or warning about Aralen had been published, and several dozen reports and inquiries from physicians had been received by the company.

This letter is a cornerstone of the company's defense in the Stumpenhorst case, as it has been in other damage suits (Levine tried to introduce about 75 other damage suits in the Stumpenhorst trial; the court admitted 25. Levine claimed the firm lost or settled all but a few of the cases, at an estimated cost $1 million).

Along with changes made in its literature about Aralen, the firm says, the letter demonstrated its concern and good faith and exonerated it from liability.

The letter was headed "Important Drug Precautions." Dr. Weimer testified he found it confusing and more of an advertisement than a warning.

OCULAR COMPLICATIONS

The letter said in part that Aralen "may be very helpful" in lupus and rheumatoid arthritis cases but that "certain ocular complications have sometimes been reported during prolonged daily administration" (of Aralen).

It mentioned "retinal change" twice, and recommended eye tests before and during prolonged daily use and an immediate stop to its use if eye changes were detected.

The Court of Appeals in the South Dakota case had this to say about the warning letter: "The 'Dear Doctor' letter could have been reasonably found (by the trial court) to be lacking in emphasis, timeliness and attention-inviting qualities. A reasoning mind could find that (Sterling's) warning actions were unduly delayed, reluctant and lacking in a sense of urgency . . ."

The company sent the letter by first-class mail to AMA-listed doctors through a mail-order house. Dr. Weimer's characterization was not based on the copy addressed to him: he said he never received one.

From 1960 through 1962 (the year there was no entry for Aralen in the PDR), Sterling, through its Winthrop Laboratories division, produced more than 227 million tablets in the most popular dosage of 250 milligrams, the Arlington trial record shows.

From 1963 through 1966 (the last year figures were available), 272 million tablets were produced, with production figures falling, beginning in 1964.

In February, 1965, two years after the "Dear Doctor" letter went out, Mrs. Stumpenhorst went to an eye doctor. He testified he thought she had the beginnings of cataracts in both eyes, but was unable to pinpoint the cause.

Her condition worsened. On July 11, 1966, she went to a second eye specialist, Dr. V. John Murgolo, of Silver Spring. Alert to the eye hazards of Aralen, he asked Mrs. Stumpenhorst if she had been taking it. Learning that she had been, he immediately suggested to Dr. Weimer that he take her off it.

Dr. Weimer accepted the suggestion. In his deposition, he said it came as a surprise to him that Aralen could cause blindness.

The company's entries for Aralen phosphate in the PDR from 1963 through 1969 say retinal changes "have rarely occurred," or "only rarely occurred," but that long-term Aralen patients should have periodic, thorough eye examinations.

The 1970 entry deletes any reference to the variety of retinal changes, but simply states that they have been reported and thus "emphasize the necessity of periodic visual field examinations in order to detect early changes during prolonged treatment with the drug." The company lengthened the list of other precautions to be taken in administering Aralen.

THE STUFF DOCTORS READ

(By Morton Mintz)

Among the nation's publications for physicians, none waves the flag for expensive prescribing of drugs by trade name more constantly, more openly, and more unabashedly than *Massachusetts Physician*, an advertising-subsidized monthly which is distributed free of charge to 11,500 doctors in Massachusetts, New Hampshire, and Vermont.

Consider the November, 1968, issue, which had 100 glossy pages. Typically, the front cover was divided equally by a "Guest Editorial" at the top and an advertisement below. In this case, the "Guest Editorial," of which the first three paragraphs were on the cover and the balance inside, was signed by Charles T. Silloway, president, until last December 31, of the CIBA Pharmaceutical Company. Entitled "Hobgoblins—and Little Minds," the editorial was studded with references to Ralph Waldo Emerson, Henry David Thoreau, and Samuel Adams. These revered New Englanders were enlisted by Silloway in an attack on legislation designed to induce generally lower-cost prescribing of drugs by generic name.

Silloway did not discuss CIBA's pricing policies, such as the pricing of Serpasil, its brand of a prescription drug, reserpine, which is widely used to lower blood pressure. As readers of *The Progressive* ("The Great Drug Robbery," September, 1968) may recall, Silloway had some problems explaining Serpasil pricing when he appeared in September, 1967, before Senator Gaylord Nelson's Subcommittee on Monopoly. To cite an instance, the executive was unable to explain why CIBA of Switzerland, the parent firm, sold one hundred .25-milligram tablets of Serpasil to druggists in Bern for $1.24—while in this country, CIBA's wholly owned subsidiary charged $4.50. In the very month that Silloway's "Guest Editorial" appeared, Arthur Levitt, the comptroller of New York State, announced that under a change in policy state agencies would purchase reserpine generically rather than by trade name. He estimated that this would reduce the state's annual expenditures for the drug from about $58,000 to about $3,000, a saving of nearly ninety-five per cent.

It must be emphasized that in running Silloway's "Guest Editorial," his picture, his biography, and his warnings against the erosion of our liberties (by Federal and state legislation for generic prescribing), *Massachusetts Physician* was showing no favoritism to CIBA. Of ten recent front covers, four others also carried the first part of a "Guest Editorial" written by a president of a drug company. A sixth gave identical prominence to a "Special Article" entitled, "Who Makes the Drugs You Use?" The byline was that of C. Joseph Stetler, president of the Pharmaceutical Manufacturers Association (PMA). On the four remaining front covers, the top half was used to announce meetings of the Norfolk District Medical Society, which had established the magazine in 1941 as the *Norfolk Medical News*. Publication was suspended because of World War II, but in 1948 the publication was reactivated under its current title by Massachusetts Physician, Inc., a non-profit corporation.

The editor of *Massachusetts Physician* is Dr. Carl Bearse, a seventy-six-year-old surgeon and former president of the Massachusetts Medical Society who told me that his magazine "fills a need" because it deals with "the socio-economic aspects of medical practice." He denied that the prominence given the views of drug industry executives was conditioned on the drug advertising which—along with a relatively small amount of advertising of other kinds—is the magazine's sole source of income.

Although some of the unsigned editorials in *Massachusetts Physician* might just as well have been written by the drug industry insofar as their messages are concerned, the magazine stands out among medical publications as a model of candor. In contrast, consider *Current Therapeutic Research*, a monthly which says it "is distributed to the libraries of all medical schools in the world and to selected hospitals and medical societies in the United States." This distribution is made without charge, although it is apparently possible to buy a subscription.

Since there is no advertising, it is obvious—but not disclosed—that the journal is subsidized, mainly by the sale of reprints to drug manufacturers whose products it acclaims. This is in the mold of Henry Welch, who while head of the Antibiotics Division of the Federal Food and Drug Administration was, in the 1950s, simultaneously editor-in-chief of *Antibiotics & Chemotherapy* and *Antibiotics and Clinical Therapy*. Over an eight-year period, these publications grossed $1,-

065,112 from fifteen firms—antibiotics suppliers, mainly—through sale of reprints and sales of advertising. Welch's gains from these enterprises, the late Senator Estes Kefauver's investigation of the drug industry disclosed, were "honorariums" totaling $224,000.

One of the frequent contributors to *Current Therapeutic Research* has been Dr. Leo J. Cass, director of the Harvard Law School Health Service and a prominent Boston physician. In the November, 1965, issue he, and a then colleague, Dr. Willem S. Frederik, identified as "Biostatistician, University Health Services, Harvard University" (one can only speculate how valuable these slender connections to Harvard would be to a drug company given favorable mention), wrote two articles. Each listed an identical set of four citations, of which three were to reports by "Cass, Leo J., and Frederik, Willem S." Of the three reports, two had been published within the previous eight months in *Current Therapeutic Research,* and the third was "in press" for the *Journal of New Drugs.*

Such productivity may be explained in part by the presence at that time of Dr. Cass himself on the Editorial Advisory Board of *Current Therapeutic Research,* and by the fact that the publication, unlike those careful scientific journals that do not print a manuscript until months or even a year after receipt, promises "prompt publication. . . . Ordinarily, papers received by the first day of one calendar month, if accepted for publication, will appear in the issue released on the first day of the succeeding month." It turned out, however, that a more compelling explanation for Dr. Cass's prolificacy was that Dr. Cass' studies were not always the highly sophisticated, objective work they were represented to be. Such was the case with one of the November articles which concluded that a single tablet of Measurin, a sustained-release aspirin, "provided pain relief as effective, over an eight-hour period, as did two doses of immediate-release aspirin at four-hour intervals at the same total dosage level." Soon after this was published, Chesebrough-Pond's, Inc., the manufacturer, launched a huge promotion campaign for Measurin. In a four-page advertisement in the *Journal of the American Medical Association* only two references were cited—one to "clinical reports on file" with the company, the other to the Cass-Frederik opus in *Current Therapeutic Research.*

Meanwhile, however, the Food and Drug Administration became suspicious about how, in a short period of time, Dr. Cass's organization, Cass Research Associates, Inc., could have been listed as an investigator by twenty-seven companies—in applications to FDA to test eighty-four experimental drugs in humans, and in applications to the agency for marketing approval of twenty-five medical products.

In an inquiry in May, 1966, Representative L. H. Fountain, North Carolina Democrat and chairman of the House Intergovernmental Relations Subcommittee, asked if work by Cass Research had been found by the FDA "to contain false data." "Yes," replied then FDA Commissioner James L. Goddard.

Although the now dormant firm blamed "certain deficiencies" in record-keeping and the "observers" it had retained, the FDA, in a formal notice in the *Federal Register,* said that a number of persons alleged to have been treated at Boston's Long Island Hospital, where Dr. Cass was visiting physician "in fact were not so treated." Indeed, the notice said, some of the patients in the three studies in which the Cass work was "significant" were "deceased or not hospitalized at the institution where the investigations were allegedly conducted."

The kind of candor shown by *Massachusetts Physician* has been conspicuously missing in the medical press, especially in those publications whose revenues are derived, in all but trivial amounts, from drug advertising. One example is *Modern Medicine,* which has a circulation of 200,000 and a former president of the American Heart Association, Dr. Irving H. Page, as its editor.

In July, 1967, a department of the free circulation throwaway called "Washington Newsletter" protested that the Pharmaceutical Manufacturers Association had too long been denied a chance to testify at Senator Nelson's hearings on drug prices about "its broad, balanced picture of what the industry contributes to health, how it goes about doing so, and why its price level has to be higher . . ."

Last March, the "Washington Newsletter" downgraded the importance of Nelson's inquiry into Chloromycetin, the antibiotic which has been responsible for hundreds of needless deaths (*The Progressive,* June and November, 1968). Candor required *Modern Medicine* to identify the writer of its "Washington Newsletter," but it did not. He was George Connery, editor of the PMA's "Newsletter."

The medical press' circulation leader (230,000) is *Medical World News,* a bi-weekly magazine. Second on its masthead and author of its "Behind the News" column is Dr. Howard A. Rusk. Behind Dr. Rusk is *The New York Times,* which prints his signed column every Sunday but declines to alert its readers to the close ties the physician has to the drug industry. In October, 1966, in the *Times,* Dr. Rusk depicted the drug industry as a counter-force to inflation. Impressed, the PMA circularized the column. Then last May, Dr. Rusk told readers of the *Times:* "Drug manufacturers are obliged to and do fulfill their responsibilities to provide the truth, the whole truth, and nothing but the truth regarding their products." At the time this claim appeared, Dr. Rusk's *Medical World News* was the front-runner among the throwaways found by the Food and Drug Administration to have been vehicles for false and misleading drug advertisements.

Last September, Dr. Rusk praised "the contributions that the American drug industry has made to Korea through many organizations but . . . primarily through the American-Korean Foundation." *Times* readers were not told that Dr. Rusk has been a leader of this philanthropic organization or that he himself has solicited huge gifts of charity for it from the drug firms. The point at issue was pungently put in the same month—and in the same newspaper—by Jack Gould, commenting on the Chet Huntley case: "If a journalist owns a piece of the action, he should be the first to disqualify himself from editorializing about or discussing any aspect of that business. But if he persists in doing so, as was the case in Mr. Huntley's commentaries, then at the very least his employer, be it a broadcasting chain or a publisher, should warn a listener, viewer, or reader, of the association on each and every occasion where it is pertinent." Disregarding the advice of its television and radio commentator, the *Times* provides no such warning about Dr. Rusk.

A third throwaway mailed free to physicians—and one with numerous foreign editions—is the twice-a-week Medical Tribune. With a domestic circulation exceeding 168,000, it claims to be "The Only Independent Medical Newspaper in the U.S." But of what is it independent? For one thing, it is all but inseparable from William Douglas McAdams, Inc., a leading medical advertising agency. By a simple device—nonmembership—trouble is avoided with the American Association of Advertising Agencies which, to prevent conflict of interest, forbids ownership of news media by advertising agencies.

In *Medical Tribune,* the advertisements are predominatnly for products of certain companies, especially Hoffmann-LaRoche, Warner-Lambert Pharmaceutical, the Upjohn Company, and CIBA Pharmaceutical, or their divisions. Usually, the advertisers have retained the McAdams agency. Their products rarely, if ever, are exposed to serious criticism—certainly not to the sustained campaigns that the publication has waged against two products of two firms that almost never advertise in *Medical Tribune,* Merck's Indocin and Dupont's Symmetrel. The executive editor, Dr. Joseph Gennis, is simultaneously executive vice president of the McAdams agency, although readers are not told of this dubious duality. Dr. Arthur Sackler, the retired board chairman of McAdams, was a founder of *Medical Tribune.* He, along with related Sackler enterprises, employes of the advertising agency, and the newspaper have shared a single personnel directory and personnel director, office space and various facilities, including a library, all at 130 East 59 Street, New York City.

Reporting of breadth and quality sometimes distinguished publications such as *Medical World News* and *Medical Tribune*—this should be said without hesitation. But such reporting usually does not reliably pertain to drugs. Advertising support from a single source is simply not conducive to editorial independence. Thus it was not surprising when one of the biggest drug stories ever, the criminal conviction on December 2, 1967, of three antibiotics makers on criminal antitrust charges, was whitewashed. The *Tribune's* doctor readers simply were not told that for eight years, tetracycline, the valuable antibiotic which is effective against a broad range of infections, was produced for as little as $1.52 per hundred 250-milligram capsules but sold to the pharmacist for $30.60, or almost twenty times as much.

Recently, the Food and Drug Administration adopted proposals to strengthen regulations intended to keep deception, falsity, and imbalance out of advertisements for prescription drugs. In 1967, while the proposals were pending, I made a check which showed that ninety-six objections had been filed against adoption of the regulations, as against zero endorsements. Pharmaceutical makers filed thirty of the objections, medical advertising agencies forty-six, publishers fourteen, trade groups four, and individuals two. One of the objectors was *Medical World News,* a McGraw-Hill publication whose seventy-nine-year-old editor—and Dr. Howard Rusk's boss—is Dr. Morris Fishbein, former czar of the American Medical Association. In an editorial attack, he denounced the proposals as "an invasion of medical practice and medical education"—education, that is, by drug companies whose advertisements, sometimes false, are his magazine's almost exclusive source of income. On behalf of the William Douglas McAdams advertising agency, Dr. DeForest Ely, the president, engaged in whimsey: The proposed regulations, he protested to the FDA, would "jeopardize freedom of the press."

With rare exceptions, particularly the *New England Journal of Medicine,* and the *Medical Letter,* which carries no advertising, a robust, reliable editorial independence is not the hallmark of the publications of medical professional groups. The American Medical Association derives almost half its total income from advertising—and, by last July, its *Journal* had, within sixteen months, been a medium for advertising messages for fifteen drugs which the FDA found to be misleading (in a few cases criminal prosecutions of the manufacturers resulted).

In 1964, the *AMA News,* "The Newspaper of American Medicine," was confronted by the conviction of Richardson-Merrell, Inc., and three of its scientists. All had pleaded no contest to charges of falsifying and withholding data which, under law, had to be submitted to the FDA about MER/29, an anti-cholesterol drug. Massive, unwise prescribing of this product, stimulated by exuberant advertising and promotion, had led to cataracts and other afflictions in thousands of patients before its removal from the

market in 1962. The disposition made of this unusual event in the *AMA News* was instructive: a twelve-line item under a one-line heading ("DRUG FIRM FINED") on Page twelve of the June 22, 1964 issue.

In January, 1968, *Psychiatric News*, official newspaper of the American Psychiatric Association, devoted about a third of its total space to advertisements for drugs used to treat mental illness and anxiety. On Page three there was a story headlined, "'GENERIC EQUIVALENCY' CALLED MYTH BY DRUG PRODUCERS." The first paragraph said, "Pharmaceutical manufacturers, after enduring seven months of virulent criticism from consumer organizations in testimony before [Senator Nelson's] Senate . . . Subcommittee launched a double-barreled counterattack late in November." But associate editor Herbert M. Grant acknowledged that the *Psychiatric News* had done no first-hand reporting and had relied on "secondary sources," specifically including the *AMA News* and "press releases from the Pharmaceutical Manufacturers Association."

"Let me assure you we are not kowtowing to the manufacturers on those hearings," he told me. Be that as it may, an analysis of the story showed that about twenty per cent of it was devoted to a pro-industry letter by Alfred Gilman, a pharmacologist who had not been a Nelson Subcommittee witness and who had written the letter at the request of the PMA. He acknowledged this to Benjamin Gordon, the Subcommittee's economist, in a telephone conversion in which he said that in addition to serving Government agencies, he is a consultant to three drug companies. Another twenty per cent of the story was preempted by two more non-witnesses, and somewhat better than ten per cent was dedicated to actual testimony—by the president of the PMA.

In February, 1968, *GP*, official journal of the American Academy of General Practice, devoted four and one-half of its 280 pages to a reprint of excerpts from testimony given before Senator Nelson by Richard M. Furlaud, president of E. R. Squibb & Sons. The testimony was a defense of trade-name prescribing. This was, of course, consistent with the views of *GP*, whose February, 1968, issue carried 145 pages of advertisements for trade-name drugs, including nine for products of E. R. Squibb.

All too often, the quality of articles in medical journals is low—or worse. Dr. William B. Bean, of the University of Iowa College of Medicine, once told the Senate Anti-Trust Subcommittee that some journals have "refused to publish articles criticizing particular drugs and methods of therapy, lest advertising suffer." When Hubert H. Humphrey, then a Senator, headed an investigating subcommittee, he asked the National Library of Medicine, which subscribes to 2,000 medical journals, to see if any had ever published a comprehensive, unflinching post-mortem analysis of a drug disaster. None had. In 1962, Irving Ladimer of the National Better Business Bureau charged that a number of medical journals had become "inadvertent co-promoters of quackery, when they permit their pages to be filled with questionable or spurious reports."

The late Senator Estes Kefauver and Representative L. H. Fountain uncovered evidence that a substantial number of articles supposedly providing objective clinical evaluations were in fact written by or for the manufacturer. In hearings held in 1964 by his House Intergovernment Relations Subcommittee, for example, Fountain found that E. Fougera & Co. engaged in this practice in order to promote Orabilex, a dye used to make the gallbladder more visible in X-rays. The company itself wrote, or had written for it, laudatory reports on Orabilex that were carried, in 1960, in the *Journal* of the American Medical Association, the *Journal* of the Southern Medical Association, and *Radiology*. This practice, Fountain said, "surely raises questions of medical ethics and strikes at the very roots of scientific integrity."

If these roots are to be protected, physicians must eliminate or at least drastically reduce the addictive dependence of their publications on drug advertising. They must select and support editors who meet the highest standards of scientific excellence and independence—men who would, for example, be willing to criticize specific drug companies and specific drug advertisements. Such reforms would bring incalculable benefits to patients as well as to the medical profession.

Last December, one solid, encouraging omen appeared, in the form of comments volunteered in response to a letter sent to 306,000 medical and osteopathic physicians by Dr. Philip R. Lee, Assistant Secretary of Health, Education and Welfare. By a ratio of seven to two (1,246 to 375), the respondents endorsed legislation proposed by Senator Nelson and the Johnson Administration for a regularly updated Government fact-book listing, describing, and indicating relative costs of all prescription drugs. The Government would publish and distribute the compendium free of charge. And by a ratio of three to two (858 to 561), the respondents endorsed a Federally supported prescribing journal which, as Dr. Lee described it, would provide objective evaluations of new drugs and reassessments of old ones."

Any objective evaluation of the Nixon Administration will have to take into account what it does about such proposals.

PRESIDENT NIXON'S REVISED FAMILY ASSISTANCE PLAN AND THE NEED TO REFORM OUR PRESENT WELFARE SYSTEM

Mr. COOPER. Mr. President, yesterday the Senate passed S. 2108, a bill to expand, improve, and better coordinate the family planning services and population research activities of the Federal Government available to all persons in the United States who desire them. I am pleased to have been a cosponsor of this bill. The program proposed in the bill should assist and contribute to the President's comprehensive program for family assistance.

When the President submitted his message to Congress proposing a major overhaul and reform of our present welfare system on August 11, 1969, I made this comment the following day in the Senate in support of the President's plan:

In my judgment, I think it is one of the most significant proposals that the President has made. It is one of the greatest proposals made by any President for many years.

I am sure that some adjustments will have to be made. Nevertheless, if the program were to cost more, at least in the beginning, it would be worth it because it would give purpose to the grant of aid . . . to those who are poor, disabled, unfortunate, and in need.

I believe it will direct our people toward useful work and training and will raise the standards and the dignity of the people of our country. I am particularly pleased by and support his plans to see to it that children, especially in their first 5 years, before school age, shall have equal opportunity for care and training.

The House passed H.R. 16311, the Family Assistance Act of 1970, on April 16 of this year. The Senate Finance Committee held hearings on the bill on April 29, 30, and May 1, with certain changes recommended by committee members, and the administration's proposals have been under constant restudy and revision by the Department of Health, Education, and Welfare.

The need and urgency for the Senate to take action on the administration's program this year cannot be understated.

Secretary of Health, Education, and Welfare Richardson emphasized this point at his press conference of June 25 when he said:

I consider the Family Assistance Plan as far reaching and imaginative . . . It has been significantly strengthened to relate the plan to medical services and the food stamp and public housing programs. I consider it really the center piece of the President's legislative effort.

Last Thursday I was pleased to note the announcement of the distinguished chairman of the Senate Finance Committee (Mr. LONG) that the committee would resume its hearings on H.R. 16311, on Tuesday, July 21, and provide an opportunity to administration officials and public representatives to testify concerning the revised program.

Mr. President, I ask unanimous consent that the statement of President Nixon of June 10, concerning the proposed revisions of this program, be included in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. COOPER. Mr. President, beginning with my public service as a county judge in eastern Kentucky some 40 years ago, I have had an opportunity to observe and scrutinize the operation and administration of Federal welfare programs—starting with the Works Progress Administration—in my State in their evolution and development and to observe the changes that have taken place in public assistance over this period of time. It is my view that some of the earlier problems encountered in these programs, rather than being faced and dealt with head-on at the time, have, as a matter of political expedience, simply been passed over or ignored with the result that these problems have expanded and multiplied to the point that the present welfare system has become unworkable.

I agree with the President's own appraisal of the problem:

The present welfare system has failed us—it has fostered family breakup, has provided very little help in many States and has even deepened dependency by all too often making it more attractive to go on welfare than to go to work.

Not only has the system failed to accomplish its purpose but in recent years its costs have skyrocketed. At the present time we have 50 different programs operating in 50 States, with Federal funds administered differently in each State. Welfare expenditures in the United States at the Federal, State and local levels reached the gigantic sum of $72 billion for the year 1969.

In his statement of August 8, President Nixon commented on the evolution of the present system:

What began on a small scale in the depression 30's has become a huge monster in the prosperous 60's. And the tragedy is not

only that it is bringing States and cities to the brink of financial disaster, but also that it is failing to meet the elementary human, social and financial needs of the poor.

In my study of the operations of these programs in my State, I have come to the conclusion that the most serious problem encountered in the present welfare system is that it does not provide incentives for those who receive aid to accept employment or to undertake job training. The present system discourages them from doing so because they fear that if they take employment, they may find themselves out of jobs in a few weeks or months and then face the problem of reapplying for welfare assistance—a process that is viewed as a threat to their families.

The revised plan as proposed by the President may need further adjustment in the Congress. But its chief objective of providing incentives for work and job training should be maintained. I am hopeful that the Senate Finance Committee will be able to report a bill to the Senate during this session of the Congress and that the Senate will take favorable action in translating the President's needed program into legislation.

EXHIBIT 1

STATEMENT BY THE PRESIDENT ON WELFARE REFORM

JUNE 10, 1970.

Past programs to aid the poor have failed. They have degraded the poor, and defrauded the taxpayer. The Family Assistance Plan represents the most comprehensive and far-reaching effort to reform social welfare in nearly four decades. Today, I am announcing significant extensions of the Administration's welfare reform proposals.

BASIC PRINCIPLES

The Family Assistance Plan is based on four fundamental principles:

Strong incentives to encourage work and training;

Equity to provide assistance to working poor families;

Respect for individual choice and family responsibility; and

Administrative efficiency to earn the trust of the taxpayer.

Administration officials have worked recently to identify ways to extend the principles of this income strategy to other domestic programs—such as Medicaid, food stamps, and public housing.

On the basis of this review, I have made my decision to propose basic amendments to the Family Assistance Act of 1970.

HEALTH INSURANCE FOR POOR FAMILIES

The most important proposal I make today is to reform the Medicaid program.

Medicaid is plagued by serious faults. Costs are mounting beyond reason. Services vary considerably from State to State. Benefits are only remotely related to family resources. Eligibility may terminate abruptly as a family moves off welfare, often losing more in medical benefits than it gains in income.

In short—just like the existing welfare system—Medicaid is inefficient, inequitably excludes the working poor, and often provides an incentive for people to stay on welfare.

I will propose legislation at the beginning of the next Congress to establish a Family Health Insurance Program for all poor families with children. This insurance would provide a comprehensive package of health services, including both hospital and outpatient care.

Final decisions on the specifications of the Family Health Insurance Proposal must await further review by the new Domestic Council. We are satisfied that the basic principles will work. This proposal will constitute the second legislative stage of the Administration's income strategy against poverty.

UNIFIED ADMINISTRATION OF FOOD STAMPS AND FAMILY ASSISTANCE

The Administration has already made extensive changes in the food stamp program to improve benefits, make them more equitable, and help even the very poorest families to receive assistance. We will propose that the Congress build on these executive reforms to integrate food stamps with Family Assistance and other income support programs.

Therefore, I plan to:

Submit a Reorganization Plan at the beginning of the next Congress to transfer the food stamp program from the Department of Agriculture to the Department of Health, Education, and Welfare.

Make is possible for a family to "check off" its food stamp purchase and receive its stamp allotment automatically with its Family Assistance check; and

Revise the food stamp price schedule to make it rise evenly with increases in income.

ASSISTED HOUSING

Present subsidized housing programs are marked by inconsistencies and inequities.

Many families pay the same rent despite wide differences in income. A small increase in earnings may force the family to move, losing much more housing assistance than is gained in income.

We have proposed a solution to many of these problems in the Housing Act of 1970. Rents would vary directly with income. A family would not be forced to move at some arbitrary income limit. We will offer this provision of the Housing Act to the Senate Finance Committee for its consideration.

REFORM OF INDIVIDUAL AND FAMILY SERVICES

In other amendments, we are proposing significant changes in social services for the poor. This proposal has been developed in recent months, and will be ready for submission to the Congress next week.

These amendments will:

Encourage accountability and program results;

Strengthen the role of Governors, Mayors, and county executives;

Seek to eliminate duplication and overlap.

OTHER MAJOR CHANGES

Other Administration amendments to the Family Assistance Act make important changes. For example:

Phasing out the special program for unemployed fathers, thus eliminating one of the most serious disincentives noted by the Senate Finance Committee;

Limiting the welfare burden of the States by placing a ceiling on their financial obligations under the program;

Strengthening the work requirement, and

Reducing areas of administrative discretion.

Nowhere has the failure of government been more tragically apparent in past years than in its efforts to help the poor. The 91st Congress has an historic but rapidly vanishing opportunity to reverse that record by enacting the Family Assistance Act of 1970. Let there be no mistake about this Administration's total commitment to passage of this legislative milestone this year.

CONFERENCE REPORT ON S. 2601—THE DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970

Mr. EAGLETON. Mr. President, I have in my hand a document entitled:

[91st Congress, 2d Session—House of Representatives—Report No. 91-1303]

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970

July 14, 1970.—Ordered to be printed

(Mr. MCMILLAN, from the committee of conference, submitted the following conference report:)

This is the House printed version of the District of Columbia crime conference report which was submitted to the House earlier today and adopted by the House.

On page 218 thereof appear the names of seven U.S. Senators as conferees who purportedly signed the conference report. That printing of seven names is in error. Three Senate members of the conference committee—myself, Senator CHARLES E. GOODELL, and Senator CHARLES MCC. MATHIAS, JR., did not sign the report. I wish to clarify that this is a printing error. I wish to allay the misunderstanding of the House Member who contacted my office indicating that he had voted in favor of it thinking that the three Senate members of the conference—who had publicly announced their dissent—had belatedly changed their minds and had signed the report. Such is not the case. Senator GOODELL, Senator MATHIAS, and I have not signed the aforementioned conference report.

"DEVIL'S ISLAND" IN SOUTH VIETNAM

Mr. FULBRIGHT. Mr. President, with the assistance of an alert staff assistant and a former director of the International Volunteer Service in Vietnam, Representatives ANDERSON, of Tennessee, and HAWKINS, of California, have uncovered and courageously exposed the appalling treatment of political prisoners on the South Vietnamese island of Con Son. The Congressman and their assistants uncovered the atrocious "tiger cages" despite extensive efforts by the South Vietnamese, with the apparent collusion of American AID and Embassy officials, to conceal them. Once again we have vivid evidence of the character of the Saigon dictatorship and of the lengths to which American officials in Vietnam will go to shield that regime from scrutiny, even to the extent of misleading Members of Congress.

Representative ANDERSON described the incarceration of prisoners in the "tiger cages" as the "most shocking treatment of human beings I have ever seen." As described by the Congressman, the "tiger cages" are small, windowless concrete enclosures with iron bar roofs, each containing up to five emaciated prisoners. No one of the male prisoners, according to the Congressman, was able to stand, either because of malnutrition or paralysis caused by shackling or lack of exercise. A single small box in each cage was the only sanitation facility provided, and a single straw mat served as the only sleeping facility for the five prisoners in each cage. Over each cage was a box containing lime, which is thrown down on the prisoners as punishment for such offenses

as asking for food or water. As Representative ANDERSON pointed out:

Lime plays the devil with your breathing and nostrils.

The entire prison at Con Son is ridden with sickness, especially tuberculosis. According to Representative ANDERSON:

There is one doctor for 10,000 prisoners, and about twenty percent of them have TB.

Some of the prisoners in the tiger cages told the Congressman that they had been chained and beaten.

According to Don Luce, the former IVS head who escorted the two Representatives, the prisoners were "terribly scared, very frightened people." Mr. Luce added:

When the guard was not standing near us, the prisoners would tell me that they had never stood trial or been sentenced for any crime and that there was not enough food, water or medical treatment.

Asked why she had been arrested, one 18-year-old girl told Luce:

I was in a peace demonstration.

Hardly less shocking than the conditions on Con Son Island is the bland lack of concern on the part of American officials, who appear to have far more energy for concealing the malpractices of their South Vietnamese clients than for correcting or alleviating them. In one of those stiff, evasive statements which regularly emanate from the American Embassy in Saigon, it was announced in Saigon on July 7:

The United States Mission is aware of the shortcomings in the corrections program here in Vietnam . . .

The statement concluded:

Of course, the control of this system rests with the Ministry of Interior of the Vietnamese government.

Just to clarify the matter, the Embassy spokesman who read the statement added:

I am denying responsibility for tiger cages.

The chief American public safety adviser in South Vietnam, Mr. Frank E. Walton, who served as deputy police chief in Los Angeles before joining the AID mission in South Vietnam, told the American Congressmen, whom he escorted to Con Son, that he had never before seen the tiger cages, although he said he visited Con Son once every 3 months. A fact sheet distributed by AID in Saigon quotes Mr. Walton as describing the Con Son prison as a "correction institution worthy of higher ratings than some prisons in the United States." According to Mr. Luce, Mr. Walton did his best to help the prison warden in his attempts to conceal the tiger cages from the visiting Congressmen. Walton, according to Luce, suggested that the Representatives visit the "curio shop" and later rebuked the group for "intruding into a Vietnamese prison."

American officials who seem so indignant at Congressmen trying to learn the truth about our involvement in Vietnam might profit from a short course in American constitutionality. The Embassy itself said in its prepared statement that the United States had contributed $442,000 to the Vietnamese penal system during the last fiscal year. These officials might also recall that, under our system of government, all AID funds are authorized and appropriated by Congress, and that this power carries with it the authority—and responsibility—to oversee the use of appropriated funds.

The American mission in South Vietnam is not a private proprietorship operating a foreign plantation. Nor are its officials responsible to or for the government of Mr. Thieu, however, great their affection for that regime. Our representatives in South Vietnam are working for the American Government, of which Congress is a part, and, burdensome though they may find them, they have certain responsibilities to the elected representatives of the American people. Among these responsibilities are the duty to expend funds and administer aid programs in the manner intended by Congress and to assist, rather than obstruct, Members of Congress who go to Vietnam in search of facts about the administration of programs authorized by Congress.

Contrary to the assertion of the Embassy in Saigon, American officials cannot disavow all responsibility for atrocities in South Vietnamese prisons. The United States provides both money and advisers for the Vietnamese police and penal systems. That involvement carries with it the right and responsibility to insist upon some minimum standards of humane treatment of prisoners. If the American mission in Saigon was totally unaware of the conditions at Con Son, there has been gross incompetence in the administration of AID's public safety program. In fact, it seems inconceivable that American officials could have been unaware of conditions in South Vietnamese prisons. There are American advisers in every nook and cranny in South Vietnam, and the U.S. supports virtually every activity of the South Vietnamese Government.

The U.S. mission in Saigon should have been concerned enough about conditions at Con Son and other Vietnamese prisons to make sure that conditions such as those described by Representatives ANDERSON and HAWKINS were corrected long ago. If American officials were insensitive to the sheer inhumanity of what was being done to Vietnamese prisoners, they should at least have given some thought to the relationship between South Vietnamese prison conditions and the treatment accorded American POW's in North Vietnam.

What was witnessed at Con Son are not "shortcomings" as the Embassy referred to them; they are atrocities. This was not a "corrections program" as the Embassy referred to it, but rather a chamber of horrors. There is no way in which the U.S. mission, either by euphemism or artful dodging, can escape a measure of responsibility for the horrors on Con Son.

The entire matter takes on additional significance because of reports that the administration now proposes to provide the Saigon government with at least $100 million in new and previously unscheduled American aid. The apparent purpose of these additional funds is to spare the Thieu regime the political consequences of having to take stringent internal measures to control South Vietnam's galloping inflation and to face the problems of an economy distorted by war and bloated by the American presence. It is likely too that these new AID funds are aimed at helping Mr. Thieu to remain in power.

In any case, it is Congress responsibility to examine any and all new proposals for aid to South Vietnam with the greatest possible thoroughness and care. By uncovering the malpractices of the South Vietnamese in a prison program supported by American funds and advisers, Congressmen ANDERSON and HAWKINS have performed a valuable service, providing Congress with highly pertinent information for its consideration of this year's AID bill.

Mr. President, I ask unanimous consent that a number of articles relating to the prison at Con Son be printed in the RECORD.

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

BAD NEWS: A FACT HAS BEEN FOUND

(By Mary McGrory)

When the Air America charter plane put down at the Saigon airport, the AID representative raced to the telephone.

"Something terrible has happened," gasped Frank Walton, who is AID's adviser to South Vietnam's police and prison system, "something terrible."

Something terrible had indeed happened. A congressional fact-finding committee had found a fact.

Two members of the House of Representatives, Augustus F. Hawkins, D-Calif., and William R. Anderson, D-Tenn., had just visited the penal island of Con Son and had seen for themselves the often-rumored but never-inspected "tiger cages" where some 500 South Vietnamese political prisoners, including two teenage sisters, exist in subanimal conditions.

"It would have been funny if the circumstances had not been so appalling," recalls Anderson.

The ex-skipper of the Nautilus, a blue-eyed, slow spoken man, and no dove, at once went to the hotel to report the awful news to the chairman of the committee, Rep. G. V. (Sonny) Montgomery, D-Miss.

"Montgomery knew he had a tiger by the tail," says Anderson, without humor.

The other members knew it, too, and the fact of the American-subsidized dungeons was the subject of innumerable hotel-room and airborne wrangles. A grisly "first" was the last thing the committee expected to discover.

The House certainly never expected anything but the rosy report on Vietnamization which Montgomery rushed to the public before the other members got a look at it.

The 12-man group was regarded as the most harmless front-line pilgrimage since President Nixon dispatched two of his aides and a clutch of hawk senators to Cambodia soon after the incursion.

Montgomery, a National Guard officer, is a devout believer in the war and once addressed a congressional prayer breakfast on the subject: "God is helping in Vietnam."

But in the party was Thomas E. Harkin, the 30-year-old aide of Rep. Neal Smith, D-Iowa. Harkin is a dark, handsome, sad-eyed graduate of the University of Iowa, a former Navy pilot and a law student at Catholic University.

He arranged for Donald Luce, a longtime volunteer worker in Vietnam, to bring a valiant young South Vietnamese man who

had survived Con Son and the chairman of the South Vietnamese Interior Committee to the congressman.

Harkin not only pressed the expedition, turned down by three members, but took films of Con Son, an infraction for which he was reported to the embassy by Walton. He typed a report, which was rejected by the committee.

"It would destroy the trip," said one of the members in voting for exclusion on the grounds that the tiger cages would eclipse the other "facts" the committee was bringing back.

Hawkins made his own report, and the handwashing began. Rep. E. Ross Adair, a stout and balding Republican hawk from Indiana, referred ponderously on the day of Harkin's press conference to "the Oriental mind" and "the sovereign government of South Vietnam, to which we cannot dictate, only suggest."

Rep. Lee H. Hamilton, D-Ind., submitted his own findings. He called the chairman's one-paragraph reference to Con Son "insufficiently complete" and hoped the revelations "would have some impact" on the Thieu-Ky government, while glumly conceding its record of concern for civil and human rights is rather thin.

Rep. Hastings Keith, R-Mass., in his separate report, confined himself to the implications of the Nixon doctrine.

Anderson, in his report, called "with regret" for the replacement of U.S. Ambassador Ellsworth Bunker.

"The real trouble," he said in an interview, "is that Thieu and Bunker are Tweedledum and Tweedledee."

The impact on the Nixon administration and the country probably will be as faint as the pulse of a tiger-cage prisoner. The administration is planning to send another $100 million to the Thieu-Ky regime.

As for the public, it is rather like the three committee members who backed out of the Con Son trip—it would rather not know about atrocities on our side.

After My Lai, a poll taken in Minnesota showed 49 percent "didn't believe" American GIs had gunned down several hundred civilians and over 50 percent thought the news of massacre, suppressed by the Army and the South Vietnamese government, should not have been published.

The House is the last body in the world to make a protest of conscience. It displays cages used by the North Vietnamese for American POWs under the dome and concentrates on the mote in the enemy's eye.

"Now that we know," Harkin asked, "how in the name of justice and humanity can we continue to financially assist and personally advise the prison system that does these things?"

We can, it seems, quite easily. The country has been coached to consider dissent as the overriding problem. That is, of course, the view of the government which the United States supports in Vietnam and to which the President proposes to send $100 million more.

Americans Find Brutality In South Vietnamese Jail

(By Gloria Emerson)

Saigon, South Vietnam, July 6.—An American who visited South Vietnam's largest civilian prison last Thursday reported here today on what he described as the inhuman conditions and intimidation existing there.

Don Luce, who is gathering information in Vietnam for the Division of InterChurch Aid of the World Council of Churches, said that 500 of the 9,900 prisoners believed to be on the island known as Con Son were confined in small stone compartments, and that many of the prisoners were unable to stand. The prisoners, he said, suffer from malnutrition, physical abuse and filthy conditions.

Mr. Luce was able to visit the island, which is 140 miles southeast of Saigon, because of Representative Augustus F. Hawkins, a Democrat from the Watts area in Los Angeles, and Representative William R. Anderson, Democrat of Tennessee. The group was accompanied by a Congressional aide, Thomas Harkin, who photographed the worst of the prisons.

The legislators were in South Vietnam as part of a 12-man House committee that made a fact-finding tour on the United States' involvement in Asia.

NEWSMEN ARE BARRED

Access to the prison is denied to newsmen. South Vietnamese officials generally deny that conditions are extremely harsh on the island, which is often referred to by its French name, Polo Condor.

The small stone compartments, known to the Vietnamese as tiger cages, were not voluntarily shown to the American visitors. The purpose of the trip had been to see if they existed.

Attempts to prevent the inspection were made by the warden, Col. Nguyen Van Ve. Mr. Luce also asserts that when the legislators asked to see six specific prisoners—four students, the editor of a French-language daily newspaper closed by the Government and another man—the colonel became angry. Mr. Luce had supplied the prisoners' names to the legislators.

After insisting that a telegram be sent to the Ministry of the Interior in Saigon asking permission for the group to see the six prisoners, Colonel Ve, according to Mr. Luce, said in Vietnamese to his own aide: "Do not worry about getting an answer—the important thing is to send it."

The warden did not know that Mr. Luce, who has been in South Vietnam for more than 11 years, speaks Vietnamese fluently.

According to Mr. Luce, Frank E. Walton, the American who heads the Public Safety Directorate—an advisory program in South Vietnam under the wing of Civil Operations-Revolutionary Development Support known as CORDS—backed the warden in his attempts to block the visitors.

"Walton suggested we visit the curio shop," Mr. Luce continued. "He was angry to see me with the Congressmen and said, 'I thought this trip was above board—Luce has misrepresented everything in Vietnam.'"

Mr. Luce, who is 35 years old and came here in 1958 as a volunteer social-service worker, has been an outspoken critic of United States involvement in Vietnam and of the Saigon Government.

Mr. Luce, who had been told of a hidden entry to the tiger cages, saw a tiny gate. Representative Hawkins asked Colonel Ve to have the door opened after the warden had said it was not possible. A guard, hearing the warden's voice, opened the door and the Americans went inside with the warden at their heels.

"We looked down from a catwalk through large openings—one for each cell," Mr. Luce related. "These were the tiger cages which are not supposed to exist anymore."

He said that in the presence of Colonel Ve the Americans visited two buildings composed of what he described as airless, hot, filthy stone compartments. In the building for men, according to Mr. Luce, three or four prisoners are in each compartment, which seemed not quite 5 feet across and 9 feet long.

"It was high enough for the prisoners to stand up but none of the men did," he related. "They dragged themselves to the spot where they could look up and speak to us. The men claimed they were beaten, that they were very hungry because they were only given rice that had sand and pebbles in it."

The prisoners also pleaded for water, Mr. Luce said, and cried out that they were sick and had no medicine.

Above each compartment, Mr. Luce related, was a bucket of powdery white lime that Colonel Ve said was used for whitewashing the walls but that the prisoners said was thrown down on them when they asked for food.

The women prisoners, who numbered about 250, told Mr. Luce, he said, that they were moved from mainland prisons seven months ago. They had the same complaints, he added, and also said there was no water for washing.

He said there appeared to be 60 or 70 compartments in each of the two buildings, with five women in a compartment.

When the group came out of the tiger camps after an hour and 15 minutes, Mr. Luce said, they met Mr. Walton, who rebuked them for "intruding" into a Vietnamese prison.

Mr. Luce related that Mr. Hawkins said that he hoped Americans in North Vietnam were not being treated as were the prisoners he had seen.

A fact sheet distributed in Saigon by Mr. Walton's agency over his signature quotes him as describing the "Con Son National Correction Center" as follows:

"In the opinion of correction advisors with lengthy U.S. penology experience, Con Son is not a 'Devil's Island,' but on the contrary is a correctional institution worthy of higher ratings than some prisons in the United States."

OTHER FACILITIES VISITED

The center was established by the French in 1862 and its name stands for a fearful ordeal. The French, it is said, built the tiger cages.

The legislators and their aide, with Mr. Luce, toured three somewhat more orthodox facilities where groups of prisoners are confined in a large room.

Mr. Luce, who was busy talking with the prisoners, said today that he could not observe whether the conditions were adequate.

"They were terribly scared, very frightened people," Mr. Luce said. "When the guard was not standing near us, the prisoners would tell me that they had never stood trial or been sentenced for any crime and that there was not enough food, water or medical treatment."

"When the prison guards came up," Mr. Luce added, "the prisoner would say to me, 'I am a political prisoner,' and in one instance the guard replied for the man, "You were arrested because you were a traitor."

South Viet Prison Found "Shocking"

(By George C. Wilson)

A South Vietnamese prison where men and women are locked up in windowless cages and disciplined with dustings of choking lime was described by two congressmen yesterday.

Reps. William R. Anderson (D-Tenn.) and Augustus F. Hawkins (D-Calif.) provided that description on the basis of their tour of Con Son Island Prison, 60 miles off the South Vietnamese coast on July 2.

"It was the most shocking treatment of human beings I have ever seen," said Anderson, a 49-year-old former submarine officer who won the Bronze Star combat award.

Anderson and Hawkins were part of a House of Representatives fact-finding group that made an on-the-spot assessment of the Vietnam War. They were the only congressmen who toured the prison, where 10,000 persons—most of them held for political offenses—are kept.

The formal report on the trip submitted to the House yesterday contained only one paragraph on Con Son. But Chairman G. V. Montgomery (D.-Miss.) of the Special House Committee said "we do not condone" the prison conditions and mentioned it briefly because "we didn't want to focus the report on it."

Anderson, in an interview, said this is what

he saw at Con Son in a tour that started about 9 in the morning and continued until mid-afternoon, including a look at the "tiger cages" the South Vietnamese prison commandant tried to keep hidden from the Americans:

He approached a wall of one compound and looked for what he had been told in Saigon would be a hidden door into the tiger cages he had heard about.

"I had been told that the South Vietnamese hid the door with a stack of wood," Anderson said.

Through an interpreter Anderson and Hawkins had brought with them from Saigon to the prison, Anderson asked the commandant to show the Americans the tiger cages. "I had been told they were in Compound 4," Anderson said.

As they stood before an uncamouflaged door in the wall of Compound 4, Anderson pressed the issue of the cages, even asking where that door led.

"He said it was to another compound. But just then—probably because the guard had heard the commandant talking—the door swung open. The commandant looked like a fellow who had dropped his teeth because it was obvious that door did not lead to another compound.

"The commandant," Anderson continued, "had no choice but to let us go inside.

"We saw a one-story foundation with no windows in it of any kind. We went up the stairs to a kind of catwalk and could look down through iron bars about ¾ of an inch thick at prisoners inside solid concrete cages about 5 by 9 feet."

Anderson said the concrete cages with the iron bar roofs were on either side of the catwalk. Most of the "tiger cages" had five people in them, although a few had three. The walls stretching up to the bars were about six or seven feet high.

"I noticed a box standing over each cage and asked the commandant what was in it. He said sand. I felt it and said I knew it wasn't sand. He then said it was lime for washing down the walls of the cages. But I could see lime clinging from the iron bars."

With the help of some advance information, Anderson found the evidence compelling that the lime was thrown on the prisoners. "Lime plays the devil with your breathing and nostrils," Anderson said in describing the lime punishment.

No one of the male prisoners was able to stand, Anderson said. They indicated to him by both talk and pointing at their limbs that they had lost the use of their legs. Anderson figured this was either from malnutrition or paralysis from lack of any exercise.

The only visible sanitation facility inside a cage, Anderson said, was a single wood or porcelain container about the size of a waste basket. One straw mat served as sleeping facilities for the five prisoners jammed into the cage, Anderson said.

While he did not see anyone shackled to the wall, the congressman said he saw steel plates evidently designed for ankle shackles in the cages.

After walking over the double line of tiger cages, which Anderson estimated contained about 200 men in 50 cages, the congressional party walked to the corresponding prison for the women prisoners.

There, in a separate building in the same compound, Anderson found a girl who spoke English. She said she was 18 and had been arrested while caught up in a political demonstration. She claimed she herself had not demonstrated but had been imprisoned for seven months at that time, with no bath in two months.

"She said her sister was somewhere in the compound, was sick but the girl didn't know where she was," Anderson said, "She looked pitiful. Most of the prisoners looked quite thin."

The women, too, evidently got the lime treatment as punishment because the same boxes of it were over the iron gratings. "Some women were standing or could stand," Anderson said, evidencing less severe periods of incarceration.

He estimated there were about 150 women in the tiger cages.

The Agency for International Development escort, former Los Angeles police officer Frank Walton, told the congressmen that there were about 10,000 prisoners in the whole prison complex and only about 35 of them were former prisoners of war.

Walton himself, Anderson said, had never seen the tiger cages before. As part of Walton's job as head of the AID section advising the Thieu Government's national police force and penal system, the former Los Angeles police officer said he visited Con Son once every three months.

Anderson said he told American officials "that there must be an early flight leaving Saigon" for Walton and other AID personnel "who have done such a botched up job" of overseeing prison conditions in South Vietnam.

The American government through AID funds, Anderson said, had spent as much as $100 million a year to assist the South Vietnamese national police force. The AID figure is below that for this current year, he said.

Since American money links the U.S. to the prison conditions, the findings of the congressmen are likely to embarrass the Nixon administration and provide Hanoi with fresh propaganda ammunition.

The chairman of the interior committee in the South Vietnamese assembly, Anderson said, told him that "their own efforts had not been very successful" in exposing prison treatment. The South Vietnamese assembly chairman, he said, encouraged the Americans to publicize what they had seen at Con Son.

Sickness, especially tuberculosis, is rampant at Con Son, Anderson said. Most of the male prisoners told him they had been imprisoned on the island for "many years."

One prisoner in the part of the compound outside of the tiger cages told Anderson he had been in Con Son 17 years, "received mail once a year and was bad off with TB."

"There is one doctor for the 10,000 prisoners," Anderson said, "and about 20 per cent of them have TB."

"Some of the prisoners in the tiger cages claimed to have been chained and beaten," Anderson said.

Some of the prisoners are suspected Vietcong while others were committed for criminal acts, according to Anderson's findings.

UNITED STATES TO BOOST SAIGON AID BY $100 MILLION

(By Robert G. Kaiser)

SAIGON, July 6.—After a bitter struggle within the American mission here, the United States has decided on a new and generous economic aid policy for South Vietnam. The Saigon government will soon receive at least $100 million in new American aid, informed sources said today.

According to U.S. officials here, the Nixon administration has decided not to burden the Thieu government with demands for severe and sudden economic reforms during this stage of the Vietnamization process.

Some officials here think the administration also wants to help President Thieu get re-elected next year.

Another indication of the more generous American attitude was President Nixon's private letter to President Thieu, delivered Saturday by Secretary of State William P. Rogers, in which Mr. Nixon said the U.S. would provide canned food for South Vietnamese soldiers and their families.

The letter also said a U.S.-finance housing program for Vietnamese soldiers' families would result in 20,000 new houses built in each of the next five years, according to authoritative Vietnamese sources.

The Saigon government had requested the food and housing aid, which will cost more than $50 million, as well as additional dollar aid to finance Vietnamization and to cope with rampant inflation and a gaping budget deficit. It is this dollar aid that the administration has now agreed to grant, according to official sources here.

Saigon received $365 million in economic aid in fiscal 1970 through the Agency for International Development (AID).

Adoption of the new U.S. policy will mean the abrupt transfer of the counselor of the U.S. embassy for economic affairs, Robert H. Harlan. He will be replaced by Charles Cooper, now a Rand Corp. consultant, who was economic counselor of the embassy in 1967–68.

Cooper recently visited Vietnam on a special mission for the National Security Council, and was largely responsible for pushing the more generous aid policy, official sources said. Harlan opposed the change in current policy, according to these sources.

The decision to give more financial assistance to the Thieu government means that a policy and program developed in the AID mission here for the next two years of the war will be scrapped. The old policy would have required the South Vietnamese to increase taxation sharply and to take other restrictive measures to bring Vietnam's lopsided economy into better balance.

The Vietnamese have agreed to make substantial reforms, but they are not willing to jeopardize the government's political position by sudden and harsh measures. As the minister of economy, Pham Kim Ngoc, said in an interview today, "If I tighten the belt whose belt do I tighten? The people in the cities. I don't have the administrative structure to tax the people in the countryside."

As Ngoc noted, "It is the urban population that has already paid the biggest price for rampant inflation in Vietnam." Any further penalty for these people could turn them against the government, in the opinion of many Vietnamese.

This situation indicates the change that has occurred in Vietnam since the Saigon government established control over most of the countryside last year: Where once the countryside was regarded as the crucial arena of the war against the Vietcong, now the cities and towns are seen as the key areas.

At the moment, the government is facing an ever-increaisng budget deficit with no prospect of substantial new revenues, except what American aid may provide. The government has also decided tentatively that it must increase the salaries of civil servants and soldiers by 40 to 50 per cent, to try to compensate for the huge loss of real income they have suffered during the galloping wartime inflation.

The economic situation here has become so serious that many Vietnamese and American officials regard it as the South Vietnamese government's biggest problem. Economic issues seem to be the single most potent political factor in this faction-ridden society. The population has had to cope with a general cost-of-living increase of more than 50 per cent in the last year.

The political significance of economic issues prompted the Nixon administration's decision to be more generous to South Vietnam in the future, according to official sources here.

Though some aid technicians are upset that the U.S. is not going to force Saigon to face up to the problems of its bizarre and lopsided economy, many other U.S. officials here express satisfaction that the U.S. will not try to alleviate some of Thieu's problems at this time.

The dispute over how best to assist the Vietnamese illustrates one of the generally forgotten issues raised by Vietnamization. That is, what are America's responsibilities

to this society, now that the U.S. has decided that it can not continue supporting it militarily for an indefinite period?

A popular view among officials here is that Washington should be willing to increase its financial assistance as it withdraws American soldiers. But U.S. officials here acknowledge that this attitude does not take into consideration the mood of Congress, which theoretically must appropriate any aid for South Vietnam.

"You've economized on American lives," Economy Minister Ngoc said today, "you can't economize on American dollars."

Ngoc says he realizes that U.S. aid will have to decline eventually, and "we want to replace American resources."

But the government can't do this overnight, he adds. "Political survival is the sine qua non of Vietnamization."

With this priority paramount, Ngoc said, he cannot try to solve all Vietnam's economic problems in a stroke.

"I am concerned with the problems of 1970," he said. "I'm concerned with riots in the street now." This was a reference to protesting war veterans, students and Buddhists, all of whose grievances can be traced directly or indirectly to economic conditions.

ECONOMIC DISPUTE

Referring indirectly to the dispute between economic technicians and politically sensitive officials in the American mission, Ngoc said his problems cannot be solved "by pure economics."

"It's something that has to be done in the context of Vietnam today," he said.

Ngoc promised that he would increase taxes on the rural population, control imports of luxury goods and double the amount of money collected from Vietnam's largely ignored income tax.

The minister, who was educated in the U.S. and speaks fluent English, making him a favorite of U.S. officials here, also said he hoped to help the Vietnamese economy grow.

This is a favorite theme of Vietnamese officials. In a speech Saturday night, Vice President Ky lambasted American aid because it provided massive imports without increasing domestic production in Vietnam.

UNITED STATES DENIES RESPONSIBILITY FOR "TIGER CAGES" AT CONSON

(By Robert G. Kaiser)

SAIGON, July 7.—An American spokesman said tonight that U.S. officials had been aware of "tiger cages" at the prison on Conson Island, and had "discussed this with Vietnamese officials." But the spokesman went to extraordinary length to disassociate the U.S. mission from the operation of the Vietnamese prison system.

In a press conference convened hastily at 11 p.m. Saigon time, Roy W. Johnson of the embassy information staff read a statement which said:

"The United States mission is aware of shortcomings in the corrections program here in Vietnam. Our advisory effort and assistance are designed to help the Vietnamese government, to the extent we possibly can to improve their system as rapidly and completley as possible . . ."

"Of course," the statement concluded, "the control of this system rests with the Ministry of Interior of the Vietnamese government. Specifically, there is no (American) public safety adviser stationed at Conson."

Two U.S. congressmen who visited the prison at Conson last Thursday reported in Washington yesterday that conditions there were "shocking."

Reps. William R. Anderson (D.-Tenn.) and Augustus F. Hawkins (D-Calif.) said men and women prisoners were kept in the windowless, crowded tiger cages for long periods of time. Some had lost the use of their legs, the congressmen said.

In response to a question, Johnson said here today, "I am denying [American] responsibility for tiger cages."

He added that Frank E. Walton, a former deputy police chief in Los Angeles who is the chief American public safety adviser here, and his staff have "urged strongly that a detailed investigation be made and any needed corrections be made" at Conson. Johnson said this recommendation was made before the current publicity.

Reached by telephone this afternoon, Walton said he had been instructed "to keep my lip zippered," and declined to comment further. He accompanied Reps. Hawkins and Anderson on their visit to Conson.

The tropical island, which houses more than 9,000 civil criminals and political prisoners, including suspected Vietcong, has a reputation as a sort of Vietnamese Devil's Island.

In a mimeographed fact sheet about the prison. Walton referred to its unsavory reputation, saying, "In the opinion of the corrections advisers with lengthy penology experience, Conson is not a Devil's Island but on the contrary is a correctional institution worthy of higher ratings than some prisons in the United States."

U.S. CONTRIBUTION

The embassy's prepared statement said that during the last fiscal year, the United States contributed $442,000 to the Vietnamese penal system, primarily for construction of new facilities.

Johnson said that there already had been improvements made at Conson, and "possibly by Asian standards the prisons aren't that bad."

"I think the entire situation on the island has improved," he said, "maybe not that particular area (the tiger cages) . . .

"They tell me in many ways it (Conson Prison) is ahead of many advanced penal institutions," Johnson said. He said he thought "about 500 people" were imprisoned in the tiger cages.

The U.S. public safety advisers are part of the pacification program, directed by Ambassador William Colby. Johnson was asked if Colby was concerned about the situation at Conson.

"He's been concerned about it for the last several hours," Johnson replied with a smile.

Johnson had no comment when asked if revelations about Conson's tiger cages had any effect on previous U.S. protests to North Vietnam about the treatment of American prisoners of war. He said that there were no prisoners of war in the Conson prison, only political and criminal prisoners.

LUCE'S REPORT

Meanwhile, an American representative of the World Council of Churches who speaks fluent Vietnamese released a report on his visit to the prison with Reps. Hawkins and Anderson.

The American, Don Luce, 35, was director of the International Voluntary Service organization in Vietnam for six years until 1967, when he resigned to protest the war and U.S. policy here. He has been investigating prisons in South Vietnam for several months, and tried unsuccessfully to get to Conson before the two congressmen took him along as an interpreter.

The new charges about conditions on Conson came at a time when prison conditions and torture by police have became a public issue in Saigon. The issue has been pressed by students, including demonstrators from Saigon University and a group of young people jailed several years ago who were recently released from Conson.

Torture and mistreatment of prisoners is "taken for granted" by most Vietnamese, one thoughtful editor observed tonight. Such mistreatment has been common at least since the days of French domination, Vietnamese say.

In recent weeks, both President Thieu and Premier Tran Thien Khiem have made statements interpreted by Vietnamese as admissions that Saigon police had tortured students who were arrested during demonstrations this spring. The government has promised to bring half a dozen policemen to trial on charges of torturing students.

Five Vietnamese students recently released from Conson testified last month before a committee of the Vietnamese House of Representatives.

Food in the tiger cage, they said, consisted of rice, often riddled with sand and pebbles, and a form of dried fish which "people in South Vietnam often buy . . . to use as compost for plants." To supplement this diet, they added, they ate leaves, grass, fleas and beatles.

"For toilet paper," they said, "we had to use a small scrap of cloth ripped from a shirt or pants pocket, which we carefully washed out with urine so it could be used again and again."

These former political prisoners were all avowed opponents of the regime, and they expressed pride at their defiance of the authorities.

Luce, in his report, said prison officials attempted to hide the tiger cage section of the prison from the congressmen. But former inmates that Luce had interviewed had told him where the small door leading to the section was located.

After interviewing men in one section of tiger cages, the visitors moved to an adjacent building where they found female prisoners in similar conditions. Luce wrote this description of an exchange with one prisoner.

"'How old are you,' I asked one beautiful girl.

"'Eighteen.'

"'Are you a student?'

"'No, I am a laborer. I worked in a factory.'

"'Why were you arrested?'

"'I was in a peace demonstration.'

"'Are you a Communist?'

"At this, the young girl laughed at what seemed to her an irrelevant question.

"'No, I'm not a Communist. I am not concerned about politics. I am concerned about peace.'

"'Will you salute the flag?' The guard who was standing beside me demanded.

"'No! no, I will not salute your flag which represents all the things you have done to me,' she answered defiantly.

"'Then you are a Communist and should be killed,' the guard retorted in equally bitter tones . . ."

VIET PRISON WHITEWASH IS CHARGED

(By George C. Wilson)

The congressional staff member who helped expose the imprisonment of South Vietnamese in "tiger cages" yesterday accused the majority of a special House committee of trying to cover up the situation.

The staff member, Thomas R. Harkin, a 30-year-old former Navy jet pilot, resigned from his committee post yesterday a few weeks before expiration of his tenure.

Harkins also accused his former congressional bosses of settling for generalized military briefing in Vietnam rather than ferreting out the facts.

His criticism came as the Thieu government's treatment of prisoners threatened to become a political issue in this country despite the State Department's effort to dissociate the Nixon administration from it.

Harkin, in an unusual press conference yesterday, said there are definitely some North Vietnamese or Vietcong prisoners of war at the Conson Island prison, which he and Reps. William R. Anderson (D-Tenn.) and Augustus F. Hawkins (D-Calif.) inspected on July 2.

Harkin's claim, if borne out, may prove an embarrassment to the United States, which

has repeatedly criticized Hanoi for its treatment of American prisoners of war.

Sen. Charles E. Goodell (R-N.Y.), in a letter yesterday, asked President Nixon to tell President Thieu that such "inhumane prison conditions" are not condoned by the United States.

The mistreatment of American prisoners of war in North Vietnam and the mistreatment of "political prisoners in South Vietnam" are "equally reprehensible," Goodell said.

Anderson, as part of his own report issued yesterday on the committee's Vietnam field trip, said that since the United States government has involved itself in Saigon's prison system through money and advisers, it must "insist on immediate prison reforms in the name of humaneness and immediate reforms to the South Vietnamese legal processes."

Under the present authority to lock up people for two years without due process, Anderson said, the Saigon government is bound to lock up innocent people.

In a separate part of his report, Anderson recommended replacing Ellsworth Bunker as Ambassador in Saigon and consideration of a South Vietnamese navy blockade of the North Vietnamese port of Haiphong.

In Saigon, an American Embassy spokesman insisted yesterday that there were no prisoners of war in Conson. Anderson said officials of the Agency for International Development had told him there were about 35 former POWs there who had committed crimes since their capture.

While Harkin conceded that he did not know how many POW's were in prisons like Conson, he said one South Vietnamese attempt to keep the tiger cages secret illustrated the problem of finding out the truth.

He said the Americans probably would never had gained access to the tiger cages if a student who had been imprisoned there had not diagrammed the layout and secret door before they left Saigon.

So secretive were the Vietnamese jailers, Harkin said, that they even changed the numbers on the various compounds at Conson—a "devil's island" prison built 60 miles off the coast of South Vietnam by the French.

These were other developments yesterday stemming from the visit by 12 House members to Vietnam, including the tour of Conson:

Harkin charged that the committee conducted only a "superficial" study of Vietnam during the two-week trip, including 25 formal military briefings "in the 11 days over there." He said the resulting "whitewash and snow job"—the committee report—contrasted sharply with the advance promise of Committee Chairman C. V. Montgomery (D.-Miss.) that the group "would not be led around by the nose" in obtaining the facts in Vietnam.

Harkin further charged that the majority of the committee tried "to suppress the most significant finding of the trip"—the conditions at Conson. One member, he said, asserted "it would be highly embarrassing" if the findings became public.

Montgomery said the whitewash charge "is completely ridiculous and irresponsible. Quite to the contrary, planned itineraries were held to a minimum." As for Conson, Montgomery said Harkin had "blown the matter out of proportion" and the committee majority's concern was based on the impact of the findings on Hanoi's treatment of American prisoners.

Rep. Hawkins filed his own report on the Vietnam trip yesterday. It amounted to a dissent from the majority's optimistic view on winding down the war and bringing peace to South Vietnam.

He said the United States is not winning the war or the support of the people of South Vietnam. American policy is aimed more at halting Red China than achieving self-determination for South Vietnam, he said.

The American invasion of Cambodia is viewed by many as "another example of Western imperialism," said Hawkins. He questioned the military success of the Cambodian operation, saying that the Communists who were pushed out of the border sanctuaries now occupy nearly half of Cambodia.

DROPOUT PREVENTION PROGRAM

Mr. MURPHY. Mr. President, as the author of the dropout prevention program, which resulted in the first performance contract in the country, on June 23, 1970, I praised OEO's decision to further test this performance contract concept nationally.

The dropout prevention program helped to usher in two concepts that will become household words in education—the concept of accountability and the educational audit.

Yesterday, the Office of Economic Opportunity announced the selection of performance contractors and the cities chosen to participate in this multi-million-dollar experiment. I was particularly pleased that Fresno, Calif., was one of the cities selected. The contractor at the Fresno project will be the Westinghouse Corp.

Mr. President, I ask unanimous consent that the press release and other data from OEO be printed in the RECORD.

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

OEO SELECTS PERFORMANCE CONTRACTORS IN EDUCATIONAL EXPERIMENT

The Office of Economic Opportunity announced today the selection of 18 school districts and six private education firms to take part in the Agency's experiment to test new methods of improving reading and mathematics skills through performance contracting.

Dr. John O. Wilson, Assistant Director for Planning, Research and Evaluation, said at a news conference in Washington that the school districts will participate under contracts totaling $5.6 million.

The districts, located in 16 states, will in turn subcontract with the private firms for operation of the programs. Wilson said. The experiment will last for one year.

"Based on the educational innovations currently being developed by private industry, the Office of Economic Opportunity has decided to undertake this major experiment," Wilson said.

"We are hopeful that the results may provide evidence that society has at its disposal the means for upgrading the basic learning skills of students whose proficiency levels are well below their peers, in short, whether we are able to guarantee equality of results."

Wilson explained that the six education firms will employ different approaches, with payment to contractors based on their performance, i.e. their success in improving the reading and math skills of under-achieving students they instruct.

The private firms were selected on a competitive basis as representing a range of innovative techniques, including: incentives to students, teachers, parents and schools; teaching machines, programmed learning techniques, and the reorganized use of existing materials.

The contracts being announced today will involve about 27,000 students in grades 1 through 3 and 7 through 9. Approximately 1,000 more students will take part in projects to assess education incentive systems only through three contracts to be announced later this summer.

An earlier contract in the amount of $526,000 was awarded to Educational Turnkey Systems Inc. of Washington, D.C. to provide management support to the Agency in planning the experiment design, selecting participants, developing and monitoring on-site reporting procedures and providing technical assistance to the participating schools.

PERFORMANCE CONTRACTORS AND SCHOOL DISTRICTS

Alpha Learning Systems of Albuquerque, New Mexico, will serve as the subcontractor for Grand Rapids, Michigan, Hartford, Connecticut, and Taft, Texas.

Learning Foundations Inc. of Athens, Georgia, will conduct programs in Bronx School District No. 9, New York City, the Duval County Schools, Jacksonville, Florida and Hammond, Indiana.

Plan Education Centers of Little Rock, Arkansas, will serve as the subcontractor for the Clarke County Schools, Athens, Georgia, McNairy County Schools, Selmer, Tennessee and Wichita, Kansas, Public Schools, Unified District 259.

Singer/Graflex Inc. of Rochester, New York, will conduct programs in the McComb, Mississippi, Municipal Separate School District; Portland, Maine and Seattle, Washington.

Westinghouse Learning Corporation of Albuquerque, New Mexico, will be the subcontractor for the Fresno, California, City Unified School District, the Clark County School District, Las Vegas, Nevada, and The School District of Philadelphia, Pennsylvania.

Quality Educational Development of Washington, D.C., will operate programs in Rockland, Maine, the Anchorage, Alaska, Borough School District and the Dallas, Texas, Independent School District.

BACKGROUND, AN EXPERIMENT IN PERFORMANCE CONTRACTING, OFFICE OF ECONOMIC OPPORTUNITY

INTRODUCTION

Past and present poverty programs have stressed the marginal provision of compensatory educational services. They have been a piecemeal offering of more funds to poor school districts, additional books and tutors, summer study programs, smaller class size, and counseling to improve "attitudes" toward learning. Until recently, it has been assumed that positive results would follow from this provision of traditional educational inputs.

In light of the rapid development by private industry of innovative educational techniques, the Office of Economic Opportunity has decided to mount a major experiment designed to test the effectiveness of performance contracting in education. The purpose of the experiment is to examine a variety of techniques (both technological and incentive based) in order to determine the extent to which such techniques can improve the basic reading and math skills of students whose performance in these areas has been below the general achievement level. Results may provide evidence that the society has at its disposal the means for upgrading the basic learning skills of students whose proficiency levels are well below their peers. If such results accrue, they would permit students to take full advantage of the educational system in the United States, and would enhance their abilities to compete on an equal footing with their contemporaries.

THE EXPERIMENT

Various educational innovations that show great promise are being developed by private industry. The key to these innovations is accountability; that is, the firms are paid only to the degree to which they are successful in improving the reading and mathematics skills of the youngsters they instruct. In effect, the techniques promise that, for this first time, education will be able to promise "equality of results"; that ways can be found to bring poor children up to a level of achievement comparable to that of their nonpoor classmates, and

that those providing the education will not be paid if "equality of results" is not provided.

The experiment will include 21 school districts, chosen to represent a diversity of participants in terms of geographic distribution, urban and rural settings, and ethnicity. Most of the students will come from low-income homes and will include blacks, Mexican-Americans, Indians, Puerto Ricans, Eskimos, and whites. A total of 28,000 students in grades one through three and seven through nine will participate in the experimental and control groups, so that the experiment will be large enough to test, in a statistically significant fashion, the variety of techniques in a range of settings. Students in the control, comparison, and special programs groups will be taught by traditional classroom methods or by specialized reading and math teachers now employed by some districts.

Three districts, in addition to the 18 announced today, will be selected in a few weeks to participate in an incentives-only group. For this group, the effects of incentives alone will be tested, so no private educational firm will be involved. Instead, the Office of Economic Opportunity will contract directly with the schools or a teachers union to develop a system that will involve both material and behavioral rewards.

Measurement of reading and math skills for all children in the experiment will be conducted by an independent contractor, not connected with the performance contracting firms or the school districts. The skills of each student will be tested at the beginning of the experiment, periodically throughout the school year, and six months after the experiment has been completed. This last testing will permit assessment of the permanence of the gains which may have been realized during the special instructional period.

On the basis of these results, the Office of Economic Opportunity will be able to make judgments as to which specific techniques are most effective under the various sets of circumstances. The Office of Economic Opportunity is preparing to undertake a separate, systematic investigation of the policy implications that may result from this experiment.

The administrative structure of the experiment, the dimensions of the experiment, an explanation of the various contractors' approaches, and other details of the experiment are set forth in the charts that follow.

Chart II: Experimental Design

I. Control group (omitted from Record).
II. Comparison group.
III. Special program group.
IV. Technology-plus-incentives group.
A. School.
B. Teachers.
C. Children.
V. Incentives-only group.

Chart III: Dimensions of the experiment

Number of school districts	21
Performance contract basis	18
Incentives-only basis	3
Number of students (about)	28,000
Technology-plus-incentives group (about)	10,800
Incentives-only group (about)	1,080
Control group (about)	11,880
Comparison group (about)	2,700
Special program (about)	1,000
Number of performance contracting firms	6
Cost (about) (million)	$6.5

Chart IV: Value of contracts

School district and contractor:	*Contract value*
Portland, Me., Singer/Graflex Corp.	$308,184
Rockland, Me., Quality Education Development	299,211
Hartford, Conn., Alpha Systems, Inc.	320,573
Philadelphia, Pa., Westinghouse Learning Corp	296,291
McNairy County (Selmer), Tenn., Plan Education Centers, Inc	286,991
McComb, Miss., Singer/Graflex	263,085
Duval County (Jacksonville), Fla., Learning Foundations, Inc.	342,300
Dallas, Tex., QED	299,417
Taft, Tex., Alpha	243,751
Hammond, Ind., Learning Foundations	342,528
Grand Rapids, Mich., Alpha	322,464
Fresno, Calif., Westinghouse	299,015
Seattle, Wash., Singer/Graflex	343,800
New York (Bronx), N.Y., Learning Foundations	341,796
Clarke County (Athens), Ga., Plan Education	301,770
Las Vegas, Nev., Westinghouse	298,744
Wichita, Kans., Plan Education	294,700
Anchorage, Alaska, QED	444,632
Total	5,649,252

DESCRIPTION OF CONTRACTORS' APPROACHES

Alpha Learning Systems.—This company minimizes the use of teaching machines; it uses programmed texts and reorganized existing materials. It utilizes an intensive incentive system for both students and teachers. The incentives to students are geared to whatever interests them, be it material gifts, trading stamps, time off, or whatever. Additionally, the learning environment itself is changed with the addition of carpeting and draperies and a separate room used for relaxation.

Singer/Graflex, Inc.—This company uses some teaching machines and audio-visual material and para-professionals, in addition to professional teachers. This approach calls for intensive use of incentives to students, teachers, parents, and schools.

Westinghouse Learning Corporation.—This company's approach involves a moderate use of teaching machines, tape cassettes, other audio-visual materials, and programmed texts. A unique feature of this approach is the involvement of computer managed instruction and a totally individualized, behaviorally based program. That is, according to performance or diagnostic tests, the computer or managed instruction system prescribes the student's lessons and materials to be used. Extensive use is made of individual behavioral objectives. Material incentives to students are an integral part of this approach. Additionally, the learning environment is modified to reflect a much more relaxed and less institutional atmosphere.

Quality Educational Development.—This contractor will employ fairly heavy use of audio-visual teaching machines and tape cassettes as programmed texts. Material incentives will be provided for students and teachers according to students' performance.

Learning Foundations.—This company's approach involves an extremely heavy use of auto-tutor teaching machines. Para-professionals, rather than certified teachers, are employed to monitor students' performance. Also, incentives that gradually change from extrinsic and tangible to intrinsic and attitudinal in nature, will be given to students and teachers. Computerized prescribed instruction is also used.

Plan Education Centers.— This company's approach employs very little hardware and very few extrinsic incentives to students. The contract uses programmed texts and existing instructional materials and believes that incentives are intrinsic to the learning system. Heavy reliance is placed on diagnostic testing and placement.

CHART V.—SUMMARY OF APPROACHES

Contractor	Utilization: Incentives	Teaching machines	Reorganized texts/ workbooks
Alpha Learning Systems	Heavy	Light	Heavy.
Singer/Graflex	do	Medium	Medium.
Westinghouse Learning Corp	Medium	do	Heavy.
Quality Educational Development	do	do	Medium.
Learning Foundations	Heavy	Heavy	Light.
Plan Education Centers	Light	Light	Heavy.

CHART VI.—CHARACTERISTICS OF SELECTED DISTRICTS

	Urban: White	Black	Mexican-American	Other	Rural: White	Mexican-American	Black
Hartford		X					
Rockland					X		
Portland		X					
Bronx		X		X[1]			
Philadelphia	X	X					
Grand Rapids	X						
Hammond	X	X					
McComb							X
Selmer					X		
Duval County		X					
Clarke County					X		X
Dallas		X	X				
Taft						X	
Wichita	X	X					
Seattle	X				X		
Las Vegas	X						
Fresno	X	X	X				
Anchorage		X		X[2]			

[1] Puerto Rican.

[2] Eskimo.

PERFORMANCE CONTRACTING

District	Location	Contact	Amount of contract	Contractor
Anchorage Borough School District	Anchorage, Alaska	Joe D. Montgomery, acting superintendent, 670 Fireweed Lane, Anchorage 99503, 907-227-6652.	$444,632	Quality Education Development.
Bronx District No. 9, New York City Public Schools	New York, N.Y.	Mr. Anton J. Klein, 212-588-6708	341,796	Learing Foundations.
Clark County School District	Las Vegas, Nev.	Dr. Parker G. Woodall, director of Federal and special programs, 2832 East Flamingo Rd., Las Vegas, Nev. 89109, 702-736-5011.	298,744	Westinghouse Learning Corp.
Clarke County School District	Athens, Ga.	Dr. Charles McDaniel superintendent, 419 Pope St., Athens 30601, 404-548-1343.	301,770	Plan Education Centers, Inc.
Dallas Independent School District	Dallas, Tex.	Mr. Rogers L. Barton, assistant superintendent, department of planning and research, 3700 Ross Ave., Dallas 75204, 214-824-1620 x401.	299,417	QED.
Duval County Public Schools	Jacksonville, Fla.	C. Hines Cronin, supervisor of Federal programs, Duval County Courthouse, 330 East Bay St., Jacksonville 32202.	342,300	Learning Foundations.
Fresno City Unified School District	Fresno, Calif.	Arthur G. Carlson, director, State and Federal acts 305 East Belgravia Ave., Fresno 93706, 209-266-3560.	299,015	Westinghouse.
Grand Rapids Public Schools	Grand Rapids, Mich.	Norman Weinheimer, superintendent, Grand Rapids, 616-456-4700.	322,464	Alpha Learning Systems.
Hammond Public Schools	Hammond, Ind.	Dr. Edward Ignas, director of Federal projects, 5935 Hohman Ave., Hammond 46332.	342,528	Learning Foundations.
Hartford Public Schools	Hartford, Conn.	Robert J. Nearine, coordinator of evaluation, 249 High St., Hartford 06103, 203-527-4191.	320,573	Alpha.
McComb Municipal Separate School District	McComb, Miss.	J. D. Prince, superintendent, Box 868, McComb 39648, 601-684-4661.	263,085	Singer/Graflex.
McNairy County Schools	Selmer, Tenn.	Julius S. Hurst, superintendent, Selmer 38375, 901-645-3267.	286,991	Singer/Graflex.
The School District of Philadelphia	Philadelphia, Pa.	Thomas C. Rosica, director, Federal programs, 21st St. south of the Parkway, Philadelphia 19103, 215-448-3441.	286,991	Westinghouse.
Portland Public Schools	Portland, Maine	Dr. Rodney E. Wells, superintendent, 389 Congress St., Portland, Maine 04111, 207-744-8221 x260.	308,184	Singer/Graflex.
Rockland Public Schools	Rockland, Maine	Bruce J. Kinney, superintendent, 5 Grace St., Rockland, Maine 04841, 207-596-6629.	299,211	QED.
Seattle Public Schools	Seattle, Wash.	Forbes Bottomly, superintendent, 815 Fourth Ave. North, Seattle 98109, 206-587-3414.	343,800	Singer/Graflex.
Taft Public Schools	Taft, Tex.	Carl Waddle, superintendent, Taft, 512-528-2636	243,751	Alpha.
Wichita Public Schools, Unified District No. 259	Wichita, Kans.	Dr. Ralph Walker, director of research division services, Administration Building, 428 South Broadway, Wichita 67202, 316-AM7-8311.	294,700	Plan Education.

TO CLEAR UP THE SENSOR PROGRAM

Mr. GOLDWATER. Mr. President, there has been some, but not much, confusion created on the floor of the Senate, first by remarks made by the distinguished Senator from Wisconsin (Mr. PROXMIRE) relative to a so-called "electronic battlefield," a few comments which were made by me relative to this statement, and the interpretation of my remarks by Senator PROXMIRE that they constituted charges against him for violating classification.

I believe I have since made it abundantly clear that the material he placed in the RECORD could not have been classified because it was material available to every Senator; in fact, my files contain every bit of it, and it was obtained through public channels.

Because the distinguished Senator referred, as I said before, to an "electronic battlefield" and the Defense Establishment has no such title; because there were several inferences that the costs were getting out of hand; and because of the general confusion that I think the entire exchange has created, I have asked the Air Force to prepare for me a sanitized version of just what the sensor program is. That paper is now available, and I ask unanimous consent that it be printed at this point in the RECORD.

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

SENSOR PROGRAM

Unattended ground sensors were originally developed for the detection of vehicular and personnel infiltration. Since their successful application in the support of the defense of Khe Sanh they have come into wide use in South Vietnam. Fundamentally, these are equipments which monitor and report on the enemy's movements but they are not a weapons system. We do not have, therefore, an "electronic battlefield" but another type of surveillance target acquisition capability which is now being used extensively by both U.S. and South Vietnamese forces.

KEY FACTS

1. Congress has been briefed repeatedly concerning this program in closed sessions by Secretary of Defense, DDR & E, Director, DCPG, and Chiefs of Services. Many Congressmen have also reviewed sensor operations in Southeast Asia.

2. Unattended ground sensors and associated relay and readout capabilities have been developed and been deployed to Southeast Asia. During the period FY 1967-FY 1970 only $877 million have been committed in support of this operational program. Over $600 million of authorized funds have been returned for use on other critical DOD requirements. In lieu of cost growth, there has been significant cost reduction.

3. Projected annual operating costs for this unattended ground sensor capability are less than $200 million including RDT&E, Procurement, and Operation and Maintenance funds.

4. A system called the "electronic battlefield" does not exist nor is it programmed in DOD.

5. Sensors are solely surveillance devices.

6. A discrimination capability for sensors was viewed as too costly to attain and, more importantly, contradictory to the policy of confirmation and control by combat commanders prior to the application of fire power.

7. Sensor technology has permitted economy of force, minimized surprise by the enemy, denied the enemy the sanctuaries of jungle and darkness and has reduced U.S. casualties.

8. The potential for technical and tactical countermeasures by the enemy were prime reasons for the program classification.

Comment 1

"I am informed that the Pentagon has already spent some $2 billion on a secret weapons system called the electronic battlefield. Some estimate its ultimate cost at $20 billion or more. To my knowledge this weapons system, as a weapons system, has never been directly authorized in the annual procurement bill in which major weapons systems are examined, judged, and passed on by the House and the Senate."

Answer 1

It is not known who has informed Senator Proxmire of the current costs and projected costs for the current capability existing in theater in sensor technology. However, the official costs have been furnished to both Houses of Congress and have been available to Senator Proxmire. This has been done over the past several years as noted in Attachment 1 and more recently has been summarized by the briefing of Lieutenant General Lavelle, as noted in Attachment 2.

It should be noted that the costs of this particular program have been significantly lower than the funds budgeted and these reductions in program expenditures have also been briefed to the Congressional Committees as noted in Attachment 3. Since the last briefing to Congress there has been a continued effort to carefully insure the most cost effective approach to development and acquisition and this has resulted in additional savings which have now been returned to the Department of Defense for other urgent uses. Dollars returned are summarized in Attachment 3.

Of the present $1,383.1 million program from inception through FY 1970, a total of $1,364.7 million has been committed to date. The total actual costs of the program to the current time are summarized in Attachment 4. With respect to the items and technology noted by Senator Proxmire (remote sensors and ancillary items less munitions and one-time military construction costs), the FY 1967-1970 program totals $877 million rather than the $2 billion indicated by the Senator. These dollars are shown in Attachment 5.

It is true that this program has not been briefed to Congress as a specific "weapons system" for it is not a weapons system but a broad program comprised of a collection of equipment designed to enhance our detec-

tion capability in the combat arena. The individual sensing devices have been used to monitor the enemy's use of roads and trails, to monitor his attempts to establish ambush points, to monitor his attempts to mine roads and trails, to monitor sapper attempts to infiltrate our defenses and to monitor and preclude attacks on bases, posts and fire support centers.

The term "instrumented/electronic battlefield" is, in fact, loose rhetoric—a Madison Avenue approach. The program, as noted earlier, consists of sensing devices, relay and readout equipment which have resulted in U.S. Commanders being able to effect economies of force, to obtain early warning/alerting resulting in protection of our forces, and permitting the use of fewer patrols—substituting sensors for personnel—with the end result of less exposure of American soldiers and a lower casualty rate.

BRIEFING BEFORE CONGRESS ON THE DEFENSE COMMUNICATIONS PLANNING GROUP PROGRAM

Committee	Date	Briefer
House and Senate Armed Services and Appropriations Committees (reprograming).	Nov. 8, 1966	OSD Comptroller.
Combined Meeting of Senate Armed Services and Senate Appropriations Committee.	Jan. 23, 1967	Secretary of Defense.
Senate Armed Services Committee (Chairman Russell).	Jan. 27, 1967	Dr. Foster.
Chairman DOD Subcommittee of House Appropriations Committee (Mr. Mahon).	January 1967	Deputy Secretary of Defense Vance.
Congressman Sykes of DOD Subcommittee of House Appropriations Committee.	Feb. 24, 1967	General Starbird.
Senator Russell of Senate Appropriations Committee	Mar. 16, 1967	Do.
House Armed Services Committee (Chairman Rivers)	Sept. 20, 1967	Dr. Foster/General Starbird.
Staff of Senator Stennis	Jan. 25, 1968	General Starbird.
House Armed Services Committee	Apr. 10, 1968	Dr. Foster/General Lavelle.
DOD Subcommittee of Senate Committee on Appropriations.	May 27, 1968	Do.
Preparedness Investigating Subcommittee of Senate Armed Services Committee.	July 30, 1968	Colonel Douglas.
Staff Senate Armed Services Committee	April 1969	Do.
DOD Subcommittee of Senate Committee on Appropriations.	Sept. 17, 1969	General Lavelle.
Staff DOD Subcommittee of House Appropriations Committee.	Mar. 18, 1970	Colonel Douglas.
R. & D. Subcommittee of House Armed Services Committee.	Mar. 24, 1970	General Lavelle.
DOD Subcommittee of House Appropriations Committee.	Mar. 25, 1970	Do.
R. & D. Subcommittee of Senate Armed Services Committee.	Mar. 31, 1970	Colonel Douglas.

SENSOR PROGRAM—SERVICE SUMMARY

[In millions of dollars]

	Fiscal year 1967	Fiscal year 1968	Fiscal year 1969	Fiscal year 1970	Fiscal year 1971	5-year total
Army	165.6	223.7	169.2	99.5	99.3	757.3
Navy	65.4	40.6	24.4	24.1	25.9	180.4
Air Force	94.1	138.6	221.7	161.9	161.0	777.3
DCPG	7.3	22.4	16.5	14.7	15.7	76.6
Total	332.4	425.3	431.8	300.2	301.9	1,791.6
Four-year total				1,489.7		
Budget request	0	258.5	691.5	637.6	314.0	1,901.6
Supp/Emer/Contg	302.1	18.9	1.5	0	0	322.5
Reprogram	84.5	274.2	2.0	0	0	360.7
Budget review	0	0	−.1	−224.2	−12.1	−236.4
Total authorized	386.6	551.6	694.9	413.4	301.9	2,348.4
CDPG returned	−54.2	−126.3	−263.1	−113.2	0	−556.8
New program	332.4	425.3	431.8	300.2	301.9	1,791.6
RECAP FUNDS RETURNED [1]						
Prior to Feb. 10, 1970	54.2	126.3	263.1	113.2	0	556.8
Subsequent to Feb. 10, 1970	2.4	1.3	20.1	82.8	0	106.6
Total	56.6	127.6	283.2	196.0	0	663.4

Note: Total program as briefed to R. & D. Subcommittee of House Armed Services Committee on Mar. 24, 1970, the DOD Subcommittee of House Appropriations Committee on Mar. 25, 1970, and R. & D. Subcommittee of Senate Armed Services Committee on Mar. 31, 1970.

[1] Total refunds as briefed to R. & D. Subcommittee of House Armed Services Committee on Mar. 24, 1970 the DOD Subcommittee of House Appropriations Committee on Mar. 25, 1970, and R. & D. Subcommittee of Senate Armed Services Committee on Mar. 31, 1970.

	Fiscal year 1967	Fiscal year 1968	Fiscal year 1969	Fiscal year [1] 1970	4-year total
Army:					
R.D.T. & E	20.7	30.0	21.8	9.2	81.7
Procurement	144.9	192.4	131.4	24.2	492.9
O. & M			7.5	7.6	15.1
Total	165.6	222.4	160.7	41.0	589.7
Navy:					
R.D.T. & E	16.0	14.7	9.7	6.0	46.4
Procurement	43.8	14.3	13.0	12.3	83.4
O. & M	5.6	11.6	1.7	2.2	21.1
Total	65.4	40.6	24.4	20.5	150.9
Air Force:					
R.D.T. & E	9.0	23.5	20.0	12.3	64.8
Procurement	61.5	93.5	157.2	68.0	380.2
O. & M	3.5	21.6	32.9	43.2	101.2
Milcon	17.7				17.7
Total	91.7	138.6	210.1	123.5	563.9
DCPG:					
R.D.T. & E	5.9	20.6	15.0	12.6	54.1
O. & M	1.4	1.8	1.5	1.4	6.1
Total	7.3	22.4	16.5	14.0	60.2
Grand total	330.0	424.0	411.7	199.0	1,364.7

[1] Committed to date. An additional $18,400,000 is available for the fiscal year 1970 approved program.

ON-GOING PROGRAM COSTS

[In millions of dollars]

	Fiscal year 1967	Fiscal year 1968	Fiscal year 1969	Fiscal year 1970	4-year total
R.D.T. & E	34.8	70.4	65.6	41.2	212.0
Procurement	90.0	106.0	242.9	82.0	520.9
O. & M	10.5	35.0	43.6	55.0	144.1
Total	135.3	211.4	352.1	178.2	877.0

Note: Excludes $17,700,000 military construction (1-time cost), $36,100,000 for development of munitions (fiscal year 67-69), and $452,300,000 for procurement of munitions (fiscal year 1967-70).

Comment 2

"There are other ramifications as well. Among these are the fact that the system involves vast amounts of complicated electronics equipment—sensors, lasers, computers—which have been the major cause of cost overruns, late deliveries, and failures to meet specifications on a large number of other major weapons systems."

Answer

The use of sensors in a surveillance role is not a complex operation. Use is made of a computer at only one installation although the equipments are used in support of U.S., and RVN forces as well, throughout all of South Vietnam.

An evolutionary approach to the development of sensors has insured an incremental, step-by-step attainment of more effective hardware which has met the operational requirement. In fact, rather than a program involving significant cost growth such as that inputed in the comment, this program has been managed in such a manner as to bring about repetitive return to DOD of authorized budget funds.

Specifically funds returned by Fiscal Year are:

(In millions)

FY 1967	$56.6
FY 1968	127.6
FY 1969	283.2
FY 1970	196.0

This program has not suffered cost overruns—but rather cost *under-runs* in the total of $663.4 million.

Comment 3

"In addition to all of this, the electronic battlefield includes items which are difficult to control and which may well result in indiscriminate killing. . . .

"... Designed to kill anything that moves, it cannot discriminate between enemy soldiers and women and children. Despite the

fact that as a weapons system it has never been specifically authorized, it has already cost the American taxpayer almost $2 billion. Some experts predict it will ultimately cost $20 billion. . . ."

Answer

Apparently "electronic battlefield" has a connotation to Senator Proxmire that we have no knowledge of, and which does not exist. The sensor equipment is not difficult to control and is employed as an integral part of existing command and control procedures. No counter action, based on sensor information, is ever tasked without the primary and essential element of the trained human judgment factor being exercised at multiple echelons of command. Fire power, delivered in reaction to sensor intelligence is governed by the same controls and rules of engagement applicable to any other reaction.

The equipment is in no way difficult to control. However, the pains taken confound the enemy's efforts to develop countermeasures, it is imperative that we retain the current degree of secrecy.

In addition, please see Comment 5 below for a discussion of the ability of the sensor system to discriminate between friend and foe.

Also, please see Comment 1 above for a discussion of the program's cost.

Comment 4

"With regard to the electronic battlefield, I think it is safe to say that most Congressmen have never heard of it. Like Topsy, it just grew. It exemplifies, as few other examples can, why the military budget is out of control.

Answer

As outlined in Comment 1 above, the Senate and House Armed Services Committees and DOD Subcommittees of the Appropriation Committees, as well as their staffs, have been briefed several times on the anti-infiltration and surveillance program. This has involved individual briefings—where requested—as well as the usual budgetary presentations.

The resources for the program are programed and budgeted by the Military Departments except for the costs of DCPG Headquarters (Operation and Maintenance and R.D.T. & E. appropriations only) which is part of the Defense Agency's budget. These overall costs have been identified repeatedly for Congressional review since the beginning of the program.

Comment 5

"Designed to kill anything that moves, it cannot discriminate between enemy soldiers and women and children."

Answer

The surveillance equipments—as they have developed and are in use today—are sensors which function as an extension of the battlefield commander's eyes and ears. They supplement, not supplant, other sources of intelligence available to today's troop leaders. Sensors are just that—they sense. No counter-action, based on sensor information, is ever tasked without the primary and essential element of the trained human judgment factor being exercised at multiple echelons of command.

The fact that current sensors cannot, of themselves, discriminate between friend and foe has been well known and constantly considered throughout the development of the system. Experience has proven true, an early judgment, that the commander's knowledge of the battlefield, enemy tactics, patterns of activities, and the nature of the area of operations were all that was necessary to make the sensor system operationally effective. In addition, in the kind of war we are fighting in Vietnam, the only positive identification of friend or foe results from face to face confrontation and personal identification.

To have designed the system to provide identification of friend or foe would have vastly increased its complexity, development time and costs. To have substituted some degree of identification through technology for the human judgment of the responsible commander was and is not acceptable. Reaction to sensor derived targets is therefore controlled under the same rules of engagement as recreation to any other intelligence.

As a result of the decision not to have an identification capability, but to rely instead upon reasoned judgment, the system was deployed in a much shorter time span, with a consequent saving in money and materiel. Early fielding of the system allowed for reduced exposure of US troops thus resulting in a saving of untold lives.

Comment 6

"Despite the fact that as a weapons system it has never been specifically authorized, it has already cost the American taxpayer almost $2 billion. Some experts predict it will ultimately cost $20 billion. . ."

Answer

Sensor technology and sensing equipment as such have never been considered a weapon system. However, the sensor development, procurement, and support program has been specifically authorized by appropriate Committees of both Houses. The commitments to date total $1.36 billion. In fact, the specific costs of the surveillance portion of the program, referred to by Senator Proxmire, have been only $877 million, not $2 billion as identified in attachment 6 to Comment 1.

An estimate of recurring development and procurement costs in future years is less than $200 million per year. The source of the prediction of some unknown "experts" of $20 billion is not known nor can any logical basis for such a prediction be determined or supported.

Comment 7

"Although known by various code names, it has been called the automated battlefield by General Westmoreland. Among industry officials, it is more commonly known as the electronic battlefield. By any name, it is nothing less than an effort to develop a totally new method of waging ground warfare. Essentially, it is a system of sophisticated sensors designed to assist in the detection of enemy movements over wide areas. The system involves the use of data links, computer-assisted intelligence evaluation and automated fire control. In a word, it is extremely complicated electronic equipment including:"

Answer

The "automated/electronic battlefield" is a coined phrase, not a weapons system, used generally to cover the classified unattended ground sensors and their use. It is true these sensors were designed to assist, and do in fact assist, in the detection of enemy movements over wide areas. At one installation, a computer and electronic display equipments are used. Their use is solely for assimilating the large amount of data generated, and to present salient facts to trained operators for their evaluation on which to base subsequent recommendations to their superiors.

"First, whole families of acoustic seismic, and magnetic devices to detect voices, footfalls, guns, and enemy troop carriers;" Captured enemy documents, and interrogation of enemy prisoners of war, indicate that the enemy believes the primary means of detection is acoustic. They always refer to sensors as "listening devices."

"Second, high-powered lasers to illuminate targets with visible and invisible energy designed to guide bombs, rockets, and anti-tank weapons."

The use of lasers is probably accurate, but lasers are not part of the surveillance program.

"Third, millions of tiny 'button bomblets' that give a sonic or radio signal to remote receivers, pinpointing the position of anything that steps on them; and . . .

"Fourth, elaborate electronic command and control displays that pull together all data gathered by the electronic network and automatically show troops movement over vast areas of terrain."

At one installation a computer and electronic display equipments are used. Their use is solely for assimilating the large amount of data generated and to present salient facts to trained operators for their evaluation on which to base subsequent recommendations to their superiors.

Comment 8

"In short, the electronic battlefield involves an entirely new concept in ground warfare, and if widely adopted, will require fundamental changes in the way our men fight.

"Yet, this revolutionary weapons system on which as much as $2 billion has already been spent, and upon which as much as $20 billion may well be spent, has gone ahead beyond the research and development stage without any specific authorization of Congress. We have never been asked, Do you wish to authorize billions of dollars for the automated battlefield?"

Answer

As outlined in Comment 1, the anti-infiltration and surveillance program does not constitute a weapon system nor an electronic battlefield.

Details on the cost of this program to date, as well as a forecast of costs for future operations, are contained in Comments 1 and 6.

The program has been reviewed by the Senate and House Armed Services and Appropriation Committees beginning with the FY 1967 Supplemental on an annual basis. In addition, there have been several reprogramming reviews. The program has received Congressional review an approval through this program and budgetary process.

Comment 9

"When the original barrier concept was discarded as unworkable, the program was reoriented and renamed the electronic battlefield. No longer designed to provide an electronic barrier, it is now intended to provide complete surveillance of enemy movements through the use of sophisticated sensoring devices backed by highly complex computer systems. First tested in Vietnam, the new devices are now undergoing intensive development for a variety of combat uses."

Answer

The overall barrier concept, as originally conceived, was never tried. Early in the fielding of the equipment, battlefield commanders realized the value of sensor surveillance. These early efforts brought home the importance of sensor derived target information which was developed and used in breaking the siege at Khe Sanh. The results at Khe Sanh fired the imagination of field commanders and were the catalyst which brought rapid expansion of the use of sensor technology throughout all of South Vietnam. In this sense, it is true that sensor equipment was reoriented to be used where the enemy was, and it does assist in the surveillance of enemy movements.

This equipment is being used by the Army, Navy, Marines and the South Vietnamese forces in the Republic of Vietnam. The sensor devices with a simple readout receiver can hardly be considered sophisticated and complex when the Vietnamese are trained to use the equipment in a matter of a few hours. No computers are used and no computer applications are envisioned for the operation in South Vietnam.

Comment 10

"Perhaps the outstanding feature of the program is the sharp rise in costs which have been incurred. Although the official figures are secret, some published figures show how explosively the program costs have grown.

"Research.—In fiscal 1967 the Defense Department's Advanced Research Products Agency budgeted $3.5 million, for sensor studies. One year later the amount spent on research for the electronic battlefield had grown to $82.9 million or over 25 times the amount spent the previous year.

Answer

It should be noted that the FY 1967 $3.5 million for ARPA sensor studies is unrelated to the program managed by DCPG. Thus, contrast of development funds should involve DCPG's $51.6 million in FY 1967 and its $88.8 million in FY 1968. The application of these funds is discussed later.

The implication of explosive growth in program costs is similarly misleading. The normal life cycle of military system acquisition involves carefully controlled initial development and procurement funding. Once the technology evolves and the operational value is validated, an accelerated, broadened development effort and procurement of operational quantities are initiated. This should not be construed as cost growth, but as normal life cycle planning and execution.

In a corollary sense, judgment of program costs should reflect the relationship of the development to the operational requirement Unattended sensor technology, and the associated readout capability, has dramatically increased the knowledge of enemy movements in the SEA environment. Real time intelligence upon which to base the application of strike resources is undoubtedly one of the most significant technological and operational advances of the war in Vietnam. Certainly in the context of our operations in Vietnam, sensors have greatly aided our soldiers and saved lives by giving early warning of enemy approach—warning that only a few short years ago was not possible of attainment.

The RDT&E costs for FY 1967 total $51.6 million of which $16.8 million was spent in support of munitions developments. The balance of $34.8 million was used in the development of electronic surveillance equipments.

The RDT&E costs for FY 1968 total $88.8 million of which $18.4 million was used in support of munitions developments. The balance of $70.4 million was spent in the direct support of the anti-infiltration surveillance system.

A recap of the RDT&E costs, excluding the development costs for munitions which terminated in FY 1969, is as follows:

(Millions of dollars)

FY 1967	34.8
FY 1968	70.4
FY 1969	65.6
FY 1970	40.1

This indicates that the major development efforts have been accomplished and that a sustaining level of effort can be predicted.

Comment

"Procurement.—Two years after the start of the program, procurement costs for the new surveillance devices had risen from $192.6 million in fiscal 1967 to $524 million in fiscal 1969."

Answer

A similar recap for procurement, excluding munitions, is as follows:

(Millions of dollars)

FY 1967	90.0
FY 1968	106.0
FY 1969	242.9
FY 1970	82.0

Further details are contained in Comment 1 and attached financial charts.

The $524 million in FY 1969, mentioned by Senator Proxmire as a procurement cost, correlates with the $523.4 million reported to the Department of Defense Subcommittee of the Senate Appropriations Committee on April 24, 1969. However, this sum as reported to Congress reflects the total FY 1969 program cost including RDT&E, Procurement and Operations and Maintenance appropriations for the Army, Navy, Air Force, and DCPG. Subsequently, $111.7 million was returned to OSD. The accurate costs of the FY 1969 procurement portion of the program are the $242.9 million reflected in the table above.

Comment

"Although just over two and a half years old, the cost of the entire program research, procurement, ammunition for testing, and funds from other sources—totals close to $2 billion."

Answer

The total program costs during the first four fiscal years of this effort are $1.36 billion. As indicated by Senator Proxmire, these costs include research, procurement, and ammunition for testing. In addition, this total program cost includes funds required for Military Construction and the annual Operating and Maintenance funds required in support of tactical operations which were not noted by Senator Proxmire.

Comment 11

"The most frightening fact about all of this is that this may be just the beginning of a cost spiral. . . . much of the program consists of very expensive electronic devices supported by computer systems."

Answer

The most heartening fact about the surveillance program is the cost reductions which have already been achieved in these "very expensive electronic devices." For instance, the original hand emplaced sensor cost $2100 a piece. A similar sensor being procured today costs $250 a piece. Simultaneously, the weight of the device has been reduced by a factor of four with an increase in the designed reliability. At $250 for a piece of hardware, this is an effective all weather sentry not subject to enemy fire as a soldier would be.

Computer support, as mentioned before, is at one installation.

Comment 12

"But in view of the size and nature of the program, the most shocking fact about the electronic battlefield is that it has never been directly authorized by Congress. The program has never been subjected to public hearings or a detailed review."

Answer

As outlined in Comments 1 and 4, the anti-infiltration and surveillance program has been repeatedly briefed to Congress and has been reviewed each year by Congress in the budgetary cycle. These hearings have been "closed" due to the highly classified nature of the development and implementation of the remote sensor technology in Southeast Asia. To publicly disclose this program would deprive U.S. troops and our allies in SEA of major operational advantages. By minimizing the enemy's knowledge of the system, we have prevented his early use of either tactical or technical countermeasures. Throughout the development of the anti-infiltration system and the parallel operational applications, we have pressed for improved technical performance which would deny the enemy such countermeasures. Public discussion jeopardizes that objective.

Comment 13

"But what is more, the military contractors know more about the program than most Congressmen and Senators. Early in January of this year more than 800 defense contractors jammed the National Bureau of Standards auditorium for a classified briefing on the program's future. All the reports and predictions made at the meeting were classified, as is practically all of the information relating to the program."

Answer

During the period January 6–8, 1970, the National Security Industrial Association, in conjunction with DOD, held a symposium on Sensor Aided Combat Systems at the National Bureau of Standards, Gaithersburg, Maryland. As stated in the keynote address, the Symposium was designed to apprise NSIA of:

The exceptional progress we have made to date in applying sensors of all kinds to modern warfare.

The emphasis and priority we intend to place on the continued development of this technology.

The new organizations with DOD and the Services that will be responsible for development and implementation of this technology and the ways in which they interact with each other and US industry.

The appropriate avenues for industry to approach DOD, the Services and Agencies to obtain the detailed information required to insure proper application of America's technology without which we cannot realize our goals.

Proceedings of the Symposium are classified "Secret Noforn" and are distributed by NSIA on a "Need-To-Know" basis.

The NSIA is a national organization of American industry composed of more than four hundred manufacturing, research and service companies of all sizes, which provides for an effective working partnership between industry and government, as visualized by its founder, James Forrestal, the first Secretary of Defense.

The sensor program has been presented to the appropriate committees of Congress several times.

Comment 14

"Perhaps most important, how is Congress to control expenditures if it does not even have knowledge, much less control, over major programs such as electronic battlefield?"

Answer

As outlined in previous comments, the anti-infiltration surveillance program has been briefed in detail many times to Congress and has been reviewed by Congress in the budgetary cycle, each year since inception. The program has been not only broadly covered by the Secretary of Defense and the Director of Defense Research and Engineering but also in detail by the Military Departments and DCPG in their Congressional budget and reprogramming reviews.

Comment 15

"The second important set of questions which the program raises centers around the development of secret weapons and their future implications for military policy. General Westmoreland has said that the electronic battlefield will revolutionize ground combat. In a speech given last October before the Association of the U.S. Army, he declared:

"The Army has undergone in Vietnam a quiet revolution in ground warfare—tactics, techniques, and technology. The revolution is not fully understood by many."

Answer

With regard to the foregoing, we believe it necessary to quote General Westmoreland completely so as to place his remarks in proper context. General Westmoreland's full comment before the annual luncheon of the Association of the United States Army, on Tuesday, October 14, 1969, is as follows:

"I will proceed on the assumption that neither the Congress nor the Nation wants us to lay down our shield of armed readiness. On the contrary, our citizens continue to

demand from us the best military forces possible within the resources made available to us. This is a fair and demanding challenge which we accept.

"In meeting this challenge, The Army has undergone in Vietnam a quiet revolution in ground warfare—tactics. techniques, and technology. This revolution is not fully understood by many. *To date it has received only limited attention. Analysis of the lessons from the revolution will influence the future direction of our Army both in fundamental concepts of organization and development of equipment.* (Note: Italic added to indicate additions to quotation.)

General Westmoreland is an astute and able commander. He recognized that when technology provided him with additional information about the enemy, in real and near-real time, tactics and techniques would have to be adjusted to use this information fully.

That this new capability was not broadly known or generally discussed, is understandable. Security precautions were taken so that our troops in combat could continue to enjoy the tactical advantages that technology provided.

Comment 16

"The financial implications alone of this so-called revolution are frightening. Will the Congress suddenly be told that it is essential that all ground forces be equipped with the new electronic sensors before the full implications of such a decision are known? Will we be told that the expenditure of almost $20 billion is necessary if we are to match the Russians in ground capability? In short, will Congress be confronted with a "decision" on the electronic battlefield over which it has little control? These are just a few of the questions which are raised by the secret nature of the program."

Answer

As previously noted, there is no DOD program for an "electronic battlefield." The anti-infiltration surveillance program, per se, has been briefed in detail many times to Congress and has been reviewed each year since inception by Congress in the budgetary cycle. Equipment, adapted to ground warfare as discussed by General Westmoreland, has been contained in these program briefings.

The source of Senator Proxmire's $20 billion figure is unknown.

Comment 17

"The electronic battlefield also presents several other problems related to its use in combat. One of the biggest problems is that it may be an indiscriminate weapon. The sensors cannot tell the difference between soldiers and women and children."

Answer

See answer to Comment 5.

Comment 18

"It has been pointed out that in such underdeveloped parts of the world as Vietnam, whole villages may be wiped out by seeding wide areas with air dropped explosive devices designed to kill anyone who ventures into their neighborhood. Once seeded, we would lose control over these devices and they could represent a permanent menace to the civilian population, much like old land mines."

Answer

The explosive devices referred to must be munitions similar to anti-personnel and anti-vehicular mines. Sensor field locations are very carefully selected along known enemy routes and in areas of enemy activity.

The sensors have been designed to insure that we can not lose control of them.

Comment 19

"A second major problem is presented by the extreme vulnerability of much of the electronic equipment to malfunction due to rough treatment."

Answer

The alleged vulnerability of much of the electronic equipment to malfunction due to rough treatment has not materialized in actual operations. In fact, both the reliability and the total life span of sensors has far exceeded the original estimates. These are key factors which have contributed in large measure to the return of funds authorized in support of the program.

Comment

"One infrared night observation device for use over medium range distances has already been abandoned because it could not withstand handling under combat conditions."

Answer

Infrared night observation devices, as posed by Senator Proxmire, are not a part of this program.

Comment

"In addition, the replacement costs, alone for equipment damaged by rough handling could be enormous."

Answer

During the development of the sensor equipment it has been designed for rough handling as may be expected in the field. In particular it was designed to have the capability of withstanding shock blows ranging from 200 to 1500 Gs. To date, rather than experiencing large losses of equipment due to a handling problem, such losses have been minimal and have contributed to our ability to reduce program costs.

Comment 20

"Finally, the most important, is the program really worth the money? Is combat capability increased to such an extent that the probable investment of billions of dollars is warranted? Once the Vietnam war is over, will we really need such a complicated system of sensors for combat operations?"

Answer

There can be no doubt that the surveillance equipments which have been deployed in SEA have proven their worth. General Tompkins, Commander of the 3d Marine Division at Khe Sanh, has stated often and in writing "the sensor-derived target information was instrumental in winning the battle."

Our soldiers now serving in Vietnam share General Tompkins' view as to the effectiveness of the sensors. They know that the use of sensors has improved dramatically our intelligence-gathering capabilities, has denied the enemy his traditional sanctuaries of night and the jungle, and has saved untold numbers of American and allied lives by giving early warning of enemy approach. All of this at a cost far less than the alleged $2 billion.

In this vein, then, military planners in all of our services are analyzing the lessons to be learned from the "revolution" to which General Westmoreland referred. From these analyses will come the direction as to how the services should proceed with respect to equipments, tactics, and organizations.

One fact now is clear, however. The capabilities which sensors of all types give us will enable our future forces to find and fix the enemy—even under the most difficult conditions of weather and terrain—with smaller forces, more quickly and more economically.

General Westmoreland, in the same speech quoted by Senator Proxmire went on to say:

"Today, machines and technology are permitting economy of manpower on the battlefield, as indeed they are in the factory. But the future offers even more possibilities for economy. I am confident the American people expect this country to take full advantage of its technology—to welcome and applaud the developments that will replace wherever possible the man with the machine."

A CONSTRUCTIVE APPROACH

Mr. MANSFIELD. Mr. President, the issue of the effect on television upon the political process is becoming more in focus in recent months. More attention is being directed to this most important phenomenon and how it effects the basic institutions of society.

A most commendable presentation of one aspect of this problem is presented in a brief filed with the FCC by Mr. Joseph Califano. It presents a thoughtful and penetrating analysis and ably articulates a position seeking a balance in the use of the medium when the great national issues are presented. In attempting to face the issue of the use of television, this is the type of approach that is constructive. I ask unanimous consent that the brief be printed in the RECORD. I commend it to the attention of the Senate.

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

[Before the Federal Communications Commission, Washington, D.C.]

IN THE MATTER OF OBLIGATIONS OF BROADCAST LICENSEES UNDER THE FAIRNESS DOCTRINE—DOCKET NO. 18859

COMMENTS BY THE DEMOCRATIC NATIONAL COMMITTEE

The Democratic National Committee (DNC), by its counsel, pursuant to the Commission's invitation in its "Notice of Inquiry and Notice of Proposed Rule Making" (Notice), in the above-referenced Docket number, dated May 18, 1970, hereby submits its comments on the proposed rules.

I. Summary of Position

The DNC endorses the Commission's efforts to expand and bolster the fairness doctrine and to promote and enhance the "First Amendment goal of providing an informed electorate capable of conducting its own affairs" in keeping with the letter and spirit of the Supreme Court's recent landmark constitutional decision, *Red Lion Broadcasting Co.* v *FCC*, 395 U.S. 367, 392 (1969).

In particular, the DNC supports the Commission's proposed rules which provide that a licensee must take affirmative action to solicit appropriate spokesmen to present contrasting viewpoints when a licensee (1) presents or permits to be presented only one side of a controversial issue on a matter of public importance in a series of broadcasts within a relatively short period of time or (2) presents an editorial expressing the licensee's viewpoints on a given issue. In its notice, the Commission states that its "proposal is a modest further step in promoting access to the broadcast media" and invites "interested persons . . . to make other suggestions on this general subject issue." Notice, pp. 6, 8.

We concur in the judgment that in most cases a licensee must be afforded latitude and flexibility in fulfilling its affirmative obligations. However, we believe there is at least one situation of such overriding national concern that the Commission should adopt a uniform, national policy clearly expressed and vigorously enforced by the Commission.

We refer to a broadcaster's obligation after it has aired a presentation (or a series of presentations) by the President of the United States of his viewpoint on controversial issues of public importance. We submit that virtually every time the President addresses the nation or appears at a press conference—whether speaking as Chief Executive on legis-

lative or economic matters, Commander-in-Chief on military operations of new weapons system or the head of his party on issues or candidates in a forthcoming election—he expresses his self-interested viewpoint on controversial issues of current public interest.[1] Therefore, the principles underlying the Commission's proposed rules place upon a broadcaster an affirmative obligation to secure responsible spokesmen with contrasting positions and to accord them reasonable opportunities, comparable in duration and scheduling, to inform the American electorate whenever they air a Presidential presentation.

Accordingly, the DNC proposes that in addition to the rules contained in its Notice, the Commission adopt the following rule:

(a) When a network or licensee broadcasts a presentation by the President of the United States of a viewpoint on a controversial issue of public importance, that network or licensee has an affirmative obligation to seek out responsible persons or entities with significant contrasting viewpoints on the controversial issue and afford them equal opportunities to present their views.

(b) In the case of any broadcast of a Presidential address or press conference, it shall be presumed that the President has presented a viewpoint on a controversial issue of public importance; and in the event of any complaint of non-compliance filed with the Commission, the burden shall be upon the network or licensee to establish compliance with this rule.

(c) Each network and licensee shall be required for a period of not less than three years to maintain a complete tape and transcript of every presentation by the President which it broadcasts and to maintain records detailing all actions taken by it to fulfill its affirmative obligations under this rule. Such records shall be available for inspection and copying at any reasonable time upon the request of any person.

Note: The term "equal opportunities", as used in paragraph (a) hereof, shall have the same meaning and effect that it has under Section 315(a) of the Communications Act of 1934, 47 U.S.C. § 315(a) (1964).

II. The DNC has a vital interest in obtaining fair media treatment

The DNC is an agency of the Democratic National Party, established at each national convention, which has the obligation and authority to promote the principles and programs of the Democratic Party. As the representative of one of the two major political parties, the DNC is vitally interested in the preservation and strengthening of the nation's political processes. An informed and educated electorate is essential to the proper functioning of our democratic form of government. Thus, we are gravely concerned about what we perceive as a developing imbalance in access to the communications media with the resulting inability of the American people to hear and consider more than one point of view.

The DNC has no desire to limit the President's ability to communicate with, and thereby to lead and govern, the nation. We do not propose any restriction on the President's right to be accorded the broadcast time which he believes essential to the implementation of his programs and policies. In a nation of 200 million people scattered beyond a continent, communication through broadcast media is a critical tool of government. At the same time, communication of opposing points of view is essential to the healthy development of a society and our democratic form of government.

It is becoming increasingly difficult for the fair and effective presentation of opposing points of view. For example, as fully set forth in its Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations, now pending before the Commission, the DNC has recently been the victim of artificial and arbitrary barriers to access to television facilities. The CBS television network flatly rejected a request by the DNC to purchase one half-hour of prime time for a program presenting viable alternatives to the policies of the incumbent Administration. Other networks and stations have raised similar obstacles, impairing the ability of the DNC to present its views. To perform its functions adequately—to inform a diverse national audience of the aspirations and recommendations of the Democratic Party—the DNC must have an opportunity to be heard.

The general rule which the DNC herein proposes would affect a variety of responsible persons and entities which hold and desire to communicate views which contrast with the President's on controversial issues of public importance.

III. The Enormous Impact of a Televised Presidential Presentation Places Special Obligation on the Broadcaster

The combination of the President of the United States—the most powerful individual in the free world—and television—undoubtedly the most effective communications medium ever devised by man—has an impact on public opinion that is difficult to exaggerate.

The Presidency, as Theodore Roosevelt observed, is indeed a "bully pulpit." The office is shrouded in majestic dignity. A statement by the President of the United States, simply by the force of his office, commands instant attention, respect and belief. As Woodrow Wilson noted about the President's force and impact as a national spokesman:

"His is the only national voice in affairs. . . . No other single force can withstand him, no combination of forces will easily overpower him. His position takes the imagination of the country. . . . If he rightly interprets the national thought and boldly insists upon it, he is irresistible; and the country never feels the zest for action so much as when its President is of such insight and calibre." Quoted in C. Rossiter, *The American Presidency*, p. 21 (1965).

The accuracy of this observation is even more compelling in this present age of television than it was in Wilson's pre-radio era. As one distinguished commentator has written:

". . . Television has put the President himself in control of what image he will project to the country and enabled him to project it farther and more favorably than was ever possible before, with less competition from Capitol Hill and less interference from the press." R. MacNeil, *The People Machine: The Influence of Television on American Politics*, p. 292 (1968).

A. Television-Age Presidents Are Increasingly Exploiting the Medium

After the hesitant start in the Truman-Eisenhower era, the White House has moved more and more boldly to exploit the use of television so that the medium is now an integral part of the Chief Executive's power. The White House has come to realize that "In a highly communicative world, access to communications broadcast resource is partially equivalent to political power." Baran, *The New Communications and Social Values*, 34 Law and Contemp. Probs., 244, 249 (1969).

Although refusing to permit live broadcasts of his press conferences, President Eisenhower made 49 live television appearances during his tenure in the White House. His appearances came at crucial junctures for his Administration: the veto of the Farm Bill in 1956, the decision to send troops to Little Rock in 1957, the passage of the Labor Reform (Landrum Griffith) Bill in 1959, as well as foreign policy positions with respect to the Middle East, Latin America, NATO and the United States.

President Kennedy used television even more imaginatively and effectively. Six days after his inauguration, he held the first press conference to be broadcast live. The conference was held in the evening to attract a large national audience[2] and, indeed, it captured 33.8% of the eligible television audience. On March 23, 1961, President Kennedy graphically demonstrated his views of the nation's vital interest in Laos, illustrating his points by frequent references to three maps of Southeast Asia. Continuing his innovative use of television, President Kennedy undertook to evaluate, explain and define his Administration's policies in 1962 when he appeared in a broadcast from his study with one representative from each of the major networks.

President Johnson continued the expansion of the President's use of television. In his tenure of five years and two months in office, President Johnson made nearly 100 live television appearances; he averaged more than one appearance for each month in office. President Johnson delivered State of the Union messages to Congress in the evening to attract the largest possible audience. His televised reports to the nation covered such controversial topics as civil rights and tax legislation as well as the nation's foreign involvement in the Dominican Republic and Southeast Asia.

President Nixon has extended the Presidential use of television to seek support from the American public for his position on many controversial matters of public importance. In his 17 months in office, President Nixon has addressed the nation over network television 12 times and in addition has held 10 televised press conferences, for a total of 22 nationwide presentations. He has requested and received prime time from all the networks to advocate at any length he desired his viewpoint on such controversial public issues as (1) his veto of the $20 billion appropriations bill for the Departments of Labor and Health, Education and Welfare, (2) his proposed changes in the nation's welfare legislation, (3) his decision to send in the National Guard to replace striking Post Office workers, (4) his views on the economy, and (5) his position on our involvement in Southeast Asia.

At his ten televised conferences (five of them during the evening hours), the President has responded to 215 questions, and virtually every one of the responses contained a statement on a controversial issue of public importance. For example, the subjects included his views on the invasion of Cambodia, the antiballistics missile system, the economy, crime, education, desegregation, and pollution.

In its proposed rules, the Commission suggests that where there is a series of broadcasts within a period of six to nine months presenting only one viewpoint on a controversial issue, a license has special affirmative obligations.[3] In the last eight months, President Nixon has appeared on television during prime hours no less than six times to advance his position on America's role in the war in Southeast Asia. Indeed, the President has made special television presentations five times in the last eight weeks and has promised another in the next two or three weeks. Three of these five presentations were devoted exclusively to Vietnam and Cambodia; one—a prime-time press conference—dealt almost entirely with the war in Southeast Asia and its domestic implication; and the fifth, while essentially an economic message, included several references to the war in Southeast Asia and dealt extensively with the relationship of that war to our nation's current economic situation.

Footnotes at end of article.

These were the President's television appearances in the last eight months.

On November 3, 1969, on the eve of an election day in many parts of the country and twelve days before a scheduled mass protest on Vietnam, the President appeared on prime-time television to delineate in detail his plan on "Vietnamization."

On December 15, 1969, the President presented a prime-time "progress report," indicating that his plan was proceeding on schedule.

On April 20, 1970, the President delivered another televised "progress report," expressing approval of the operation of his "Vietnamization" plan and announcing his six-month plan for troop withdrawals.

On April 30, 1970, the President announced the invasion of Cambodia which he deemed necessary to the success of his "Vietnamization" program.

On May 8, 1970, a hastily arranged Presidential press conference was televised during prime evening hours, concentrating almost entirely on the Cambodian invasion and its domestic implications.

On June 3, 1970, the President again went on television to proclaim the Cambodian invasion "the most successful operation of the war," dramatizing his views with film clips of captured food, arms and equipment.

On June 17, 1970, the President presented his televised analysis of the nation's present economic state and his prescription for curing its economic problems.

B. The President Has Absolute Control Over the Timing, Format and Content of His Presentation

In each presentation of his views on controversial issues of public importance, the President has had instant access to tens of millions of Americans. On each occasion, the three major commercial networks have agreed to provide to the President his choice of time, sometimes on very short notice. Indeed, the networks have rarely, if ever, refused a specific request for television time to the President. See, R. MacNeil, *op. cit.*, pp. 301–07. As the Chairman of the Senate Foreign Relations Committee recently observed:

"The President can *command* a national television audience to hear his views on controversial matters at prime time, on short notice, at whatever length he chooses, and at no expense to the Federal Government or his party." [4]

Invariably, the President's speeches, if he so requests, are broadcast live simultaneously over the three major commercial networks. Thus, virtually everyone watching television at that time has little choice but to watch the President. Non-affiliated stations often repeat in its entirety a Presidential speech at other hours of the day. For example, after President Nixon's June 17, 1970, speech on the economy was broadcast at noon on all three networks, two local stations in New York rebroadcast the speech in its entirety later in the day, once at 4:00 p.m. and once at 11:00 p.m. See Television Listings, *New York Times*, June 17, 1970, at p. 95, col. 5. While a President's speech is being telecast live on all three networks, it is also simultaneously being broadcast on several radio networks, reaching untold additional millions of Americans. And, whatever the President has said is the subject of wide news coverage including extensive use of film clips of the appearance.

As a result, the President is able to augment the prestige of his office and the effectiveness of a television presentation with a guaranteed national audience of great magnitude. For example, President Nixon's well-publicized press conference on May 8, 1970, received a rating of 48.5%, which indicates that approximately 49,600,000 Americans listened and watched the President respond to questions about his views on such controversial issues as the war in Southeast Asia, student unrest on campus, the conduct of the public and National Guard, the sale of jets to Israel and unemployment.

Moreover, the President is able to choose what he deems to be propitious times and occasions for his addresses to the nation, thereby adding immediate political impact to his words. For example, the President chose to deliver his speech on the economy at noon, when the stock market was still open; his May 8 prime-time press conference was held on the eve of a scheduled mass protest against his policies near the White House.

The President is also entirely free to choose his format and any devices he desires to accentuate the effectiveness of his speech. In addition to using maps, President Nixon was the first President to include film clips in his live presentation to support visually his assertions.

C. The Networks Have Failed to Accord Fair Treatment to the President's Opponents

Against this powerful array of forces, the networks have not sought out, much less permitted, any effective rebuttal. The networks have not faced squarely the three basic questions which arise in considering the appropriate response to a Presidential presentation:

(1) Who are the appropriate spokesmen to respond?

(2) When should the response be broadcast?

(3) What should the format of the response be?

The networks rarely secure or permit persons who hold opposing views to respond to or analyze the President's statement. Generally, the networks have their own correspondents "comment" briefly on the Presidents' speech immediately after his address. This commentary, of course, does not purport to be and does not often have the effect of a presentation of a point of view on the subject which contrasts with the President's. Such sessions are directed primarily to summarizing, paraphrasing and in some cases noting the significance of the Preident's remarks. As Commisioner Cox recently stated concerning the network commentators' treatment of one of President Nixon's speeches on Cambodia: "All they did was reiterate what the President said." *The Evening Star*, June 19, 1970, at p. A4, Col. 4. Moreover, the commentary is invariably brief. As former television correspondent Robert MacNeil points out:

"Resumption of the full commercial schedule has a higher priority than analytic comments by reporters after the President has finished speaking. The usual network practice is to 'fill' until the normal time slot is expired. . . . Knowing this, an astute President will time his appearance so as to fill all or virtually all the time allotted to him." R. MacNeil, *supra*, at pp. 304–05.

Frequently, a network will carry on the next day's news program a very brief quote from a Senator or Congressman. Whatever the effectiveness such comments—which generally do not exceed one or two sentences—might otherwise have is diluted because they are frequently juxtaposed with another Congressman's statements in support of the President's presentation or a film clip of the presentation itself. Moreover, the difference in advance publicity, viewing time and format between the President's speech and any such opposition statement eliminates the latter's effectiveness.

A third approach—which also fails to give a full and balanced response to the President's statements—has recently been given sporadic application by the national networks. For example, after President Nixon's latest address on the Cambodian situation, NBC presented a special Thursday night edition of "Meet the Press" which had representatives who supported the President's views as well as those who opposed them. The next night CBS presented an hour-long "debate" between the supporters of Mr. Nixon's policies and the opponents of those policies. In both, the effectiveness of the opposition was substantially diluted by the difference in format between the "debate-type" program and the President's wholly self-controlled presentation.

To equate a President's unfettered presentation during prime time to a brief off-the-cuff reply carried during a newscast or a tightly controlled debate is like equating Neil Armstrong's first moon step from the Apollo XI spaceship to a Shirley Temple two-step on the Good Ship Lollipop.

In each of his televised addresses, President Nixon, like his predecessors, has been permitted to take all the time he wanted, to use any device (including, for example, maps and films) and to proceed uninterrupted in his presentation. Even at a Presidential news conference, a reporter is not permitted to ask follow-up questions. In marked contrast, the speakers in opposition to the President's presentation have their format and time dictated by the networks. Most importantly, under the present approach, opposition speakers are severely circumscribed in the presentation by questions and comments from reporters and opposing speakers who agree with the President's position.

As expert observers recognize, the manner of presentation often determines the effect and impact of a televised message. See generally M. McLuhan, *Understanding Media* 268–94 (1964). To make a point with maximum effectiveness, a President, a producer of documentaries, or even a commercial advertiser must have freedom within confined time limits to package and project his message. As Professor Miller points out in his book, *The Process of Persuasion*, we are all "creatures of conditioned reflex," and

"[T]he crux of all persuasion jobs, whether selling soft drinks or political philosophy, is to develop these conditioned reflexes by flashing on trigger words, symbols or acts." V. Packard, *The Hidden Persuaders* 18 (1957). See also H. Burtt, *Psychology of Advertising* (1938).

During the 1968 Presidential campaign, Ray Price, an advisor to Mr. Nixon, wrote:

"We have to be very clear on this point: that the response is to the image, not to the man. . . . It's not what's *there* that counts, it's what's projected—and carrying it one step further, it's not what *he* projects but rather what the voter receives." [5]

To counter the tremendous impact of a President's unfettered televised presentations, those who hold differing views on controversial issues of public importance must be free to project a coherent and complete response, which will at least begin to approximate in the minds of the viewers the impact of the President's position.

The Commission has already recognized that political spokesmen should have substantial freedom in choosing the manner and format for presenting their views to the public. *King Broadcasting Co.*, 15 F.C.C. 2d 829 (1967). To afford the American electorate a balanced presentation of views on controversial issues, the networks must permit those who hold opposing views from the President's reasonable opportunities comparable in duration, scheduling and freedom of format, to present their views.

IV. The Fairness Doctrine Requires the Rule Which the DNC Proposes

The Rule we propose promotes the Commission's well-established and judicially endorsed fairness doctrine, which requires broadcasters to act fairly in permitting a reasonable opportunity for reply in specific circumstances affecting the public interest. As codified by statute, 47 U.S.C. § 315(a) (1964) the fairness doctrine requires a broadcast licensee to afford "reasonable opportunity for the discussion of conflicting views on issues of public importance." As

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interpreted by the Supreme Court, this statute imposes an obligation on the broadcasters, "to discuss *both sides* of controversial public issues." *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. at 380 (emphasis supplied). Yet, as we have demonstrated, insofar as Presidential presentations are concerned, the networks have provided no reasonable or fair opportunity for reply.

A. The President's Television Presentations Pose a Special Problem Under the Fairness Doctrine

Under the fairness doctrine, what is "fair" in any one situation depends upon all of the surrounding circumstances. *See, e.g., King Broadcasting Co.*, 15 F.C.C. 2d 829 (1967). Given the enormous impact of a Presidential television presentation and the President's instant access to tens of millions of Americans, fairness requires at the very least that the President's opponents be given an opportunity which is in every feasible manner equal to the President's.

The networks have been patently unfair to the President's opponents and have thereby violated their public trust for the American people whose interest they are required by law to serve.[6] As the Supreme Court emphasized in *Red Lion:*

"It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." 395 U.S. at 390.

The networks have failed in their "obligation of presenting important public questions fairly and without bias" [7] and they have failed in their "fiduciary . . . obligations to present those views and voices which are representative of [the] community." *Red Lion Broadcasting Company*, 395 U.S. at 389. This is particularly unfair and unfortunate because of the enormous impact on public opinion which a Presidential presentation is likely to have.

Obviously, the President addresses on national television only the most critical questions of the day—questions on which there will likely be several contrasting opinions. It is precisely those questions which require the complete and unfettered discussion that our system contemplates to inform our citizens and thus enable them to participate intelligently in the democratic process. *See Red Lion Broadcasting Co.*, at 390. If the President of the United States considers a matter of such importance that he requests national television time and if the network believes the matter is of such importance that it provides such time to the President, then the matter is obviously important enough to impose an affirmative responsibility on the broadcaster to secure and present appropriate spokesmen with contrasting viewpoints.

Presidential pronouncements are, of course, subject to the terms of the fairness doctrine. *See, e.g., Republican National Committee*, 3 R.R.2d 767, 769 (1964); *Sen. Eugene J. McCarthy*, 11 F.C.C.2d 511 (1968). Indeed, in the 1964 proceeding, initiated by the then Republican National Chairman, Dean Burch, the Commission held that in response to a Presidential speech broadcast simultaneously on the three national networks, the networks were obligated under the fairness doctrine to provide a reasonable opportunity to opposition speakers to insure that their viewpoints were effectively presented to the public.[8]

The DNC believes that this situation requires that the Commission promulgate a rule to delineate the network's obligations. A specific rule, like the one proposed herein, will make crystal clear to the networks their responsibilities in fully presenting contrasting viewpoints on important controversial issues and will permit them to operate confidently under the fairness doctrine in the particular area of Presidential broadcasts. *See, e.g., In the Matter of Amendment of Part 73 of the Rules To Provide Procedures in the Event of a Personal Attack or Where a Station Editorializes as to Political Candidates*, 8 F.C.C.2d 721, 724 (1967). ("A major purpose of the rules is to clarify and make more precise the procedures which licensees are required to follow. . . .") Moreover, a carefully constructed, specific rule is not only easier for the Commission to administer than a case-by-case approach but a duly promulgated rule will also permit the Commission to use, when necessary, all of the enforcement powers provided it under the Communications Act. *Id.* at 722–24.

B. The Networks Have an Affirmative Obligation to Present Contrasting Views

Because we are addressing the adequacy of a response to a Presidential presentation broadcast simultaneously over three national networks, the DNC believes that the rule it proposes must be adopted on a uniform, national basis. The obligations therefore must be placed on the network, which originated the Presidential address, as well as any individual licensee.[9]

The DNC's proposed rule places an affirmative obligation on the networks and licensees to solicit and present viewpoints which contrast with the President's. It has long been the policy of the Commission to enforce the "affirmative duty [of the licensee] to encourage and implement the broadcast of controversial public issues." In the Matter of Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949). Given the impact of a Presidential speech, an obligation on the licensee to provide comparable time to opposing viewpoints will best provide a way for the broadcaster to satisfy its obligation to help produce an informed populace.[10]

The rule would also recognize that, as we have demonstrated, virtually every Presidential broadcast presentation contains his viewpoint on controversial issues of the day. That presumption would be written into the rule in order to insure timely responses to the Presidential point of view and to eliminate the need which might otherwise exist for this agency to become enmeshed in disputes between the broadcasters and responsible spokesmen eager to respond. Nevertheless, there will inevitably be disputes in this area, perhaps regarding whether a controversial view was espoused and surely whether a broadcaster has met his affirmative obligation to seek out responsible spokesmen. In order to facilitate the resolution of such dispute, the DNC proposes that broadcasters be required to maintain records—open for public inspection and copying—detailing their efforts in this area.

The affirmative obligations the DNC proposes here follow logically from the rules which the Commission now proposes. The Commission's proposed rules place an affirmative obligation on a broadcaster to seek out a proponent of a contrasting viewpoint after a television editorial or a series of broadcasts on a controversial issue. The rationale for the Commission's proposed rule is to afford prompt and full discussion of a controversial issue by the advocates of a variety of contrasting opinions. We support this concept.

The Commission has recognized that where a licensee editorializes or broadcasts a series of programs, presenting only one side of an issue, he cannot passively rely on general over-the-air invitations to present the other side. The Commission states that if "the licensee has adjudged the subject matter of such importance to his community as to warrant an editorial," he must "make every reasonable effort to encourage presentation of views in opposition to his editorial." Notice, p. 6. Even though the licensee has presumably weighed all of the aspects of an issue and presents in an editorial a reasoned, unbiased conclusion, he must still select suitable persons with contrasting views, notify them of the issue and assist them in all appropriate ways to present their views.

If there is an obligation to find responsible opposition spokesmen where a presumably objective broadcaster editorializes on a given issue, how much greater should his obligation be when a President of the United States, the leader of a political party and a partisan of particular policies, presents his views on controversial matters of public importance? Moreover, when one compares the probable impact of a Presidential statement with that of a broadcaster's editorial, it becomes all the more important that the broadcaster assume an affirmative role in presenting views which contrast with the President's.

C. The Networks and Licensees Must Solicit Appropriate Opposing Spokesmen

Under the DNC's proposed rule, the affirmative obligation by the networks and licensees would be to notify and secure appropriate, responsible spokesmen who hold opposing views from those which the President has expressed on a controversial issue of public importance, and who are prepared to state them in prompt rebuttal to the President's presentation.[11] Both the Supreme Court and the Commission have recognized that a contrasting point of view is generally not adequately presented when provided by the licensee himself in an attempt to balance the record. In proposing the rules under advisement, the Commission noted that "requiring the *licensee* to present the contrasting viewpoint might inhibit the robust debate sought." Notice, p. 7, n. 8. (Emphasis added) *See also Radio Albany, Inc.*, 4 R.R. 2d 277 (1965). The Commission has recognized that a presentation by a licensee will not have the same impact as a presentation by an interested party. "'[I]ntonation, speech pattern and inflection are incomparably related to verbal expressions of opinion.'" *Id.* at 278. As the Supreme Court recently observed, quoting John Stuart Mill:

"'[It is not] enough that [one] should hear the arguments of adversaries from his own teachers, presented as they state them, and accompanied by what they offer as refutations. That is not the way to do justice to the arguments, or bring them into real contact with his own mind. He must be able to hear them from persons who actually believe them; who defend them in earnest, and do their very utmost for them.' J. S. Mill, *On Liberty 32* (R. McCallum ed. 1947.)" *Red Lion, supra*, at p. 392, n. 18.

In direct contrast to this policy, Richard W. Jencks, President of the CBS Broadcast Group, recently stated that the CBS "news organization can give a fairer presentation" of controversial issues than truly partisan spokesmen. *N.Y. Times*, March 22, 1970, p. 39, col. 1. Opposition spokesmen should not have to contend with positions such as this when seeking to make a reasoned response under the fairness doctrine.

Under the rule that DNC proposes, a television network may have to present more than one opposition viewpoint. On some issues, there may be several significantly different opinions. The DNC's rule would require that each significant responsible view be given an equal opportunity to be heard. The Commission has clearly stated that "to accord one organization or group favored treatment, beyond that accorded to other responsible organizations," would be to the violate the fairness doctrine. *Lloyd C. Sigmon*, 8 F.C.C. 2d 987 (1967). Of course, the broadcaster is under no obligation to present highly extreme or irresponsible positions. *See Tri-State Broadcast*, 3 R.R. 2d 175 (1962). However, it is the obligation of the networks to present fully all responsible opinions. To do less is to defeat the interest of the public in receiving "suitable access to social, political, esthetic, moral, and other ideas and experiences." *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. at 390. In the final analysis, of

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course, as the Commission notes in its proposed rules, the broadcaster would still have discretion to choose in good faith the appropriate spokesmen who would be notified and given a full opportunity to respond.

D. The Opposing Spokesmen Must Be Given Equal Opportunity To Respond

To begin to counterbalance the enormous impact of a Presidential presentation, the DNC's rule incorporates the "equal opportunities" standard of § 315(a) of the Communications Act. We submit that nothing less than a truly equal opportunity for opposing spokesman to articualte and rally support for their opposition will begin to allow for a fair presentation of contrasting viewpoints. If the public is not to adopt uncritically all Presidential suggestions without hearing contrasting viewpoints, substantial and effective offsetting measures are required. Only an appearance by an opposition spokesman comparable in duration, scheduling and freedom of format can hope to provide the necessary balance to a Presidential presentation.[12]

In delineating the obligations of the equal opportunities doctrine the Commission has noted that while "perfect equality is not practicable . . . a licensee must see to it that that time segments offered . . . are substantially equal in duration, quality and desirability of hours." *Station KTTV*, 14 R.R. 1227 (1957).

We submit that the spokesmen opposing the President's views must not be restricted in presenting their viewpoints by inappropriate program formats or inadequate scheduling offers. See *King Broadcasting Co.*, 15 F.C.C. 2d 829 (1967). In a fairness doctrine context, the Commission has recognized that a comparable opportunity for presentation by opposing spokesmen is necessary to the effective presentation of their viewpoint. In adopting the personal attack and political editorialzing rules, the Commission said:

"The phrase 'reasonable opportunity' to respond is used here and in the personal attack subsection because such opportunity may vary with the circumstances. In many instances *a comparable opportunity in time and scheduling will be clearly appropriate;* in others such as when the endorsement of a candidate is one of many and involves more than a few seconds, a 'reasonable opportunity' may require more than a few seconds if there is to be a meaningful reply." 8 F.C.C. 2d at 727. [Emphasis added.]

Moreover, as the Commission, as well as psychologists, political scientists and advertising executives, among others, has recognized, control over the format of the presentation is essential to success in affecting public opinion. In the case of personal attacks, the Commission has noted that the victim "might conclude that a panel or round-table discussion does not afford a comparable opportunity to reply", when the offending remarks were made on a program of a different nature. *John Birch Society*, 11 F.C.C. 2d 790, 791 (1968). An uninterrupted Presidential appearance requires a similarly unfettered opposition presentation, if contrasting viewpoints are to be forcefully put forth.

To permit less of an opportunity for a contrasting presentation is to defeat the "paramount . . . right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences." *Red Lion Broadcasting Co.* v. *F.C.C.*, 395 U.S. at 390.

The DNC's proposed rule will serve to insure that the American public is exposed to contrasting sides of a controversial issue of public importance. To countenance less than a full presentation by a network or licensee is to favor one idea over another. Such a result is the antithesis of free discussion. It maximizes the power of the President and the networks over public opinion and makes less likely the ability of new or contrasting ideas to gain currency. As the Supreme Court said in *Red Lion*, "There is no sanctuary in the First Amendment for unlimited private censorship operating in a medium not open to all." 395 U.S. at 392.

CONCLUSION

For the foregoing reasons, the Commission is hereby respectfully urged to promulgate a rule providing that:

(a) When a network or licensee broadcasts a presentation by the President of the United States of a viewpoint on a controversial issue of public importance, that network or licensee has an affirmative obligation to seek out responsible persons or entities with significant contrasting viewpoints on the controversial issue and afford them equal opportunities to present their views.

(b) In the case of any broadcast of a Presidential address or press conference, it shall be presumed that the President has presented a viewpoint on a controversial issue of public importance; and in the event of any complaint of non-compliance filed with the Commission, the burden shall be upon the network or licensee to establish compliance with this rule.

(c) Each network and licensee shall be required for a period of not less than three years to maintain a complete tape and transcript of every presentation by the President which it broadcasts and to maintain records detailing all actions taken by it to fulfill its affirmative obligations under this rule. Such records shall be available for inspection and copying at any reasonable time upon the request of any person.

Note: The term "equal opportunities", as used in paragraph (a) hereof, shall have the same meaning and effect that it has under Section 315(a) of the Communications Act of 1934, 47 U.S.C. § 315(a) (1964).

FOOTNOTES

[1] As students of the Presidency have noted, the President wears many hats and acts in many capacities. See C. Rossiter, *The American Presidency*, 2–33 (1956).

[2] The White House, of course, appreciates the facts that (1) approximately 95% of American households or 59 million households possess at least one television set and (2) the number of viewers increases throughout the day so that during prime time as many as 70% of the television sets will be turned on. Thus; at the same time in a single evening, there could be 120 million persons viewing.

[3] The network's affirmative obligation to seek opposition spokesmen if they present a one-sided series on controversial issues may stem from the likely impact of such a series. Multiple presentations make it possible to reach a larger number of persons. The reiteration of ideas in successive presentations also makes it more probable that they will be accepted by the public. We submit that a single Presidential presentation is likely to reach a larger audience and have a greater impact on public opinion than a series of broadcasts by a licensee.

[4] J. W. Fulbright, Speech to Senate, CONGRESSIONAL RECORD, page 17837, June 2, 1970. See also E. S. Muskie, Speech to Senate, CONGRESSIONAL RECORD, page 17837, June 2, 1970.

[5] J McGinnis, *The Selling of the President*, p. 37. As Alexander and Myers wrote in "A Financial Landslide for GOP," *Fortune*, March, 1970:

"From early 1967 until just before the election, Richard Nixon turned down all invitations to be interviewed on "free" programs like *Meet the Press* and *Face the Nation*. He preferred to pay for his time so that he could control content and format in his television appearances."

[6] NBC's reported offer of time to certain Democratic Congressmen to respond to one of President Nixon's speeches on the economy underscores the problem. In the first place, the other two major networks have failed to make similar offers. Secondly, NBC does not offer this time pursuant to a general policy but only in response to one isolated presentation. This does not satisfy the fairness doctrine.

[7] S. Rep. No. 562, 86th Cong., 1st Sess., 8-9 (1959).

[8] In *Republican National Committee*, the Commission approved the conduct of ABC when in response to a half-hour address by President Johnson, it provided Senator Goldwater with 25 minutes of reply time as well as carrying numerous newscasts in which his views were broadcast. Similarly, NBC's conduct was approved because it offered 15 minutes of reply time as well as presenting numerous newscasts and news type programs. In contrast, the Commission questioned CBS' conduct which consisted solely of newscasts.

[9] There can be no doubt that the Commission's authority extends to promulgating rules which operate directly upon television networks. *See* In the Matter of Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasts, May 4, 1970.

[10] As the Commission has noted, the purpose of the fairness doctrine is "the development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day." 13 F.C.C. 1249.

[11] The Commission has often noted, in other contexts, that "time is of the essence" if a reply is to be meaningful. In the Matter of Amendment of Part 73 of the Rules To Provide Procedures in the Event of a Personal Attack or Where a Station Editorializes as to Political Candidates, 8 F.C.C. 2d 721, 727 (1967). For example, when the broadcaster had broadcast an editorial the day before an election, a five hour delay before a response could be aired was found a violation of the fairness doctrine. Capitol Broadcasting Co., 8 F.C.C. 2d 975 (1967).

[12] It is arguable that a televised Presidential presentation is so prodigious in its impact that any effective rebuttal would require more time at a preferable hour than that afforded the President's speeches.

DISTRICT OF COLUMBIA REPRESENTATION: THE KENNEDY AMENDMENT

Mr. CRANSTON. Mr. President, last Friday's Los Angeles Times contained an excellent editorial on the need for representation in Congress for the District of Columbia. The editorial, entitled "Our Disenfranchised Capital," eloquently makes the point that simple fairness in our democratic system requires that citizens of Washington, D.C., should enjoy the same representation in Congress to which the rest of the Nation's citizens are entitled.

I believe that representation in Congress for the District of Columbia is long overdue. I believe that we must work to attain such representation at the earliest possible opportunity, in order at last to bring the citizens of our Capital City the mainstream of American democracy.

The distinguished Senator from Massachusetts (Mr. KENNEDY) has proposed to achieve this goal by offering an amendment on the Senate floor during the debate on electoral college reform. I support Senator KENNEDY's proposal, and I am pleased to be a cosponsor of his amendment.

Mr. President, I believe the Los Angeles Times editorial will be of interest to us all. I ask unanimous consent that it be printed in the RECORD.

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

OUR DISENFRANCHISED CAPITAL

A hundred and 94 years after Independence, taxation without representation is a going concern in only one part of the United States—the District of Columbia.

Although residents of the district were given the right to vote for President and Vice President by constitutional amendment in 1961, a similar amendment giving the district senators and congressmen has been prevented from coming to a vote in the House and the Senate by political opposition, chiefly from the South.

The amendment to give the district representation in Congress has wide bipartisan support, but it has been bottled up in the House Rules Committee and the Senate Judiciary Committee. It is no secret in Washington that certain powerful Southerners on these committees dislike the idea of giving representation to a city a majority of whose citizens are black.

But representation, of course, is the fundamental right of all citizens. When the capital district was established the Founding Fathers, envisioning it as a neutral place insulated from political pressures, set it up in a country swamp. Times have changed, and so has the district.

It is now a big city with a greater population than 11 of the states.

Its 900,000 disenfranchised citizens have an additional cause for complaint, for Congress is in effect the district's city council.

In an effort to get the representation amendment before Congress for a vote, Sen. Edward M. Kennedy (D-Mass.) plans to attach it as a rider to the upcoming constitutional amendment calling for popular election of the President.

We hope the tactic works. It seems to us only fair that the district's residents should have the representation the rest of us have. It is certainly only fair that Congress should have the opportunity to vote on whether to submit the amendment to the states for ratification.

S. 1478—ESTABLISHMENT OF A COMMISSION ON REVISION OF THE ANTITRUST LAWS OF THE UNITED STATES

Mr. JAVITS. Mr. President, as the Senate considers whether or not to approve the amendment of S. 1520 now before us, I want to call attention once again to the urgent need for comprehensive review and revision of our basic antitrust laws.

The role of antitrust legislation in the modern industrial economy has been the subject of endless debate in recent years. Though many academicians, businessmen and legislators are unhappy with various aspects of our current antitrust policy as formulated and administered by the Courts, the Justice Department and the Federal Trade Commission, antitrust has proven to be much like Mark Twain's aphorism on the weather—nobody has really done anything about it.

There is no question in my mind that something should be done about it. Our basic antitrust precepts were formulated three-quarters of a century ago to apply to a very different kind of economy than exists today. At that time the economy was not highly centralized and subject to practically no Government controls. The antitrust laws were necessary to insure at least a degree of regulation through the preservation of competition.

I am not suggesting that we scrap our antitrust laws or that competition is an anachronism. But it is evident that the antitrust laws are only one of a whole series of devices presently available to Government to control excesses in our economic system. These controls include the amount and type of Government lending and guarantees, Government licensing, tax policy, interest rates, and labor-management relations, to name just a few.

I feel that many of the criticisms—which have been made of the courts, the Federal Trade Commission, and the Justice Department for failing to take into account in the administration of the antitrust laws this fundamental change in the nature of the economy—are justifiable. I particularly deplore the tendency to rely more and more on per se rules of illegality and the tacit abandonment in such cases of the rule of reason. But even if criticism of particular decisions may be merited, such criticism is not going to accomplish the needed reforms. The essence of the problem is that we have allowed the courts, the FTC and the Justice Department to make our antitrust policy, whereas in my view this responsibility is in the Congress.

That is why for the last several years I have introduced a bill—it is S. 1478 in this Congress—to establish a high-level commission to study all aspects of our antitrust policy and make appropriate recommendations to Congress for amending the law. I believe that it is only on the basis of the recommendations of such a commission that Congress is likely to be moved to action.

What I am driving at is, perhaps, best illustrated by the case of bank mergers. The Supreme Court, after deciding—rightly or wrongly—that such mergers were subject to section 7 of the Clayton Act, proceeded to judge the legality of the mergers solely from the standpoint of their effect on competition. In a rare example of its kind since the 1880's, pressure—legitimate pressure—from the banking community led Congress to step in, through the Bank Merger Act, to broaden the criteria of legality to take into account other interests in addition to the preservation of competition.

I suggest that there is nothing really unique about banks and that the same technique might well be applied in other cases.

We need to rethink, from scratch, what it is we really want our antitrust laws to do—where they should lead us, if you will—at this point in our economic development. The courts and the FTC are not going to do this job of rethinking for us, and neither is Congress unless it gets some support for the kind of commission I have proposed and from the business community.

I am, of course, not so naive as to think that the commission will resolve all the deeply held views about the role of antitrust policy into one broad consensus. Thus, whatever the commission concludes about conglomerates and the current merger trend—and that will surely be one of its prime subjects of inquiry—I have no doubt that there will continue to be sharp differences of opinion as to just what, if anything, the Government should do about it.

However, there are many areas where I think the Commission might make recommendations that would find broad support in Congress. Let me just mention a few of them:

One of the areas in which the Commission clearly could make a most valuable contribution is in the application of our domestic antitrust laws to foreign trade and investment. For many years, experts have been pointing out how the rigid application of the antitrust laws has put our exporters at a serious competitive disadvantage abroad. That is not a matter to be taken lightly in these days of concern with our balance of payments and our poor export showing last year.

No less pressing is the need to encourage the investment of private capital of the United States and other developed countries in the developing countries. Again it is widely felt that our antitrust laws are an inhibiting factor, particularly to the establishment of consortia of United States and other private companies from industrialized countries grouping to invest in less developed countries. In both instances, there is a deep conflict between our antitrust philosophy and other major national policies when there should be coordination and thoughtful accommodation between them.

Another extremely valuable contribution the Commission could make would be to determine if the Robinson-Patman Act forbidding price discrimination continues to serve any purpose and, if so, to rewrite the act so that the courts who must interpret it, and the businessmen who must obey its abstruse commands, can make some sense out of it. For years now the courts have been extending pointed invitations to Congress to do something about this problem, and it is time the invitation was accepted.

Still another way in which the commission could perform a valuable service is to clarify the relationship between the Justice Department and the FTC in the enforcement scheme. At present, there is a good deal of overlap in their functions, particularly under the Clayton Act, which seems quite unnecessary. Similarly the relationship between private suits and Government suits could be clarified and strengthened.

Yet another area which the Commission could profitably give its attention to is marketing techniques. With the growth of the economy a number of novel marketing techniques have evolved, and with them have come, inevitably, antitrust problems. These problems include resale price maintenance, fair trade laws, limitations on competition between distributors and a whole panoply of problems connected with franchising.

Mr. President, this of course is only the briefest summary of what the Commission I propose could profitably consider. I am deeply convinced that our antitrust laws need to be modified and

that this can be done only if Congress is willing to reassert its rightful prerogative in shaping our basic antitrust policy. I am still hopeful that time may be found for hearings on S. 1478 and I am confident that broad support exists to establish the Commission I propose, to lay the ground for Congress reasserting its voice in this area.

Finally, Mr. President, I ask unanimous consent that S. 1478 be printed in the RECORD at the conclusion of my remarks.

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

S. 1478

A bill for the establishment of a Commission on Revision of the Antitrust Laws of the United States

Whereas the antitrust statutes of the United States are, in certain major areas of their application, in need of revision; and

Whereas there exist under the antitrust statutes of the United States conflicts in policy as to the proper standards of conduct required to be observed by American business; and

Whereas a thorough examination is essential in order to determine the impact of such statutes upon the productivity and long-range economic growth of the United States and upon United States foreign trade, investment, and economic policy: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established a Commission on Revision of the Antitrust Laws of the United States (hereinafter referred to as the "Commission") constituted in the manner hereinafter provided.

PURPOSE OF THE COMMISSION

SEC. 2. The purpose of the Commission shall be to study the effect upon competition (including competition between American business and foreign business), price levels, employment, profits, production, consumption, foreign trade, economic growth, and the capability of the economy to best sustain the Nation at home and abroad of—

(1) existing antitrust statutes (including enforcement proceedings thereunder), as interpreted by judicial, executive, and administrative decision;

(2) existing price systems and pricing policies of trade and industry in the United States; and

(3) the extent and causes of concentration of economic power and financial control.

MEMBERSHIP OF THE COMMISSION

SEC. 3. (a) NUMBER AND APPOINTMENT.—The Commission shall be composed of twenty-four members as follows:

(1) Eight appointed by the President of the United States, four from the executive branch of the Government and four from private life.

(2) Eight appointed by the President of the Senate, four from the Senate, and four from private life.

(3) Eight appointed by the Speaker of the House of Representatives, four from the House of Representatives, and four from private life.

(b) POLITICAL AFFILIATION.—Of each class of four members mentioned in subsection (a), not more than two members shall be from each of the two major political parties.

(c) VACANCIES.—Vacancies in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

ORGANIZATION OF THE COMMISSION

SEC. 4. The Commission shall elect a Chairman and a Vice Chairman from among its members.

QUORUM

SEC. 5. Thirteen members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 6. (a) MEMBERS OF CONGRESS.—Members of Congress, who are members of the Commission, shall serve without compensation in addition to that received for their services as Members of Congress, but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) MEMBERS FROM THE EXECUTIVE BRANCH.—Notwithstanding section 5533 of title 5, United States Code, any member of the Commission who is in the executive branch of the Government shall receive the compensation which he would receive if he were not a member of the Commission, plus such additional compensation, if any, as is necessary to make his aggregate salary not exceeding $30,000; and he shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of the duties vested in the Commission.

(c) MEMBERS FROM PRIVATE LIFE.—The members from private life shall each receive not exceeding $100 per diem when engaged in the performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

POWERS OF THE COMMISSION

SEC. 7. (a) (1) HEARINGS.—The Commission or, on the authorization of the Commission, any subcommittee thereof, may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee may deem advisable. Subpenas may be issued under the signature of the Chairman or Vice Chairman, or any duly designated member, and may be served by any person designated by the Chairman, the Vice Chairman, or such member.

(2) In case of contumacy or refusal to obey a subpena issued under paragraph (1) of this subsection, any district court of the United States or the United States court of any possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is being carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(b) OFFICIAL DATA.—Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairman, such information as the Commission deems necessary to carry out its functions under this Act.

(c) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.

(d) The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

SEC. 9. The Commission shall transmit to the President and to the Congress not later than three years after the first meeting of the Commission a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable. The Commission may also submit interim reports prior to submission of its final report.

EXPIRATION OF THE COMMISSION

SEC. 10. Sixty days after the submission to Congress of the final report provided for in section 9, the Commission shall cease to exist.

SENATOR EAGLETON'S CONCERN FOR THE DISTRICT OF COLUMBIA

Mr. KENNEDY. Mr. President, in too many instances we who are in the political arena are accused of responding only to the issues that clearly promise some kind of political mileage. Yet for those of us here in the national legislature, it is rare to see sincere concern expressed for the District of Columbia.

However, I believe that the distinguished Senator from Missouri (Mr. EAGLETON) deserves praise and appreciation for his work in the past 18 months as a member of the District of Columbia Committee.

Ever since his assignment to that committee, Senator EAGLETON has worked tirelessly in support of the city's needs. I have often admired how his zeal and enthusiasm have stimulated renewed congressional interest in District of Columbia affairs. I believe everyone of us here is aware of the importance to guarantee for the people who live in the Nation's Capital that their personnel affairs can be managed and directed by officials they have selected, instead of by those of us sent here to represent constituencies from around the country.

An excellent summary of Senator EAGLETON's approach to the tasks he has assumed on that committee appeared in the Washington Post last Saturday.

Robert L. Asher, an editorial writer for the Post, has placed TOM EAGLETON's efforts in a perspective that should inspire the concern of every Senator. For that reason, I ask unanimous consent to have printed in the RECORD Mr. Ashers editorial review of Senator EAGLETON and the District of Columbia, published in the Washington Post of July 11, 1970.

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

THE DISTRICT COMMITTEE'S MAN FROM MISSOURI

(By Robert L. Asher)

The youngish man in the red and white short-sleeved shirt swivels through the cramped suite in the New Senate Office

Building, wisecracking about the Senator, changing the Senator's speech text, peeking at the Senator's mail and introducing himself to the Senator's waiting visitors.

He says, "Hi, I'm Tom Eagleton"—because he is the Senator.

And he also talks a lot about the District of Columbia—originally because he had to, and because he wants to. It started a year and a half ago, when at age 39 Thomas F. Eagleton became the junior senator from Missouri, subject to the senatorial fraternity's time-honored tradition of hazing freshmen.

To earn full standing in this brotherhood, all new pledges are given a variety of menial chores: necessary but unthrilling duties that most seniors are eager to throw off. This is about where duty on the Senate District Committee ranks, and that's exactly where Eagleton wound up.

What's more, he promptly won the uncoveted title of chairman of the Committee's fiscal affairs subcommittee, which entails listening to countless hours of testimony about the city's revenue problems—taxes, the annual federal payment to the city, borrowing authority and the like—and hammering out legislation for consideration by the full seven-member committee.

Unlike their House District Committee counterparts, who have fewer constituents and nearly four times as many committee members, most senators faced with D.C. duty are hardly in a position to really dig in, unless they are from Maryland—as are Chairman Joseph D. Tydings (D) and Charles McC. Mathias Jr. (R)—or Virginia, as is William B. Spong Jr. (D).

Yet to their credit, all seven members have been generally sympathetic to the city government's legislative hopes, from home rule bills on down the line. It was simply that no one anticipated Tom Eagleton's gusto.

Eagleton immediately began boning up on the city's incredibly baffling budgetary system, under which his subcommittee authorizes revenue-raising measures but must leave the item-by-item spending approvals to the appropriations committees. His findings prompted him to depart from traditional gentlemanly dealings with the House committee; instead, Eagleton ripped into the other side of the Hill for giving what he termed "pious speeches" about crime here while approving "reverse-progress" revenue bills.

As a man with crime-fighting credentials (youngest elected circuit attorney for the city of St. Louis, youngest Missouri attorney general, youngest lieutenant governor), Eagleton concluded that the House was short-changing the city's efforts to deal with the "root causes" of crime by failing to allow enough funds for nonpolice programs such as narcotics treatment, the courts or correctional improvements.

Later last year, Eagleton raised more than a few Senate eyebrows when he led a floor fight against the Appropriations Committee and managed to win a 2 per cent increase in the budget that finally was approved. Bucking the appropriations fellows is touchy business, but thanks to his humor and his homework, the junior senator seemed to carry it off without serious reprisals.

Certainly there is no political mileage in Missouri for this sort of concern about Washington. Why does Eagleton bother?

Before answering, he moves from behind his desk to a chair on the interviewer's side, observing that he's "tired of looking like a bank president." Then he prefaces the answer with some anxiety that what he is about to say may sound corny or self-serving. "It's not that I'm trying to be a knight in shining armor or a great crusader," he replies, "I just have an interest in cities, and the same sort of problems that I worked with in St. Louis."

Eagleton notes that St. Louis is comparable to Washington in size, ethnic makeup, degree of poverty and affluence of suburbs. To him, the District Committee assignment is an opportunity to wrestle with urban issues. "Cities are going to pot, and if we don't save them the country is in for a hell of a lot of problems," the senator says. "I know that's old hat, but it's so patently true."

What Eagleton didn't realize when he began was that despite all these similarities between his city and this one, the big difference is in the governing. "Before, I believed in home rule for the District in theory," he remarks. "Now, one and a half years later, I believe in it one million per cent. Just look—Congress has to figure out if you can fly a kite here, Congress tells you to put flags on a policeman's uniforms . . . This stuff epitomizes the dilemma a resident of the District is in."

How much time does Eagleton spend on District affairs?" "Let's face it—the District comes third," he replies, noting that there are some 4.5 million voters in Missouri with interests in the education and health problems he handles on the Labor and Public Welfare Committee and the air and water pollution problems he handles on the Public Works Committee. "I'm not feeling guilty when I say that," he adds, "it's just a hard fact of staff hours."

It means shunting off citizen groups to members of his office staff and relying on District Committee aides, Jack Lewis and Ted Maeder as his "issue-spotters." In addition, Eagleton works closely with Tydings and Spong on many committee efforts.

"If 50 residents want to see me about rat control here," Eagleton says, "I've got to remember that there's flood control and OEO grants in Missouri to worry about. It's just hard to find time to know the problems of Joe Citizen in Cardozo, much as I'd like to."

As a result, Eagleton's contacts with the community are limited generally to city government leaders, such as Mayor Watler E. Washington, members of the school board or witnesses at hearings.

Within the committee, members over the years usually have striven for a public posture of unanimity on most issues. But lately, there have been occasions when the members have differed, such as over provisions in the pending anticrime bill. Eagleton notes that the issues and opinions vary not so much along the usual "liberal-conservative" lines, but according to the differing backgrounds and interests of both House and Senate District committee members. There are the House Southerners, the members from Washington's suburbs and those from other cities and rural areas.

Thus, Eagleton has no problem supporting such things as a proposal to tax suburban residents on income earned in the District. St. Louis has such a tax ("It's the number one revenue-producer, and I still pay it"). Tydings and Spong are not about to back it.

But the House committee is the great sticking point with Eagleton. "It has a distinctly different approach to urban problems than I do. That group as a whole seems to feel that the problems are ameliorated by, if you will, benign neglect."

Should the city government stand up to Congress more? "The mayor plays it about the way he has to play it," Eagleton feels. "If he yelled and screamed terribly loudly, the day of retributional reckoning would come. He doesn't have that kind of clout. He isn't dealing on a parity basis. All the muscle chips are on one side of the table.

"If the city is ever to get off dead center—and dead center right now is kind of going backwards—there are two indispensable things: home rule and a statutory, agreed to, continuing, at-least-30-per-cent federal payment." An elected government without the money guarantee would still face the same "stranglehold" of Congress, Eagleton feels.

Does Eagleton enjoy the job enough to want to stay on the committee in the future? "I'm taking no oath in blood for eternity." he comments, "let's say we're doing it in two-year hunks."

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1970

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the unfinished business.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The BILL CLERK. A bill (S. 1830) to provide for the settlement of certain land claims of Alaska Natives, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

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

Mr. HANSEN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER (Mr. ALLEN). The amendment will be stated.

The Assistant Legislative Clerk read as follows:

On page 182, line 1, strike out the words "open to entry," and insert in lieu thereof the words "open to mineral leasing, entry,".

Mr. HANSEN. Mr. President, this amendment is merely technical and clarifying in nature.

Section 23(a)(1) of the Alaska Native claims bill provides the Secretary with the authority to withdraw lands for a period of 5 years from all form of appropriation under the public land laws including the mining and mineral leasing law.

The bill provides that the Secretary shall then, at his discretion, classify such lands and open them to "entry, selection, or location for disposal in accordance with applicable public land laws." My amendment would clarify this provision so the Secretary of the Interior would be authorized to classify the lands and open them to mineral leasing as well

as those forms of appropriation which I have just mentioned.

This amendment is intended to be merely of a qualifying nature and I believe reflects the intent of the Senate Interior Committee as I understand the intent of the committee.

Section 23 was not intended, as pointed out in the report, to provide a freeze on mineral leasing in Alaska for a period of 5 years.

Section 23, as originally drafted, was only intended to allow for the orderly disposal and leasing of the public lands in Alaska and it is with this intent that I offer the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wyoming.

Mr. JACKSON. Mr. President, the Senator's amendment is entirely in order. The committee intended to do what the Senator from Wyoming is now correcting by his amendment. I am, therefore, very pleased to accept the amendment offered by the Senator from Wyoming.

Mr. HANSEN. Mr. President, I thank the distinguished chairman of the committee and express my appreciation to him for his consideration.

The PRESIDING OFFICER (Mr. ALLEN). The question is on agreeing to the amendment of the Senator from Wyoming.

The amendment was agreed to.

The PRESIDING OFFICER (Mr. ALLEN). The question now recurs on the amendment of the Senator from Oklahoma.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. JACKSON. Mr. President, I ask unanimous consent that the pending Harris amendment and all amendments thereto be voted upon not later than 12:15 p.m. I understand the Senator from Oklahoma has agreed to that request. He is not in the Chamber at the moment, but I understand that he has agreed to this procedure.

Mr. GRIFFIN. Mr. President, we have checked with Senators on this side who are interested, and there is no objection.

The PRESIDING OFFICER (Mr. ALLEN). The request was for the amendment including all amendments thereto to be voted on not later than 12:15 p.m.

Mr. JACKSON. That is correct.

The PRESIDING OFFICER. Would the time be controlled?

Mr. JACKSON. The time is to be controlled by the junior Senator from Washington and the senior Senator from Oklahoma.

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

Mr. GRIFFIN. Mr. President, may I inquire of the distinguished Senator from Washington, who is the manager of the bill, if there would be any reason why we could not get an agreement on a time limitation of 1 hour or even one-half hour on any amendments thereafter to the bill?

Mr. JACKSON. Mr. President, I see no reason why we should not be able to agree to a 1-hour limitation on all amendments offered thereafter. I would like to inquire of the able Senator from Wyoming (Mr. HANSEN) if we could get an agreement in that connection.

Mr. President, I suggest, and I will put it in the form of a request, that there be a 1-hour limitation on all amendments offered after the Harris amendment. This would give one-half hour to each side.

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

Mr. JACKSON. I yield.

Mr. HANSEN. Does the Senator mean an hour limitation on each amendment?

Mr. JACKSON. Each amendment.

Mr. HANSEN. I have no objection.

Mr. JACKSON. Mr. President, there is only one other amendment that is pending to my knowledge. That is the amendment I have offered, amendment No. 773, on competitive leasing. There would be a 1-hour limitation on that amendment.

The PRESIDING OFFICER. Would the 1-hour limitation apply also to amendments to the amendment?

Mr. JACKSON. Yes. Mr. President, I will make the unanimous-consent request.

I ask unanimous consent that after the disposition of the Harris amendment and all amendments thereto, there be a 1-hour limitation on each subsequent amendment including any amendments thereto, the time on such amendments to be equally divided and controlled by the junior Senator from Washington and the senior Senator from Alaska (Mr. STEVENS).

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

Is there a unanimous-consent request as to the time on the bill itself?

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on the bill itself, there be a time limitation of 1 hour, so that if there is need for extra time, it will be forthcoming, the time to be equally divided between the Senator from Washington (Mr. JACKSON) and the acting minority leader, or whomever they designate on the bill.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

Who yields time?

Mr. JACKSON. Mr. President, I suggest the absence of a quorum, the time to be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, again I suggest the absence of a quorum, with the time to be taken equally out of both sides.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. TOWER. Mr. President, I ask unanimous consent that Elizabeth Monnington, a volunteer worker on my staff, be permitted to be present on the Senate floor to assist me this afternoon.

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

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

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

Who yields time?

Mr. HARRIS. Mr. President, I yield myself 5 minutes.

We were discussing yesterday the pending amendment that I offered and which would strike from this bill the provisions that would terminate certain services of the Bureau of Indian Affairs to the Alaskan Native people and would state that within 5 years from the date of the enactment of this act, the United States would cease to provide certain services to any citizen of Alaska solely on the basis of his racial or ethnic background.

I stated yesterday, Mr. President, that this amendment should be adopted and those objectionable provisions of the act should be stricken, for several reasons:

First, because American Indians, Eskimos, and Aleuts are entitled to compensatory attention to their needs because of the differences in the way they have been treated over the years, as compared with other American citizens.

Second, because the threat of termination ought to be removed once and for all, as President Nixon has himself lately recommended.

Third, because we ought not to tie to this bill, which seeks only to do justice for the Native peoples of Alaska, this separate provision which would terminate certain of their present rights.

We are not asked to pass the bill now before us out of generosity. We are asked to pass it only to do justice at this late date. Therefore, we should not hold hostage justice for the Native peoples of Alaska in order to get them to agree to giving up certain rights which they now have by reason of being American Indians, Eskimos, and Aleuts.

Overnight, Mr. President, the staff of the committee and others attempted to work out a compromise amendment which, as I understand it, with certain

changes in the typewritten language, would have been agreeable to the Alaskan Native Federation. It involved two or three very specific and important conditions:

That there should be no termination of services or of rights of Alaskan Native people without their own prior involvement in that decisionmaking and without detailed approval by Congress.

Those words, as I understand it, might have been acceptable to some Members of the Senate, as they would have been to the Alaskan Native Federation; but I understand that the distinguished Senator from Alaska (Mr. GRAVEL) cannot agree to that compromise language. I am sorry about that. Therefore, we must have an up or down vote on the amendment which is now pending to strike from the bill the termination language.

I hope that will be done, Mr. President. I hope that the Senate will not now take a backward step in regard to one section of our country, but instead will consider this matter, not in connection with the Alaskan claim bill, but generally as we consider the overall recommendations of President Nixon in regard to self-determination without termination.

So, I sum up at this time by saying, as I did last night, Mr. President, that we no more need a Bureau of Indian Affairs than we need a Bureau of Italian Affairs or a Bureau of Irish Affairs, except for the special needs and problems which we have caused for American Indians, Eskimos, and Aleuts; and at least until we have more nearly righted those wrongs, we should not do away with the Bureau of Indian Affairs against the wishes of those whom it specially serves.

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. Mr. President, I yield 2 minutes to the senior Senator from Alaska.

Mr. STEVENS. Mr. President, I should like to make clear my position on this matter.

It is my understanding that basically the Bureau of Indian Affairs provides three types of services to Alaskan Native people: the education services, the welfare services, and the health services through the Public Health Service.

The amendment preserves the health service function. The education function is being taken over by the State of Alaska under an agreed program, in consultation with the Alaskan Native people and their organizations. I believe it meets 100 percent with the approval of all the people of Alaska that the State provide education for all Alaskan citizens, regardless of race, color, or creed.

The welfare function is slowly being taken over by the State. I feel this bill will eliminate a great deal of the welfare need, but in any event, our programs are better than the Federal programs, and as soon as possible I think the State should take over that function, too.

So, therefore, I think the fears that the Senator from Oklahoma has expressed, that might have reason to exist in other areas, will not have reason to exist in the State of Alaska. The provision that has been written into the bill by my colleague from Alaska is one that at the end of 5 years will make sense. If it does not make sense, we have 5 years to reconsider it. It is a statement of principle, which I believe all Alaskans feel, that no ethnic or racial considerations should be involved in public services provided in Alaska by the Federal Government.

Alaskans are prepared to meet the need. As stated last night, we will have the financial ability to meet the need. This bill, in and of itself, gives to 20 percent of our population more of a capital base than the whole of Alaska has today. I think that ought to be kept in mind as we review this problem.

Mr. JACKSON. Mr. President, I yield to the junior Senator from Alaska such time as he may require.

Mr. GRAVEL. I thank my colleague from Alaska, the senior Senator, for restating basically what happens with the present plan, and that is that there will be no cutback in services. That basically is the fear; because if there is more to it than that, somebody is in fear of the BIA for no reason at all. The only value of the BIA is to perform services. If those services are not cut back, then obviously we do not need the BIA, and that is really what we are putting forth here.

All I can say is that we can enunciate and pontificate all we want about how bad the BIA is, but until we do away with it, we really do nothing but expend a lot of wind.

This is not the compromise that was attempted last evening and this morning in my mind. It was no more than establishing a glorified study. I think we made that point very clear yesterday—that a State will not address itself to this problem, and until we force the issue, there will be no dissolution of the BIA, there will be no withdrawal. It is not because the Natives of Alaska or the Natives of any other area have a deficiency; because if there is a deficiency, it goes to all men. It is most difficult, if not impossible, to recede the expanding powers of government. Therefore, the compromise, in my mind, was not acceptable.

The other point at issue is that the proposed legislation considers only Alaskans, and those who say that it goes beyond the Alaskan situation beg the question. It only goes beyond the Alaskan situation if it is successful, because it puts to shame all prior programs, all prior efforts at solving the problem. So that what happens here is that we are not saying that the BIA should be taken out of Oklahoma. We are not saying that the BIA should be taken out of Utah. We are saying that, after 5 years, after a plan has been developed in which the Natives participate in developing this plan, there will be no BIA. If something unusual occurs within that 5-year period, this Congress or the next Congress can reexamine and alter that course of action, if it so desires. But I submit that unless we have a triggering mechanism in here to force the dissolution, it will not take place.

We will have to study the matter and then we will have to come here and mash our teeth over this gigantic problem that plagues this country. We will mash our teeth and say that we really have not been able to solve it and how terrible it is that these little Indian kids are not getting what the white kids are getting. They do not eat at the same table as the white kids. We give them an extra table and say that we are giving them special treatment—a special table for special treatment. That special treatment in the past has never measured up to what the other people get, and it will never measure up, because they are not in the majority, and they will always be discriminated against.

What we have done with the BIA is to build in a structural discrimination, and if we retain it in Alaska, we will continue to have a structural discrimination pattern.

I have seen this body rent over the civil rights issue, the fabric stressed to the extreme. Let us take the example of busing. My colleague and many of my other colleagues have fought the issue of busing. Let me describe what is probably the most diabolical busing program in this country, and it is not in the South, and it is not perpetrated by local government or local citizens. It is done in the highest councils of this Government; it is done at the Federal level, in Washington, D.C. Imagine busing a 13-year-old girl from Barrow, Alaska, which is almost a totally Native community, all the way down to Oklahoma—not to integrate her, but to put her in a little school with a group of little Indians, other Indians, so that you have a nice segregated cocoon.

I was the one in 1966 who developed the program in the State of Alaska that we do not bus our kids into another segregated area. We bring them into the urban areas of Alaska, and we have them go to school with my kids; we have them go to school with your kids. So that there is integration. That is the plan we worked out within the State. It was not a Federal plan, it was not a State plan, and it stands 10 times taller than any program ever initiated by the BIA.

Education is the concern of the Federal Government. It is the responsibility of the State government. It is the duty of local government. When you adhere to that, you recognize that the children in Alaska who are Natives will receive the direction of their education from their parents, within their school districts. The money will come and the direction of the law will come from the State government, and of course the bulk of the money will come from the Federal Government.

Let me conclude by picking up the point which my colleague so ably stated as he so ably put forth the kernel of the problem: Because of the harm that was done to the Indians of this country, there is a need and a moral requirement that we have compensatory attention. He could not be more right, and I could not applaud that kernel of wisdom any higher. The only difference we have is that he wants that compensatory attention based upon race, and I think that goes to the heart of our system in a most destructive manner. If we have compensatory action and if there is a need for it—and I say there is—it should be based

not upon race but upon need, upon need in Alaska and any other part of this country. That, I think, is the case simply stated.

Mr. JACKSON. Mr. President, I ask unanimous consent to have printed at this point in the RECORD a memorandum from Mr. William Van Ness, special counsel to the committee, in connection with a possible substitute to section 4(b) of the bill, together with the proposed substitute and a letter from the Alaskan Federation of Natives to the Senator from Oklahoma endorsing the substitute. I do this in order to provide a more adequate legislative history of the background of this discussion.

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

MEMORANDUM

JULY 15, 1970.

To: Senator JACKSON.
From: Bill Van Ness, Special Counsel.
Subject: S. 1830, Section 4(b).

A review of the record of the July 14 debate on section 4(b) of S. 1830 and the amendment proposed to that subsection discloses that the goals and objectives of the members who have discussed this "transitional section" are in general accord.

In view of this general agreement on principle I have drafted for your review and for the consideration of Senators Gravel, Stevens and Harris a revised section 4(b) which may provide legislative language on which an agreement can be reached. The major changes in the subsection are as follows:

SUBSECTION (B) (1)

1. The Secretary is directed to make a study of and to develop a program for the orderly transition of "appropriate" programs to the State of Alaska and, in addition, to existing Native organizations and to the Village Corporations and Regional Advisory Boards established by this Act. This change would in effect adopt the concept of self-determination and allow Alaska Native people to administer appropriate programs.

2. The language in subsection (b) (1) (second sentence) which would terminate services on the basis of racial or ethnic distinctions within five years would be deleted in its entirety.

3. Public health and educational programs referred to in the subsection would be specifically excluded from the Secretary's study as well as from the operation of the subsection.

SUBSECTION (B) (2)

1. This subsection has been revised to delete the requirements that a plan be presented for transition of the programs within four years. Also deleted is the last sentence which set up a procedure for Congressional review of the plan prior to its implementation. The new language continues the requirement for submission of annual reports and goes on to require that a "final report" on the transition of programs to the State and to the Native people be presented to the Congress within five years.

SUBSECTION (B) (3)

1. This subsection makes clear that there will be no reduction in the Federal Services provided to the Tsimshian Indians who are excluded from benefits under the Act. The language has been changed to allow the Tsimshians to assume the management of appropriate programs.

The changes proposed to subsection 4(b) make clear that:

1. No existing Federal programs are terminated.

2. The Alaska Native people may assume management of programs free of the paternalism and administration of the Bureau of Indian Affairs.

3. That the social, economic, and health needs of Native people will be met.

4. That the special legal relationship between Native people and the Federal government continues unimpaired.

AMENDMENT No. —

On page 49, line 19, delete all of section 4(b) and substitute the following language:

"(b) (1) The Secretary is authorized and directed, together with other appropriate agencies of the United States Government, in conjunction with the Alaska Native people to initiate a study, subject to the approval of Congress, for the orderly transition and management of appropriate education, welfare, and other Federal programs benefitting the Alaska Native people from the United States to the State of Alaska or other appropriate local organizations, including existing organizations of Alaska Native people, and the Village Corporations and the Regional Advisory Boards established under this Act. *Provided*, That nothing in this subsection 4(b) shall affect services furnished the Alaska Native people through the Department of Health, Education, and Welfare, or diminish the applicability of the Act of April 16, 1934, as amended (48 Stat. 596), or the Acts of September 23, 1950, as amended (64 Stat. 967), and September 30, 1950, as amended (64 Stat. 1100). These programs shall be exempt from the study the Secretary is directed to undertake pursuant to this subsection.

"(2) The Secretary shall report annually to the Congress on the implementation of this subsection, on the need for any new programs or additional legislative authority, and on the availability of State and general Federal assistance programs to provide any necessary and needed services to Alaska Natives as citizens of the State of Alaska and the United States. Within five years of the date of enactment of this Act the Secretary shall present a final report to the Congress on the transition of programs referred to in subsection (b) (1) hereof.

"(3) None of the provisions of this subsection 4(b) shall diminish in any way the services and programs furnished to or available to the Tsimshian Indians on the Annette Islands Reserve: *Provided*, That the management of appropriate Federal programs may be transferred to the Tsimshian Indians by the Secretary."

ALASKA FEDERATION OF NATIVES,
Anchorage, Alaska.

HON. FRED R. HARRIS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARRIS: We have reviewed the July 15, 1970, memorandum to Senator Jackson from Bill Van Ness which proposes alternative language for section 4(b) of S. 1830.

This alternative language would not, we understand, require the termination of any federal programs presently available to Alaska Natives, and would contemplate that the Secretary would consult with appropriate Native organizations in planning for the transition of any programs to state or other authorities.

On this understanding, we believe that this new language would represent an improvement to section 4(b). The Federation has requested the total elimination of any provision dealing with termination—on the ground that this issue is irrelevant to a land compensation bill. The proposed language, as we interpret it, would achieve the substance of this request.

Sincerely,

JOHN BORBRIDGE,
First Vice President.
EBEN HOBSON,
Executive Director.

Mr. JACKSON. Mr. President, does any other Senator request time on my side?

I yield such time as he may need on the pending matter to the able senior Senator from Colorado.

The PRESIDING OFFICER (Mr. SPONG). The Chair would advise the Senator from Washington that he has 3 minutes remaining.

Mr. JACKSON. I yield 3 minutes to the Senator from Colorado and if he wishes more time, I will yield it to him on the bill.

The PRESIDING OFFICER. The Chair would advise the Senator from Washington that the vote will occur at 12:15 today.

Mr. JACKSON. I yield the remainder of my time to the distinguished Senator from Colorado (Mr. ALLOTT).

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ALLOTT. Mr. President, I rise in support of the two Senators from Alaska. It is hard for anyone not familiar with the work of the committee to realize the many, many hours that the entire committee—not just the two Senators from Alaska, its chairman, and myself—devoted to this subject. It has just been called to my attention that there were 15 executive sessions alone on the bill, many of which stretched to 3 or 4 hours. This is not something that has just been brought up on the floor of the Senate out of a clear sky, and that the committee has not already carefully considered.

I agree wholeheartedly with the position taken by the two Senators from Alaska.

Mr. President, I refer to page 302 of part 2 of the hearing on the Alaska Native claims to the statement of Arthur Goldberg, who was representing and speaking for the Alaska Federation of Natives. Mr. Goldberg said this, and it should be in the RECORD:

> We have tried reservations and the result has been abysmal poverty and alienation from the mainstream of American life. We have tried the Bureau of Indian Affairs and various other forms of paternalism and the result has been a large and costly bureaucracy and a failure to develop Native self-sufficiency. In short, our past attempts to resolve Native land problems have been tragic failures.
>
> Now, as a result of the unique aspects of the Alaska problem, and as a result of what we have learned from the past, Congress has the opportunity to come up with a solution which will work. This cannot be achieved by trinkets or doles, by passing the problem off to some slow-moving adjudicatory body, or by imposing some modified form of reservation or paternalism upon the Alaskan Natives. But it can be achieved by a bold and imaginative approach which fully and finally resolves all claims, ties the settlement to the lands in question, and permits the Natives to improve themselves and their land and determine their own destiny.

That is Mr. Goldberg speaking, Mr. President, for the Alaska Federation of Natives. We have heard both Senators from Alaska speak. I, for one, am fully willing and confident to follow their leadership and advice in this matter.

Mr. HARRIS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Sen-

ator from Oklahoma is recognized for 5 minutes.

Mr. HARRIS. Mr. President, the Alaska Federation of Natives opposes the termination provision in this bill, a statement on which I placed in the RECORD last night. Because they are worried about the bill and getting through this momentous claim, they tried their best last night to work out some compromise on termination. Representatives of the Alaska Federation of Natives last night tried to get agreement on a substitute amendment which would not take rights away from them as a condition to their getting their claim settled, and decided specifically that, before any such decision was made they had to be taken into account, and before any new authority was granted to the Secretary of the Interior to cut off services or their rights as American Indians, Eskimos, and Aleuts, Congress would be asked for its prior approval.

Unfortunately, the substitute amendment which the distinguished chairman of the committee, I understand, was agreeable to, and which he has now placed in the RECORD, was not agreeable to the distinguished Senator from Alaska (Mr. GRAVEL).

Thus, once again, the Senate is being asked to play God in regard to American Indians, Eskimos, and Aleuts. It is being asked to decide what is good for them, against their wishes, and without consultation with them.

That is wrong.

Yesterday, the Senate decided that American Indians, Eskimos, and Aleuts should not be assured of having three of the five members of the commission established under the act but, instead, should have assurance of only two of five members on that commission which will make very vital and important decisions in regard to eligibility for benefits under the act and also in regard to matters concerning the villages, and so forth.

We said on the one hand, yesterday, that the Native peoples of Alaska should not be assured of a majority on that commission; on the other hand, we are asked to say today, "Turn them loose on their own."

As a condition of getting the benefits in this bill, it is said that the Alaska Natives will have to accept being cut off from certain of their present rights. So far as the U.S. Government is concerned, 5 years from today, they will cease to be considered Natives under the law and will cease to be entitled to certain services solely on the basis of racial or ethnic background.

Mr. President, I think that should be studied very carefully.

Mr. President, Alaska Natives do not want this. There is plenty of time, since the provision would not go into effect for 5 years, anyway, to develop the plans.

Why does not the Senator from Alaska come now with plans?

Why does he not tell us exactly what can be done?

The answer is that no one knows, since the plans do not exist, and we do not know how this would be carried out.

Why do it now? Why require it? Why not wait until such plans are developed in conjunction with the Natives themselves and then those plans can be brought back here for Congress to consider and approve?

If termination is such a good deal, why are not the Alaska Natives in here asking for it?

If termination is such a good proposition for the Alaska Natives, as the Senator from Alaska (Mr. GRAVEL) indicates, why is it not presented as a separate question, rather than as a part of this claims bill?

Why is it made a condition precedent to their receiving the benefits under the bill, which are nothing more than simple justice, justice to which they have long been entitled.

Those are the questions involved here. They are serious questions.

We know, as I said yesterday, that people do not stay in one place. Many of the Natives have already moved to other States; this amendment might cut off their rights when they move to urban areas.

Therefore, I think that is another reason why we should not act hastily here in conjunction with the bill and take a backward step along the trail of termination which has been such a sorrowful trail for American Indians, Eskimos, and Aleuts in the past.

Mr. JACKSON. Mr. President, I believe I have 1 minute remaining.

The PRESIDING OFFICER (Mr. SPONG). The Senator is correct.

Mr. JACKSON. I yield 1 minute to the senior Senator from Alaska (Mr. STEVENS).

The PRESIDING OFFICER. The Senator from Alaska is recognized for 1 minute.

Mr. STEVENS. Mr. President, I want to make certain I understand the last comment of the distinguished Senator from Oklahoma. The provision he speaks to applies only to a citizen of Alaska. Therefore, any Alaska Native who is a citizen of the State of Oklahoma or a citizen of the State of Washington, or a citizen of the State of California, will continue to get the Federal services that are provided for any Indians in that area.

We merely seek to establish the fact that this bill—which is the fairest settlement any group of Indians, Eskimos, or Aleuts have ever received from the Federal Government—will establish a system wherein Alaska will have no discrimination on the basis of race or color. I think that is clear. The bill is a fair one. It gives the Natives the opportunity to meet their own problems. To the extent that they cannot meet them, the State will meet them.

I can assure the Senator from Oklahoma that those needs will be met.

Mr. HARRIS. Mr. President, will the Senator from Alaska yield?

Mr. STEVENS. I yield, if I have any time left.

Mr. HARRIS. I yield on such time as may later be allowed me on the bill.

Does not the Senator feel that we should increase the acreage under the bill to 40 million acres, as the Natives would like to see done?

Mr. STEVENS. Mr. President, I have for some time believed that there should be substantially more land in the northwest portion of Alaska. We have in some ways met that by the amendment offered by the Senator from Washington (Mr. JACKSON), and my distinguished colleague and me yesterday. But the bill is a substantial compromise between my views.

One of the compromises we reached in our committee was that in order to obtain the cash we need for a capital base—$500 million and the additional 2-percent royalties which led to another $500 million, for a total of $1 billion for 20 percent of our people in Alaska—we had to give up some of the land.

So again I would say to my good friend, the Senator from Oklahoma, as I did on yesterday, that the bill is a compromise bill to which I am wedded, and I intend to stay married.

Mr. HARRIS. Mr. President, does the Senator intend to offer an amendment which would increase the acreage to 40 million acres?

Mr. GRAVEL. Mr. President, I would be happy to do so if I thought it would pass. If the Senator believes it would pass, I would be happy to cosponsor an amendment with him.

Mr. HARRIS. Mr. President, I think that land is very important here. I will go into that at another time.

I raised that question here because this is not such a good deal. I hope that it will go through with the improvements we have incorporated in the bill. We have already made some improvements in it.

I compliment the committee and the chairman of the committee and the two Senators from Alaska for what they have done. But I think that we can still improve the bill more.

I do not think that we are doing enough in this bill without the additional acreage; we cannot say that the Indians ought to be glad to accept the termination provision in the bill because they are getting such a good deal.

Even if we can increase the acreage, as I hope we can do later, this will still only represent simple justice. We should not say, "If you receive this benefit from us, you will have to give up some of your present legal rights."

Mr. President, I do not think that is proper. I hope that the termination provision will be stricken and that my amendment will be agreed to.

The PRESIDING OFFICER (Mr. SPONG). All time has expired. The question is on agreeing to the amendment of the Senator from Oklahoma. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Mississippi (Mr. EASTLAND), the Senator from Tennessee (Mr. GORE), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Alabama (Mr. SPARKMAN), the Senator from

Georgia (Mr. RUSSELL), the Senator from Maryland (Mr. TYDINGS), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Minnesota (Mr. MONDALE) is absent on official business.

I further announce that, if present and voting, the Senator from New Mexico (Mr. MONTOYA) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK) and the Senator from Delaware (Mr. BOGGS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) and the Senator from Maine (Mrs. SMITH) are absent because of illness.

The Senator from New York (Mr. GOODELL) is detained on official business.

If present and voting, the Senator from Delaware (Mr. BOGGS), the Senator from New York (Mr. GOODELL), the Senator from South Dakota (Mr. MUNDT), and the Senator from Maine (Mrs. SMITH) would each vote "nay."

The result was announced—yeas 14, nays 68, as follows:

[No. 241 Leg.]

YEAS—14

Allen	Hughes	Nelson
Cranston	Kennedy	Pell
Eagleton	Mansfield	Ribicoff
Harris	McIntyre	Young, Ohio
Hart	Muskie	

NAYS—68

Aiken	Goldwater	Murphy
Allott	Gravel	Packwood
Anderson	Griffin	Pastore
Baker	Gurney	Pearson
Bayh	Hansen	Percy
Bellmon	Hatfield	Prouty
Bennett	Holland	Proxmire
Bible	Hollings	Randolph
Brooke	Hruska	Saxbe
Burdick	Jackson	Schweiker
Byrd, Va.	Javits	Scott
Byrd, W. Va.	Jordan, N.C.	Smith, Ill.
Case	Jordan, Idaho	Spong
Cook	Long	Stennis
Cooper	Magnuson	Stevens
Cotton	Mathias	Symington
Curtis	McCarthy	Talmadge
Dole	McClellan	Thurmond
Ellender	McGee	Tower
Ervin	McGovern	Williams, N.J.
Fannin	Metcalf	Williams, Del.
Fong	Miller	Young, N. Dak.
Fulbright	Moss	

NOT VOTING—18

Boggs	Goodell	Mundt
Cannon	Gore	Russell
Church	Hartke	Smith, Maine
Dodd	Inouye	Sparkman
Dominick	Mondale	Tydings
Eastland	Montoya	Yarborough

So Mr. HARRIS' amendment was rejected.

Mr. GRAVEL. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ALLOTT. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 773

Mr. JACKSON. Mr. President, I call up my amendment No. 773.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk proceeded to read the amendment.

Mr. JACKSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment (No. 773) is as follows:

On page 145, after line 5, insert a new section 17 as follows and remember as appropriate the following sections:

"MINERAL LEASING ACT

"SEC. 17. Disposition of all minerals included under the Federal mineral leasing laws including but not limited to deposits of coal, phosphate, sodium, potassium, oil, oil shale, gas, or sulfur located in public lands in Alaska and of all deposits of any other minerals located in such lands, which the Congress may hereafter authorize to be disposed of by sale or lease, after the effective date of this Act may, where there is competitive interest shown in a particular tract of land, be under such competitive bidding procedures, as the Secretary may prescribe by regulation. The provisions of the Mineral Leasing Act of February 25, 1920, as amended and supplemented (41 Stat. 437; 30 U.S.C. 181 and following), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 and following) shall apply to the extent that such provisions are not inconsistent with this Act. Where such competitive interest has not been displayed the provisions of the Mineral Leasing Act of February 25, 1920, as amended and supplemented (41 Stat. 437; 30 U.S.C. 181 and following), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 and following) shall apply."

Mr. JACKSON. Mr. President, I yield myself such time as I may require.

Mr. President, I have introduced an amendment to S. 1830, the "Alaska Native Claims Settlement Act of 1970," to authorize the Secretary of the Interior to dispose of oil and gas and other leasable minerals on the public lands in Alaska by competitive bid where there is competitive interest in the lands to be leased. This amendment is proposed in connection with S. 1830 rather than as general legislation because section 13 of S. 1830 terminates Public Land Order No. 4582, the existing land withdrawal order covering public lands in Alaska, and therefore has the effect of opening all unreserved public lands in Alaska to noncompetitive mineral lease offers.

If this amendment is not adopted, the minerals of the Nation's richest oil and gas area may be given away to speculators at a tiny fraction of their commercial value or true market value.

The provisions of the Mineral Leasing Act of 1920 do provide for a very limited form of competitive leasing. If the Geological Survey determines that the public lands in question are on a "known geological structure" the lands are leased competitively on a cash bonus bid basis. This term—"known geological structure"—is not defined in the act, but has been administratively defined to mean that there must be a producing well on a known geological structure, and the structure must extend to the public lands in question. As a result of this restriction on the use of competitive leasing procedures the great bulk of Federal mineral leases are issued noncompetitively to the first applicant.

The Mineral Leasing Act authorizes the issuance of noncompetitive leases on public lands for a mere $10 filing fee and a 50-cent-an-acre rental payment. In my view, it is not in the public interest to allow these lands, which are owned by all of the people, to be leased noncompetitively at a fraction of their fair market value, when there are willing buyers anxious to bid on the leases.

The amendment I have proposed, along with the able senior Senator from Delaware (Mr. WILLIAMS) would apply only to public lands in the State of Alaska and would adopt language which was recommended to the Congress by the Federal Field Committee for Development Planning in Alaska, by the Department of the Interior with the endorsement of the Bureau of the Budget, and by the Comptroller General of the United States. In addition, the Public Land Law Review Commission in its recent report to the President and the Congress recommended that the Mineral Leasing Act be amended in the manner which I have proposed for Alaska.

In my view a strong and convincing case can be made for extending the amendment I have proposed to all public lands. Hearings on this have not, however, been held and I have therefore limited the amendment's application to the public lands in the State of Alaska.

There are several reasons for urgency with respect to writing a competitive leasing provision into the present bill. The first, of course is the enormous value of the resources in question and the enormous pressures within the oil and gas industry to obtain oil leases in Alaska. There may be hundreds of millions, or even billions, of dollars at stake in the manner by which these minerals are leased. Congress provided in the Mineral Leasing Act of 1920 for noncompetitive leasing of oil and gas except in the immediate vicinity of a producing well. At that time the intention was to allow independent operators to prospect for leasable minerals with a minimum of red tape and expense on raw wildcat lands on which there was little competition for leases. The interest of the Government as landowner was protected by collecting a royalty on production wherever a commercial discovery was actually made.

The situation in Alaska today, however, is very different from the one Congress had in mind in 1920. Drilling is still the final test of whether or not oil and gas deposits are actually present, but modern geology and geophysical techniques provide powerful evidence about the probability of their occurrence before any exploratory drilling takes place. For this reason, exploration rights on some undrilled tracts in Alaska have had a market value of thousands and tens of thousands of dollars per acre.

The right to explore 179 tracts offered by the State of Alaska in September 1969, for example, brought in over $900 million. If the same acreage had been open to leasing under Federal laws in the spring of 1968—and this is the significant point—this acreage would have passed to speculators for a $10 filing fee and an annual rental of only 50 cents per acre. On the basis of a November 1969 field rules hearing, the State division of oil and gas defined three forma-

tions in the Prudhoe Bay field, the Sadlerochit, the Kuparik, and the Lisburne. These formations are roughly analogous to the U.S. Geological Survey's narrow definition of "the known geological structure of a producing well" and contained 43 of the 179 tracts offered in September. These 43 tracts received total high bids of $470.3 million.

Accordingly, if the area offered by the State in its competitive sale had been available for leasing under Federal laws, the $900 million in bonuses actually received would have been diminished by $429.7 million.

There is no reason whatever to convey such valuable rights in the public domain except at their fair market value as determined in a competitive sale.

The second reason this amendment should be incorporated into S. 1830 is related to the purposes of the Native claims settlement bill. Alaska Natives have a substantial, though unlitigated claim against much of the public lands of Alaska, including lands which hold rich deposits of oil and gas. A principal objective of this legislation is to extinguish these claims by purchase, by adopting the legislative settlement proposed by S. 1830. This has the effect of clearing title to those lands and their minerals, in part by an appropriation from the Federal Treasury and in part by the commercial revenues received from oil and gas production on the lands claimed by the Natives. The logic and the financing of this settlement both assume that the potential mineral revenues from the public lands of Alaska will not be dissipated by the disposal of mineral rights at a fraction of their true value. A fair price for the disposition of these resources can not be assured without allowing competitive leasing wherever there is competitive interest in the lands to be leased.

The GAO report referred to earlier notes that in one small oilfield, the Bell Creek field discovery in Montana, 2½ million acres of Federal lands were leased noncompetitively. The GAO estimates that these leases resulted in $24 million less revenue than their fair market value. This estimate represented the difference between the average price per acre for leases on these Federal lands and the average price per acre for competitively awarded leases on State lands in the same area. The disproportion in value on the rich mineral lands in Alaska could be much greater than this if provision is not made to lease public lands pursuant to competitive procedures where there is a competitive interest.

A third reason for this amendment flows from the interests of the State of Alaska. The combined provisions of the Mineral Leasing Act and the Statehood Act grant Alaska 90 percent of the revenues from mineral leasing on public lands within its boundaries. The State of Alaska therefore has a big stake in the Federal Government's choice of leasing practices. The State does, however, have a line of defense against the dissipation of potential mineral revenues by noncompetitive leasing: the State can select the lands in question under the provision of the Statehood Act which allows Alaska to select over one hundred million acres from the unreserved public domain. The State is therefore impelled to select lands immediately which it might not otherwise want, only to prevent their leasing under the noncompetitive provisions of Federal law. Representatives of the Governor of Alaska have told the Public Land Law Review Commission that the State intended to station agents in each of the Federal land offices in Alaska, in order that the State could select each tract on which someone was about to file a noncompetitive lease offer. Certainly this procedure does not lead to a sound pattern of land ownership or land management. Its necessity can be eliminated by authorizing the Secretary of the Interior to lease minerals on the same competitive basis as does the State of Alaska and almost all other States.

A final reason for this amendment is to eliminate a powerful source of confusion and possible corruption with regard to certain outstanding lease offers on Federal lands in Alaska. In 1966 the Department of the Interior began suspending the processing of mineral lease offers on lands where there was a Native protest. This so-called land freeze was superseded in January 1969 by the Secretary's public land order withdrawing all public lands in Alaska from mineral leasing in order to preserve the status quo for a congressional settlement of the Native claims. Meanwhile, however, various individuals tried to file offers to lease valuable oil and gas properties in the State under the noncompetitive provisions of the Mineral Leasing Act. These offers to lease lands which were not available for leasing cost the applicants only a $10 filing fee, and imposed no legal obligation on the Government to grant a lease. Yet some of these offers, or interests in them, were sold by the applicants to other individuals and even to substantial oil companies for many thousands of dollars. There is still reputed to be an active market for such lease offers in Fairbanks.

The State of Alaska has filed a selection of the most valuable of these lands and the State Commissioner of Natural Resources has ruled that under Alaska law they must be leased competitively. His ruling led the lease applicants to place great pressure on the Alaska Legislature to compel the State to grant leases to them. The legislation to this end, dubbed the "Dirty Oil Bill" by the Alaska newspapers, never came to a vote in either house of the legislature, but it led to bitter charges of corruption and malfeasance within the State. A group of Canadian oil companies and others who bought some of the lease offers on lands subject to the land freeze have made an effort to get oil and gas rights granted to them as part of S. 1830. The amendment proposed here will end any confusion about the status of the lease offers made during the Alaska land freeze, and should put an end to the trade in lease offers.

It should be made clear that this amendment will not end all noncompetitive leasing in Alaska, nor will it frustrate the intentions of the Mineral Leasing Act in providing for noncompetitive leasing. If there are indeed independent operators in Alaska who want to explore raw wildcat lands in which the major oil companies are not interested, there will surely be acreage which can be obtained either competitively or noncompetitively without the payment of huge bonuses. It is instructive that Tom Miklautsch, the Fairbanks druggist who became a millionaire from a small investment in a Prudhoe Bay oil lease, obtained his exploration rights in a competitive lease sale.

There is no justice, and no justification whatever, for the transfer of obviously valuable rights in the public domain to one party for a small filing fee, when there is another party who is willing to pay fair market value. The oil independent who actually explores apparently unpromising lands should not be used to justify the sacrifice of public revenues to middlemen who have no intention to drill and who would get windfall fortunes by peddling their cheaply obtained leases competitively to the big oil companies.

The detailed study of "Federal Land Laws and Policies in Alaska" which the University of Wisconsin School of Natural Resources made for the Public Land Law Review Commission summarized its views on noncompetitive leasing as follows:

NONCOMPETITIVE LEASING

Under the Mineral Leasing Act, leasing for gas and oil is not competitive until a "known geological structure" is defined. *This procedure results in many persons taking noncompetitive leases who have no competence or financial capacity to explore and develop oil but only intend to sell their lease rights to an operating oil company. Under a competitive leasing system, such as is employed on the outer continental shelf, the amounts now paid by the oil companies to the lease speculators would be paid to the public treasury.* Thus the non-competitive leasing system is a distribution of public funds to those speculators who are sufficiently familiar the law to play this lottery. *The only reasonable alternative is to make all oil and gas leasing competitive as is now the policy under the more modern law which applies to offshore leasing.* (Emphasis added.)

Mr. President, I strongly urge that this amendment be adopted. It is clearly in the best interests of the Natives, the people of Alaska, the public and the Federal Government.

Mr. President, I ask unanimous consent that extracts from various reports urging that the Mineral Leasing Act be amended to require wider use of competitive leasing be printed at this point in the RECORD.

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

GAO REPORT

On March 17, 1970, following a review of Federal law and policy concerning the award of mineral leases the comptroller General of the United States formally recommended in a report transmitted to the Congress:

(1) "That the Department of the Interior, in leasing Federal lands for the development of oil and gas resources, should use competitive bidding to a greater extent to ensure that the lands are leased at prices that more nearly approximate their fair market value."

(2) "That the Mineral Leasing Act of

1920 be amended to (1) require that oil and gas leases of all Federal lands be awarded competitively unless otherwise justified."

The GAO report also noted in its findings and conclusions that:

"Many oil and gas leases of Federal lands outside a known geologic structure of a producing oil or gas field were awarded noncompetitively at prices that appeared to have been less than fair market value." (See p. 6)

"For example, GAO estimates that 2.5 million acres of Federal lands in the general vicinity of the Bell Creek Field discovery in Montana were leased noncompetitively for about $24 million less than their indicated fair market value. This estimate represents the difference between the average price per acre for leases on these Federal lands and the average price per acre for competitively awarded leases on State lands in the same area." (See chap. 2 for this and other examples.)

"GAO believes that the substantial public interest in acquiring noncompetitive leases indicates that effective price competition could have been obtained if the leases had been awarded competitively. However, the leases could not have been awarded competitively because, under the governing statute the first qualified applicant is entitled to lease, without competitive bidding, lands of the United States that are not within any known geologic structure of a producing oil or gas field. Generally, the geologic data needed to determine whether lands offered for leasing are within such a structure are not available to the Department before leasing and drilling." (See p. 7).

"On the basis of its review, GAO believes that the Department, in leasing Federal lands for the development of oil and gas resources, should use competitive bidding to a greater extent to ensure that the lands are leased at prices that more nearly approximate their fair market value." (See p. 38).

"GAO believes, also, that the increased use of competitive bidding would tend to reduce or eliminate certain undesirable aspect of awarding leases to applicants on the basis of simultaneously filed lease applications, such as the multiple filing of applications increase the chances of getting a lease, and the acquisition of leases for speculation rather than for the development of the resources."

PUBLIC LAND LAW REVIEW COMMISSION

One of the major recommendations of the Public Land Law Review Commission's report to Congress and to the President is to amend the present provisions of the Mineral Leasing Act of 1920 to enlarge the scope of the competitive leasing provisions.

The Commission noted with respect to the limited competitive sale requirements of present law: "We have concluded that these competitive sale requirements are too narrow in scope, particularly in the case of oil and gas." The Commission's recommendation number 49 provides that:

"Recommendation 49: Competitive sale of exploration permits or leases should be held whenever competitive interest can reasonably be expected. (p. 132, chapter 7, *One Third of the Nation's Land.*)"

The contractor's study of "Federal Land Laws and Policies in Alaska" by the University of Wisconsin, School of Natural Resources stated as follows:

"NON-COMPETITIVE LEASING

"Under the Mineral Leasing Act, leasing for gas and oil is not competitive until a "known geological structure" is defined. *This procedure results in many persons taking non-competitive leases who have no competence or financial capacity to explore and develop oil but only intend to sell their lease rights to an operating oil company. Under a competitive leasing system, such as is employed on the outer continental shelf, the amounts now paid by the oil companies to the lease speculators would be paid to the public treasury.* Thus the non-competitive leasing system is a distribution of public funds to those speculators who are sufficiently familiar with the law to play this lottery. *The only reasonable alternative is to make all oil and gas leasing competitive, as is now the policy under the more modern law which applies to offshore leasing.*"

The "Legal Study of the Federal Competitive and Noncompetitive Oil and Gas Leasing Systems" which was prepared for the Public Land Law Review Commission by The Rocky Mountain Mineral Law Foundation set forth a number of alternatives to the present noncompetitive leasing procedure of the Mineral Leasing Act of 1920. Alternative No. 11 of the contractor's study report is basically the same as the amendment proposed to S. 1830. The Foundation's discussion of the alternative is set out below:

"ALTERNATIVE NO. 11

"Modify the existing leasing system to authorize the Secretary of the Interior to extend competitive bidding to lands designated as being subject to competitive interest."

"1. Problems to be solved

"As a landowner it may be said that the United States does not receive a fair market value for leases issued under the simultaneous drawing system. A lucky winner is placed in the position of being able to receive this value. The administration of such a leasing system is a significant burden. If areas in which "competitive interest" exists were to be designated as being subject to competitive bidding, the number of applicants would be reduced and limited more to persons with a greater interest in development. The United States would realize the fair market value of leases upon such lands.

"2. Key features

"Upon receipt of more than a stated number of applications the land office would post the lands as being subject to competitive bidding. The number of offers would have to be arbitrary. It could range from more than one offer to such number as is deemed to establish a competitive interest. Upon receipt of the requisite number of offers filed in the existing open filing system within a certain time period, the lands would be posted as available only for competitive bids. The bidding could be restricted to only those who had filed applications within the time period, or it could be open to any bidder. A deposit of a stated sum should be required of applicants which would be forfeited if the applicant failed to make a bid."

"3. Probable advantages

"The United States would receive a higher return for lands made subject to competitive leasing. The prospect of having to engage in a bidding process to obtain a lease should discourage the submission of applications by complete strangers to the oil and gas industry in anticipation of striking it rich, and the simultaneous drawing could be eliminated. No significant change should occur in the total amount of acreage leased under this system in comparison to the present one. This alternative would not require the initiation of any new procedures for "designation" of competitive lands as would be true under other suggested expansion of competitive bidding, thus saving the imposition of additional administrative burdens and costs. No change should occur in development and exploration rates as present day operators are forced to acquire lands from those who are the lucky winners in the lottery. If bidding were limited to those persons who had filed applications within a certain number of days (assume 10 days), they would have some reward for their initiative in taking steps to apply for the lands and they are not acting solely in response to an advertisement to try their luck in a lottery. If the bidding were made open to any persons, it might be that a higher bid might be secured but presumably the competition has been indicated only by those who applied and it would appear consistent to restrict the bidding. However, all interested persons could still file applications and obtain the right to bid."

"4. Probable disadvantages

"While some incentive would be returned to constant examination of BLM records to determine the expiration of leases, the suggested alternate should not produce the "scrambles" and indications of inside information as to lease expirations that led to the simultaneous drawing. This should be offset by establishing a period of days during which competitive interest is ascertained. It is probable that some of the disadvantages noted with regard to an all competitive bidding alternative would arise, as would be true with any extension of competitive bidding to additional lands."

DEPARTMENT OF THE INTERIOR

In commenting on the provisions of S. 1830 in a report to the Committee of April 28, 1969 the Department of the Interior endorsed the principle that public lands in Alaska should be subject to competitive leasing. The Department stated that:

"Section 12(a)(1) provides that deposits of coal, phosphate, sodium, potassium, oil, oil shale, gas, or sulfur located in all public lands in Alaska shall be subject to disposition by the Secretary upon application therefor or upon his own motion under such competitive bidding procedures as he may prescribe by regulations.

"The Department believes that it is important for the Secretary to have specific authority to dispose of all minerals under the mineral leasing laws by competitive bidding. We are carefully reviewing this language to be sure that this objective will be adequately accomplished. We recommend, however, that the section be amended to insure that it covers all minerals included under the mineral leasing laws."

A similar recommendation was made by the Bureau of the Budget in its April 29 report on S. 1830:

"We note that Sec. 12 of S. 1830 provides for competitive leasing of enumerated minerals subject to the Mineral Leasing Act. Competitive leasing would be a major step forward in assuring that the Federal Government obtains a fair market value return when it disposes of minerals. It is particularly important that this authority be enacted before the present "freeze" is ended since without this authority extremely valuable deposits will have to be disposed of noncompetitively unless they are determined to be in areas where competitive leasing is legally required."

The PRESIDING OFFICER. Who yields time?

Mr. ALLOTT. Mr. President, I do not know who controls the time in opposition.

Mr. GRAVEL. The Senator controls it.

Mr. ALLOTT. I yield myself such time as I may require.

Mr. President, I oppose the amendment of the distinguished chairman of the committee, fully aware of his feelings about this matter. We have discussed it many, many hours in the committee.

I wish to say, first of all, that I oppose it because by committee action—according to my recollection only by a majority of one or two votes—the committee recommended that section 17, which is the gist of this amendment, be eliminated from the bill.

I oppose the reinstatement of that provision for two or three other reasons,

which I can state very clearly and very quickly.

First, 80 percent of the oil discovered in this country has been discovered by independents. It is nice to talk about offering these leases on a competitive basis and getting all the money in. But, if we do, we are going to force the people who have discovered most of the oil in this country out of the business.

Reference was made to the Bell Creek Field in the statement of the chairman of the committee, that if it had been leased on a competitive basis, it would have brought in $24 million more to the Government.

If the Bell Creek Field had been a known geologic structure, and it would have been leased on a competitive basis, and it is in all probability true that the Government would have received $24 million more out of it. But it was not on a known geologic structure. It was, therefore, leased noncompetitively, and as a result of that discovery and that find, subsequent leases brought in many, many dollars more to the Federal Government than if this one firm had not gone in there and risked its own reputation and its own capital in order to bring in that field.

Mr. HANSEN. Mr. President, will the Senator yield at that point?

Mr. ALLOTT. I yield.

Mr. HANSEN. Mr. President, I think it might be well to point out that Sam Gary, the Denver independent who discovered Bell Creek, had drilled 34 consecutive dry holes before he finally, in a last gasp dying effort, got together enough dough to drill a 35th well, and that was the well that was the producer, that brought into production and made available to all the people of this country the fabulous Bell Creek Field.

I just wanted to intrude on my good friend's time to make that observation.

Mr. ALLOTT. The Senator is not intruding at all. I knew he would allude to this in his remarks, and I did not want to intrude on his own speech.

But it illustrates the point very clearly that here is a man, an independent who had drilled 34 wells, and still had the backbone to drill a 35th. After that, by reason of his belief and confidence in his own efforts, in his geological abilities and drilling abilities, he brought in a field; and thereafter, of course, any bids that went out went out competitively.

Second, I want to say that I believe there is a very deep fallacy in this amendment, which is one of the main reasons, if not the main reason, that I oppose it.

The amendment reads, "where there is a competitive interest shown in a particular tract of land" it shall be under competitive bidding.

I ask, what is a competitive interest? Let us be practical, knowing the kind of a world we live in, and show how this will work.

I do not know whether it is generally known, but there was at one time a particular man in the oil business in the United States who had faster communication transmission out of the Bureau of Land Management than Bell Telephone has over its wires. He knew everything that went on there, and he knew it just as fast as a man came in.

So John Smith, who has worked in an area for a long time, and done some exploration and perhaps some geologizing, goes into the local office of the BLM, or sends in an application for a lease upon a given tract of land.

Bingo, just like that, the Maximum Oil Co. and the Super Maximum Oil Co. and the Super Super Maximum Oil Co. find out, through their pipelines in this big, sprawling Federal bureaucracy, that Smith who is a good oil man, has an interest in this area.

So what happens? When he makes his application for a lease, under this amendment it goes up for a competitive bid. So the man who had the brains to find it, the man who did the work to find it, all of a sudden, under this amendment, has a competitive interest shown. The Maximum Oil Co. and the Super Maximum Oil Co. and the Super Super Maximum Oil Co. all of a sudden come in, and the poor guy who had the brains and all the input, and spent his money, is outbid by the Maximum Oil Co. It is just that simple, and there is no way of getting around it. It is unfortunate about the Federal Government that it is that way, but there is no such thing as a secret application for a lease.

Therefore, what we are going to do is drive the independent oil people in this country, who have discovered most of the oil in this country that has been discovered, out of business, and we will be dependent completely and wholly upon the big companies, which are not now, for the most part, major exploration companies.

I sincerely hope that this amendment is not adopted, because it is going to thrust oil discovery in this country back many, many years, and it will destroy the very people who, it is true, have made their livings—and thousands of them have gone broke—trying to discover and bring in new oil. It is going to leave them out in the cold, and then we hand the whole ticket over to the major oil companies with the big checkbooks and the big pocketbooks. But once this independent has found a piece of land that he thinks looks good, that he has enough faith in to make an appliation for a lease and pay the lease on a noncompetitive basis and do the exploratory work and develop it himself, he actually has increased the income of the Government. Once he makes a discovery at his expense, from that time on, it is a known geological structure and the Government can lease it on a competitive basis with reasonable expectation of substantial bidding.

So when we speak of the long-run well-being of the United States, it will be better served from the prospect of more discoveries, and out of these discoveries, more competitive bidding in known geological areas.

I sincerely hope that this amendment, which was considered at great length by the committee, will be rejected.

Mr. METCALF. Mr. President, I am concerned about the loss of revenue if the provision for competitive leasing is not provided. I was especially concerned when the very able and distinguished chairman of the committee (Mr. JACKSON) used a horrible example of the Bell Creek field in Montana. I did not know that he was going to cite this as an example and was not familiar with the GAO report to which he referred. But immediately after I heard him cite this example, I called some independent and small oil drilling operators in Montana. Each of them acknowledged that the Bell Creek incident was valid, but each of them said that there would never have been a Bell Creek discovery had it not been for the small independent operator wildcatting on unproven ground.

The whole issue here is whether or not on unproven and undeveloped geologic structures in Alaska and only in Alaska, because in the rest of the Nation the Mineral Leasing Act is the present law, the independent and small operator shall be outbid and out-maneuvered by the large national and international companies that can spread their leasing costs and their losses over foreign operations, offshore leases, fields in several States, or whether an independent can risk his entire fortune in exploring undiscovered and unknown fields to try to bring in new areas and new discoveries.

My Montana advisors tell me that if every area has to be subject to competitive bidding, the big companies will monopolize the entire industry and the small independents will lose out completely. The question here is whether the independents are going to be shut out of further Alaskan development or not; whether the existing law is going to be applied to Alaska as a State of the Union or a special law for the benefit of the big oil corporations going to be used solely in this area.

Mr. JACKSON. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Washington has 22 minutes.

Mr. JACKSON. I yield 5 minutes to the senior Senator from Delaware, who is a cosponsor of the amendment.

Mr. President, I ask unanimous consent that the name of the junior Senator from Alaska (Mr. GRAVEL) be added as a cosponsor of the amendment.

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

Mr. WILLIAMS of Delaware. Mr. President, I support the amendment. I can see no reason why, in the best interests of the American taxpayers, there is any objection to it. This amendment does not stop the Government from leasing in unknown geological areas the land on the basis of noncompetitive bidding. However, once it has been established that oil is in the surrounding area and there is a competitive interest in these leases, why should not the Government sell these leases and auction them to the highest responsible bidder?

The Comptroller General points out in his March 20, 1970, report, to Congress, which was referred to by the Senator from Washington, that oil was discovered in Powder River County, Mont., on June 29, 1967, and that at that time a substantial amount of acreage on Federal lands was not under lease. After oil was discovered in that area there was a great interest in these leases on the Gov-

ernment lands as well as the lands owned by the State of Montana. The State of Montana, very properly, auctioned its lands off at competitive bids, with the result that they sold the leases for 457,550 acres of State lands in this same area at prices per acre ranging from $6.14 up to $12.83. In leasing the 457,550 acres of State lands Montana received $4,544,025 from competitive bidding.

Since the oil had not been discovered on either the State lands or the other Government lands the Government under the present law leased 2,452,639 acres at 50 cents an acre and received a total of only $1,226,407. The Government leased nearly six times the acreage and received just over one-fourth of the amount of money. Government land was leased for 50 cents an acre. The Comptroller General estimates that on that one transaction we could have received approximately $24 million more by auctioning these leases in a competitive bidding sale.

I ask unanimous consent that excerpts from the Comptroller General's report relating to this matter be printed at this point in the RECORD, and I call particular attention to the letter which was included in the Appendix of this report as an example of the promotional literature that was sent to potential investors.

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

At the time of the Bell Creek discovery, most of the Federal lands in the five-county area were not under lease. Since the KGS could not be established by GS before completion of the discovery well, the lands were available for leasing noncompetitively to the first qualified applicant. In fiscal year 1968, 3,482 leases covering about 5,018,000 acres of Federal land were issued as compared with 820 leases covering 860,000 acres of Federal land in fiscal year 1967.

Montana uses competitive bidding in awarding oil and gas leases of State lands. Normally, every 3 months there is a lease sale of State lands for which lease applications have been received and of State lands offered for lease at the direction of the Board of Land Commissioners. Leases are awarded by competitive oral bidding to the qualified applicant who submits the highest bonus bid; the lessee being subject to annual rentals and royalties on production. A lessee pays a $5 filing fee and an annual rental based on $1 an acre. In addition, it is required that a lessee pay royalties ranging from 12.5 to 25 percent in value or amount of the oil produced, depending on the volume of production, and royalties of 12.5 percent in value or amount of gas produced.

From June 29, 1967—the completion date of the Bell Creek Field discovery well—to September 10, 1968, BLM issued 1,596 noncompetitive leases, covering about 2.5 million acres of Federal lands in the five-county area, for the payment of first-year rentals of $1,226,407 based on $0.50 an acre. During this same period, Montana issued 850 competitive leases, covering 457,550 acres of State lands in the same general area, for the payment of $4,544,025, or an average of $9.93 an acre, comprised of an average bonus of $8.93 and first-year rentals of $1 an acre. This information is summarized in the following table.

County	State of Montana payment			Federal Government payment		
	Acres	Total	Per acre	Acres	Total	Per acre
Powder River	119,583	$1,516,890	$12.68	654,332	$327,234	$0.50
Carter	108,479	1,359,186	12.53	794,870	397,506	.50
Custer	122,187	749,650	6.14	414,274	207,179	.50
Rosebud	68,716	423,127	6.16	430,981	215,483	.50
Big Horn	38,585	495,172	12.83	158,182	79,005	.50
Total	457,550	4,544,025	9.93	2,452,639	1,226,407	.50

Because of the substantial leasing activity resulting from the discovery of the Bell Creek Field, we believe that the Federal lands could also have been leased competitively at prices comparable to those paid for leases of State lands in each of the five counties. The basis for our estimate that an additional $24 million in revenues could have been realized by the Federal Government is summarized in the following table.

County	Average price per acre on State lands	Number of acres of Federal land leased	Indicated market value	Amount paid under Federal leases	Market value not realized
Powder River	$12.68	654,332	$8,296,931	$327,234	$7,969,697
Carter	12.53	794,870	9,959,724	387,506	9,562,218
Custer	6.14	414,274	2,543,639	207,179	2,336,460
Rosebud	6.16	430,981	2,654,842	215,483	2,439,359
Big Horn	12.83	158,182	2,029,474	79,005	1,950,469
Total		2,452,639	25,484,610	1,226,407	24,258,203

We found that the Bell Creek Field discovery also had a significant impact on the leasing of oil and gas rights on Indian lands located within the five-county area. The Bureau of Indian Affairs (BIA) awards leases of Indian lands under a competitive bidding system. The leases provide for annual rentals of $1.25 an acre and royalties of 16⅔ percent of the value of oil and gas produced. Revenues received from oil and gas leases of the Indian lands supports our belief that Federal lands in the five-county area that were leased subsequent to the discovery of oil in the Bell Creek Field were leased at less than their fair market value.

At the time of the Bell Creek Field discovery, BIA's Northern Cheyenne Indian Agency had not held a lease sale for 2 years. BIA's Crow Indian Agency had received bids for only 3,482 of the 40,152 acres offered for lease in August 1966 and June 1967. However, between June 29, 1967—the completion date of the Bell Creek Field discovery well—and September 10, 1968, the Northern Cheyenne Indian Agency held four lease sales. For 149,039 of the 149,519 acres offered, the high bonus bids plus the first-year rentals averaged $8.10 an acre. The Crow Indian Agency also held two lease sales during that same period. For 44,199 of the 47,519 acres offered, the high bonus bids plus the first-year rental averaged $10.39 an acre. This increased leasing activity occurred despite the fact that these Indian lands are located at least 65 miles from the Bell Creek Field.

EXAMPLE OF PROMOTIONAL LITERATURE AND AGREEMENT OF A LEASING SERVICE

DEAR INVESTOR: Thank you for answering our ad on Uncle Sam's Drawing for petroleum rights on the rich oil and gas lands in the West.

This is the game for those who like to flirt with Lady Luck. It is absolutely legal, you can play it on a tax-deductible basis, the odds are far shorter and the payoff potentially far greater than the Irish Sweepstakes.

Some of these lands have had a potential of over $500,000 in royalty income for the winner. A great many parcels have a potential income value of from $100,000 to $250,000 and when sold to an oil company, under an advance oil production agreement, this income can be received as capital gain cash.

It is no longer necessary for you to visit the Federal Land Office to participate in these drawings. We, as your agent, can do it all for you for a very nominal fee of $10 or less per entry when filing on a regular basis. This includes our financing your filings by furnishing up to $1280 advance rental deposit per application. The enclosed literature explains our program in full.

Regularity is the keynote to success in this game. Most oil companies, shrewd investors and insiders file each and every month, on several parcels, without fail. Just one small winner can easily pay for 25 years of regular filing.

If you are interested in participating in these drawings, just sign and return one or more of the enclosed blue Entry Cards, along with your checks, and we will do the rest. If you hurry, you can make this month's drawing.

If you desire any additional information please feel free to write directly to me.

Yours For Good Luck,

_____, _____.

P.S.—Over 95% of all federal leases acquired by oil companies are purchased directly from private citizens who have won in this drawing.

Mr. WILLIAMS of Delaware. Mr. President, this issue has been before Congress many times. Under the existing law the Federal Government has a standing rule of leasing the mineral rights on public lands at a fixed price of 50 cents per acre with an exception being made only in those areas in which there is known to be mineral rights.

All public lands are leased at these rates unless they are lands upon which oil deposits have been proven. On proven

grounds they can sell or negotiate leases at higher rates.

The catch is that the lands are not proven for oil deposits until after they have been leased; therefore, the net effect of the existing law is that in areas in which the Government land is surrounded by proven oil deposits and at times when such surrounding lands are actually bringing premiums of as high as $20 to $30 per acre for the leasing rates, the Government will lease its land which is just as valuable for the standard 50 cents per acre.

One glaring example of how the Government lost under this noncompetitive bid operation is best illustrated by what happened in New Mexico. I discussed a similar transaction a few years ago which took place in New Mexico. I describe that New Mexico transaction which parallels the Alaskan situation.

An area of approximately 40,000 acres near Carlsbad, N. Mex., was withdrawn by the Secretary from oil or gas leasing on February 6, 1939, because of the potash development.

Many requests for leases to open the area for oil and gas development were received. Oil and gas had been found in large quantities in the immediate surrounding area. With modern technique for drilling it was believed that it would be possible to drill for oil and gas without serious risk to the potash development.

Accordingly, the area was opened for oil and gas leasing with nearly all of this area being open on a noncompetitive basis inasmuch as it had not been actually proven to be a producing area for either oil or gas.

This 40,000 acres was broken up into about 79 tracts, and immediately nearly 29,000 applications were received from various interested parties, seeking to lease these tracts at the standard 50 cents per acre. The demand was so great that the Federal Government announced and arranged a public drawing whereby on a given date all the applications were placed in a pot and the lucky 79 drawn.

Through this noncompetitive bid allocation the Government received $20,000 for leasing this approximately 40,000 acres.

According to the newspaper stories at the time, after this public drawing the lucky winners of this lottery—as it might be called—were able to sell their leases ofttimes without leaving the grounds at a profit of $3 to $4 million. Certainly the Government, as badly as it needs the money, could have sold those leases and received that much or more for them at auction.

As has been pointed out, the State of Alaska recently auctioned its leases on State lands. Certainly it cannot be said that it is known that there is going to be oil and gas on the land that was leased by the State of Alaska. Nevertheless, there is good reason to believe that there will be oil and gas, and the State received approximately $900 million. Why should not the State have sold these leases to the highest bidder, and why should not the Federal Government, which has substantial acreage in the same area, exercise the same prudence in disposing of leasing privileges on its public lands?

I would say that if this were land belonging to any Member of the Senate individually he would lease that land to the highest responsible bidder and get the most for it. After all, as Members of the Senate we are directors representing the American taxpayers, and I think they can best be protected by letting the Government auction these mineral leases to the highest responsible bidders. It just does not make sense to do otherwise.

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

Mr. WILLIAMS of Delaware. I yield.

Mr. JACKSON. I compliment the Senator for his excellent remarks.

I want to emphasize again that if the existing Federal law had been applicable—instead of the State law of Alaska, which requires competitive bidding in connection with the Prudhoe Bay sales—the Federal Government would have lost over $429 million of the $900 million which the State of Alaska received at the September 11, 1969, lease sale. This is a dramatic example of the need for competitive leasing in this particular bill.

Mr. WILLIAMS of Delaware. I agree completely. Personally, I wish we could have this competitive bidding practice adopted throughout the Government on many of its procurements and sales.

Certainly, at this point, if we are going to consider this bill, the least we can do is to protect the Government's interests to that extent.

I strongly recommend that the amendment be adopted.

Mr. TOWER. Mr. President, I oppose the pending amendment to the Alaska Native Claims Act. I do so for two reasons. First, this amendment would tend to discriminate against the independent oil operator. By effectively raising the price he must pay for Federal oil and gas leases, the measure would make him less able to compete with the major oil company. Mr. President, I have nothing but respect for the major oil companies. Most of them began as independent oil operators. However, I am against adopting a measure which could have the longrun effect of driving the independent operator out of the market for these Federal leases. The independent cannot afford to pay the higher prices which usually result from competitive bidding.

Second, the amendment would establish a system of leasing Federal lands which would differ from the other 49 States. I feel that we should maintain a uniform leasing system throughout the 50 States of the Union. As I understand the amendment, all federally owned lands could be leased for mineral exploration only by competitive bidding.

Referring to my first reason, we must understand a little something about the manner in which the independent operator must employ his limited capital.

The independent operator is the epitomy of the free enterprise entrepreneur. He is willing to take high risks in seeking the larger reward. In the past, he has been responsible for drilling 80 percent of the exploratory wells in nonproducing areas. He has found the bulk of the new oil and gas reserves in the United States. This country has benefited from his efforts. Normally, the risk capital of the independent operator is limited. Usually, he is not able to expend large sums for unproven leases. His capital, rather, must be spent in completing his portion of any successful wells. He normally enters the capital market to raise the high-risk dollar which he spends for the lease, geologic work, and actual drilling.

In the past, only proven Federal leases were sold by competitive bidding. The term "proven" means that the lease is located on or in close proximity to a known petroleum producing geologic structure. The unproven Federal leases could be purchased for a nominal cash sum. Of course, the Government retained the usual landowners' royalty in addition to the cash.

This system tended to encourage the exploration for these vitally needed reserves of oil and gas. Under this noncompetitive system, large quantities of petroleum have been discovered by the venturesome independent operator through a multiplicity of efforts. These efforts probably would not have been made had only competitive bidding existed.

Competitive bidding by its nature tends to increase the price of all leases. While this increases the short-term benefits to the Nation by increasing initial revenues, this system would decrease the long-term benefits to the Nation by tending to drive many potential purchasers out of the market who could not afford the higher prices.

Thus, those who were willing and able to pay the larger sums for the proven leases at the competitive auctions could improve their chances to discover oil and gas. They could drill nearer the known producing reservoirs. On the other hand, the independent who could not afford the higher prices of the competitive bidding for the proven leases could wildcat; that is, he could drill in the completely untested territory at a much lesser price.

In this way, the independent could compete with the large companies for the leases. This is the manner of leasing which is used today. This system has contributed to this Nation's ability to produce the large quantities of oil and natural gas necessary to run this country and to maintain its national security.

I also object to this amendment for another reason. By establishing competitive bidding on Federal leases only in Alaska, the system thus proposed would differ from the other 49 States. The other 49 States presently allow both competitive and noncompetitive lease sales for federally owned leases.

I feel that we should maintain the present uniform system of leasing Federal lands for mineral exploration throughout all 50 States of the United States.

Mr. JACKSON. Mr. President, I yield 5 minutes to the junior Senator from Alaska.

Mr. GRAVEL. Mr. President, I should like to address myself to some facets of this matter that have been raised.

I do not claim any great knowldege or experience concerning the mineral his-

tory of other States. I think we have a unique situation in this particular bill, and the solution that is offered here is a very sound one.

I should like to digress for a moment, with reference to the parallel given by the Senator from Colorado about somebody having a direct wire line into the BLM and say that I know of an individual in the State of Alaska who used to be a floor sweeper for some oil companies and now is a very wealthy person.

I submit that being a spy within the Federal Government and passing knowledge is no different from being a spy in a private company and also passing out knowledge.

It should be noted, also, that this amendment is supported by no less than the administration, the Bureau of the Budget, the Treasury Department, the State of Alaska, and the Secretary of the Interior.

So, I think that the credentials of support are quite unusual.

The basic argument being made is that the competitive bid requirement goes to the fundamental tenets of our American leasing system. That is where the small prospector with his burro goes trudging up the mountain with his pick, he lays it down and discovers a great mineral deposit, and then goes out and files on it.

What happens in Alaska is not that. We do not have small developers. The nature of the oil business in Alaska is so expensive that small developers have not been able to get a toehold up there. So that the idea we are protecting some myth of Americana as it existed at the turn of the century does not hold in this particular instance.

What does hold is that when some of the companies do some geologic work and discover that there are some good finds, they parcel it out somewhat in the way of the shills in Las Vegas, where the properties are, and the people file on them, acquire it, turn around and sell to the oil companies when it is ready, willing, and able to take it up and do some exploration.

So the fact is that in Alaska, when properties are turned over by a small person—and let us keep this in context that by a "small persons" we are talking about millionaires, they are the small people involved here—they do not have the capacity to go out and perform any exploration.

Thus, in Alaska, the need for exploration is not met by this one method. It is met when the Government enters into a contract requiring companies to explore. That, of course, has been the record of Alaska. State law is similar to what is proposed here.

Interestingly enough, as a result of the hiatus of the Native land claims, and as a result of the selection procedures in Alaska, we had a similar situation where the State selected lands that individuals had filed on and those individuals had subsequently sold their interest to various major oil companies.

What happened was that, had they been permitted to exercise their filings, they would have become millionaires. The State of Alaska went in and took this land and the individuals turned around and filed a court case. The court case was not entertained. So they took the next remedy which was to go for legislation.

Thus, in the past 2 years the State legislature in the State of Alaska signed what is known as the dirty oil bill.

This dirty oil bill made a few people wealthy at the expense of a lot of other people.

Unless we adopt this amendment right here, S. 1830 will be known in Alaska and throughout the Nation as the dirty oil bill, because without this amendment. there is a mechanism, unintentional though it may be, that will make about 20 or more individuals multimillionaires, a sheer windfall for them; and all they will have done was to tack a little piece of paper to the bill and plunk it down.

Many of these individuals have no plans to go drill for oil. They have already sold the land and received the money. They have already sold the options, so that if the Federal Government accepts the filings they will not only have the money already received but considerable additional sums.

I think that is the point at issue in this particular legislation. It is not meant to deal with the States of the West. I think that the land problem will be treated adequately in the Land Law Review Commission report, already rendered—which, incidentally, recommends this course of action; but for the other States we can attack that problem there.

For Alaska, we do not want to see, by historical accident, a windfall of millions of dollars going to a very few individuals, when this money can approximate the amount of money we are rendering here in the Native land claims settlement. It could be the same smount. We do not want to see that same amount go to a few individuals but to the entire people of the State of Alaska.

That is the subject of the amendment. I urge its adoption.

Mr. HANSEN. Mr. President, let me point out that I have no disagreement with the distinguished chairman of the committee, nor with the distinguished Senator from Delaware (Mr. WILLIAMS) in urging that, generally, it makes good sense for our Government to offer anything it has to sell on a competitive bid basis.

I have supported, as the Senator from Delaware knows well, a number of efforts on his part, part of which were opposed by this and previous administrations, such as the sale of surplus minerals.

Thus, I point out that the Government has not pursued a policy of contending that the best and highest public interest always is attended by the sale of everything on a competitive bid basis.

In this instance, however, I think that the overriding concern of every one of the more than 200 million people in this country should be addressed to this hard fact: In the United States, 75 percent of all the energy that we use, the power that produces the light which illuminates this Chamber, for example, the power that keeps air conditioners working, comes from oil and natural gas.

More than 99 percent of all of our transportation whether it be by auto, train, plane, or ship is moved by oil or gas.

That is point No. 1.

Point No. 2, our reserves, those that we own, held by Americans on American soil, are not keeping pace with the tremendous use characterizing the ever-increasing activities of Americans. As a consequence, this applies to the problem we have had for some years: in relation to what we consume each year, our reserves are dwindling. This is true in the case of oil, and even more frighteningly true in the case of natural gas. Last year, two of the major industrial plants in this country—automobile manufacturing plants and tire plants—had to be shut down because there was not enough gas in the United States that could be turned on to fill the needs of the industrial plants and supply as well the needs of the consumers in the northeastern part of the United States.

This, then, is the prospect facing us today. Whether we will be able to keep the wheels of industry turning full time, so as to assure that all the people who want to work and have jobs can be assured of the ability to work, will depend upon the success that attends our efforts in this very important search for oil and natural gas.

Point No. 3 that we should consider: For those who try to equate the dollars that could come to our Government on a competitive-bid basis as compared with the present mineral leasing laws which, I submit, have served the best interests of this country very well, should consider another hard fact today: Of the total amount of oil, oil products, and natural gas that we consume per year, we import 20 percent.

Yet there are those who say, "We could have cheaper oil and cheaper gas in this country if we would just open the gates to let more come in."

Maybe we could, but only for a little while, because the fact is that we are facing a critical situation in the Middle East today. And what happens there will affect our NATO friends.

For anyone to contend that it would make good sense or that it would serve the best interests of this country to jeopardize the latitude and the flexibility of the options we have in the Middle East in trying to support our friends in Israel, I point out that if we were to become dependent upon others—as some suggest by the actions proposed by this amendment, which would certainly discourage much searching for oil and gas, then we would have to fulfill our requirements on the basis of what can come from other countries. And if we are to be dependent on the one hand upon the Arab nations of the world for our oil and gas and on the other hand pursue the policy which presently characterizes our attitude in the Middle East, I think we would have to make a hard decision.

We would either have to reckon with the fact that our sources of supply could be shut off at any time insofar as nations who are not pleased with our actions were concerned, or we would have to change our policies insofar as the nation of Israel is concerned.

So as an alternative to these choices, neither of which would be acceptable, it seems to me that we must continue to give every encouragement we possibly can to that small group of people that have accounted for 80 percent of all of the discoveries of all natural gas in the United States of America, exclusive of those on the Continental Shelf, in the last 10 years.

It is the small independent who operates under our present land laws who is able to put together a big enough block of land that he can interest dentists and doctors and farmers and housewives or anyone else who wants to put a little money into a gamble that is risky, to put together enough money to drill that hole.

The distinguished Senator from Delaware spoke about the Bell Creek field and what the General Accounting Office had to say. That is all well and good. However, how would the lands at Bell Creek have sold before Sam Gary made his first discovery? They would not have sold at all. The reason they would not have sold is that no one was interested in that area.

This land was available. No oilman had to bid for it. All he had to do was to lease it. Why was it not leased? It was not leased because it was only after Sam Gary made his discovery on his 35th well that he had drilled, after having drilled 34 dry wells, that there was any interest in Bell Creek.

It was only then that the General Accounting Office was able to say, "We could have gotten $24 million more."

That is a pretty small price to pay for the security that comes from having certain public lands laws that have served us well that makes us certain that we are not more dependent upon any other nation in the world.

I have said that of the total amount of oil and gas and allied products we consume in this country today, we import 20 percent. That means in terms of barrels of oil we are importing one for each four we produce.

I hope that we do not become dependent upon any country, even upon a nation as friendly as Canada is to us for these oil and gas supplies.

The way we can assure that we will not be dependent upon them is not to change these laws.

A lot has been said about Prudhoe Bay. I would like to point out to my good friend, the Senator from Alaska, if I may have his attenion, that it has been my privilege to support him on certain facets of this bill.

While the statement has been made that there would have been a loss in excess of $400 million if there had not been a competitive bid proposal there, let me point out what the facts are.

I am certain that my good friend, the Senator from Alaska, is aware of this, but many may not know that in September 1969, less than a year ago, there were 131 of 174 different parcels offered for sale upon which the Government received no bid at all.

No one wanted to bid on them. There were no bids at all. So any time anyone thinks that any time an oil lease is offered, someone is going to come in with a lot of money and bid on it, that is not the fact.

It is interesting to know, and I think it should be underscored, that a majority of the lands acquired by Mobil-Phillips in the 1964–65 sales were acquired for $1.55 per acre, as compared with the high of $28,233.25 per acre at the time of the bid sale last year in Alaska.

The point I want to make is simply that it is the independent, it is the little guy who is responsible. If we are concerned about little people, we should reject this amendment.

If my good friend, the Senator from Alaska, does not know some of the little men who are operating there, I can give him the names of a couple of people from my State of Wyoming. They have put their money, their expertise, their dollars, their last buck into these seismic exploration activities. They have geologized the area. They have done all those things that encouraged them to believe that there was some reasonable prospects, some reason to take a chance.

That accounts for the fact that only one out of every 50 wells drilled in this country today is a producer. Forty-nine do not pay off. Yet, it is this hope, that that one well in 50, or even less than that, will be the one that will be a commercial producer, which encourages these independents to search the length and breadth of this country and to bring into production a well after having first discovered the presence of this oil.

The only way I have ever heard anyone say that one can be sure the oil is in the ground is when the drill bit hits that oil.

It is terribly expensive to drill for oil on the north slope of Alaska. The fact that the State of Alaska was able to reap the great harvest it did came about because independents were operating up there and putting together these blocks of leases that finally brought about the activity and resulted in the discovery of oil.

When we look at the whole picture, our public land laws today give the assurance that the distinguished Senator from Delaware, my friend, wants to have. Any time there is a known geologic structure, the Director of the BLM, has the right—indeed, it his duty—to call for competitive leasing. But let us not be so concerned with trying to militate against the small operator as to discourage him to the point that this country of ours does not have adequate energy sources and we have to go, hat in hand, to the Middle East, to Indochina, or wherever it may be, and say, "We would like to buy oil."

Nothing is as expensive as something that one has to have that someone else has. And if there is a shortsighted policy that would not serve the best interests of this country well today, it would be a change in the public land policy which would discourage the independent operator from risking his last buck. That would discourage other Sam Garys from putting in their last dime, the last dime they could raise, after having drilled 34 dry holes when nobody else wanted to drill the land. Heaven knows, most people were not even interested in leasing at 50 cents an acre. The reason was that Sam Gary had not hit oil. It is a great thing to come around later, after someone else has had success, and say, "We would like to buy into this now that you are getting rich." Who would not?

The importance of this is that we think first about the adequacy of energy that will supply all the needs we have for jobs, and have the independence of action which makes it possible for us to inject our mighty influence into Southeast Asia one day, if we want to, and into the Middle East tomorrow, if we were to determine that is in our best interests, without first having to ask ourselves the tough question that perhaps was in the minds of a lot of Frenchmen when they decided to sell jets to Libya. There were those of us who did not understand why the French would do that. We might better understand if we would stop long enough and look closely to understand that France gets a great deal of this miracle material—oil and gas hydrocarbons—from that part of the Middle East.

If one can understand this he can understand many things that do not make sense to us because we are in that enviable position of being independent now, and I hope we are able to keep it that way.

Mr. President, the amendment offered by the Senator from Washington (Mr. JACKSON) underwent considerable discussion in the committee. It was only after a complete review of this matter that the committee made the decision to eliminate the provision proposed by the chairman.

The question surrounding competitive as contrasted with noncompetitive leasing is really peripheral to the whole question of settlement of native claims in Alaska.

The proposal the Senator from Washington (Mr. JACKSON) makes would establish a system of competitive bidding for all oil and gas leases on public lands in Alaska.

To adopt a system of competitive leasing would require a basic modification of the Mineral Leasing Act. This law is designed to promote the exploration and development of oil, gas, and certain other minerals on the public domain.

Existing law allows for noncompetitive bidding on all oil and gas leases outside a known geologic structure. A known geologic structure is generally identified as a geologic formation in which there is an existing producing oil or gas well.

So that there may be no misunderstanding, I wish to emphasize that noncompetitive leases that are issued under the Mineral Leasing Act embrace wildcat lands which are not within a known geological structure of a producing field. The definition of known geological structures on Federal lands is the function of the Geological Survey of the Interior Department.

In the State of Alaska, the Geological Survey has declared a total of 130,887 acres in eight separate areas as being within a known geological structure. This acreage is available only by competitive bidding. All other Federal lands in Alaska not withdrawn for governmental

purposes are available for noncompetitive leasing.

Unless noncompetitive leasing is continued as authorized by existing law, the independent segment of the oil industry will eventually be squeezed out of Alaska to the detriment of the Nation. We cannot, in good conscience, permit this to happen, particularly at a time when our domestic oil and gas reserves are at low ebb and the need for greater exploration and development is imperative.

It is my contention, and was the feeling of the majority of the members of the Interior and Insular Affairs Committee, that while some revision of the Mineral Leasing Act was perhaps needed, the Alaska Native claims bill was no place to revise the act as it relates to Alaska.

The Public Land Law Review Commission recently reported their recommendations and findings. This was a $5 million study and took 6 years to complete.

It is the general consensus of many Members of Congress that regardless of the thoroughness of the review which was conducted by the Public Land Law Review Commission, much study and hearings need to be held before an enactment of any of the recommendations can be pursued.

Be that as it may, the recommendation on mineral leasing of the Public Land Law Review Commission is substantially different from that suggested by Senator JACKSON. In effect, Senator JACKSON has recommended a change in the public land laws for Alaska which does not coincide with the recommendation of the Public Land Law Review Commission.

The Public Land Law Review Commission recommends that the general public land laws throughout the Nation be altered uniformly so that a competitive sale of leases should be held whenever a competitive interest can reasonably be expected.

The Public Land Law Review Commission goes on to state that a "competitive interest can reasonably be expected" in the following situations:

First. In the general area of producing wells.

Second. For land covered by relinquished or forfeited leases or permits.

Third. Where past activity and general knowledge suggest reasonably good prospects for success.

This is different from Senator JACKSON'S amendment which provides that competitive leasing shall be the rule where there is currently competitive interest shown.

I feel it is wrong to provide for a different mineral leasing law for Alaska alone; but even more important, I feel it is even more ill advised to alter the mineral leasing law without even taking into consideration the recommendations and suggestions of the Public Land Law Review Commission for which we just spend $5 million.

Aside from the fact that the Alaska native claims bill is a poor vehicle by which to attempt to force a major change the Mineral Leasing Act, there are other reasons why the adoption of a competitive leasing provision would be adverse to the interests of mineral development in Alaska as well as the United States.

First in importance is the real significance of the alarm sounded by Federal agencies concerning dwindling oil and gas reserves that are so essential to meet the expanding energy requirements of our Nation. There is a need for an accelerated exploration program to find new reserves of oil and gas to augment existing and dwindling supplies.

The Wall Street Journal, in its issue of April 8, 1970, called attention to the report of the American Petroleum Institute that crude oil reserves fell to a 15-year low in 1969. It also called attention to the report of the American Gas Association that proven reserves of natural gas fell for the second consecutive year in 1969.

Domestic petroleum requirements are projected to increase 38 percent by 1975. Worldwide demand will be up 76 percent. By 1975, the United States will consume one-half of the total world demand. Reserve growth rate will need to improve quickly if we are to meet projected demands.

High activity in the United States decreased considerably in the past year. Total wildcat wells were down 993 and field wells were down 2,820 in 1965. Wildcat success ratio last year—13.5 percent—was next to the alltime domestic low in 1959. If total acreage inventory decreases measurably, semirandom wildcat drilling also decreases, as many of these wells are drilled as much from an economic basis as scientific. More importantly, this type of drilling provides the data that ultimately develops specific prospects.

Amidst the hue and cry of both industry and government officials, for exploration incentives to encourage the search for new reserves of oil and gas to meet our ever-increasing demand for energy in the face of dwindling supply, the proposed amendment would, in fact, operate to discourage exploration and development of our oil and gas resources on the public domain of the United States in Alaska.

It is of real importance that the United States not allow itself to be placed in a position whereby it has to rely on foreign sources for its supply of oil and gas.

In light of the decreasing mineral reserves which are constantly in evidence, the United States has a substantial stake in the development of mineral reserves in Alaska.

In addition, there is no justification for adopting a separate mineral leasing law for Alaska. Any revision which is to take place in the Mineral Leasing Act should apply on a nationwide basis.

In view of the fact that 62 percent of all the Federal lands in the United States are located in Alaska, it is even more inconsistent for us to even consider changing the leasing system for this one segment.

Throughout the long history of the Mineral Leasing Act, its provisions with respect to the issuance of oil and gas leases have remained applicable uniformly to the entire public domain of the United States, including Alaska.

If modification of the Mineral Leasing Act is necessary or advisable in order to change the present system of leasing Federal lands, it should be by a separate bill addressed directly to the amendment of the Mineral Leasing Act and it should be applied uniformly to the entire public domain of the United States.

By restricting the leasing of oil and gas in Alaska to competitive bidding, there are many small oil and exploration companies that will be discouraged from taking part in discovery operations in Alaska.

Small independents simply do not have the financial resources or backing to bid competitively with larger oil companies for a specific piece of land.

The present ecological and environmental conditions in Alaska make it extremely difficult for the small independent to operate with the larger oil companies. This is true without even taking into account the original cost of such a lease. It is tremendously expensive to do business in Alaska.

An onshore wildcat well in the Cook Inlet Basin or the Copper River Basin in southern Alaska cost from $500,000 to $1.5 million.

Geologic field parties average $35,000 to $40,000 per month. Seismic crews on the Arctic Slope cost approximately $250,000 to $300,000 per month.

Operating costs of wells on the Alaska Peninsula can average $18,000 per day. Mobilization and demobilization costs can run as high as $750,000.

Wells on the North Slope will cost $2.5 to $3 million.

In all likelihood, competitive bidding would hamper the development of oil and gas in Alaska.

Historically, the independent has been responsible for 75 to 80 percent of the oil and gas discoveries.

Under the noncompetitive leasing system, the small oil companies have been able to amass sufficient land so that they could get financial backing to make basic seismic and geologic checks which have resulted in the major oil and gas discoveries.

Competitive leasing denies the aggressive, creative explorationist by removing those incentives which have led the independent to take great risks.

The important thing to note about the proposed plan to adopt a system of competitive leasing is that it is the independent oil and gas driller who will be harmed by such a proposal. But in the long run it is our Nation—all of us—who will suffer if we run short on oil and gas.

The large oil companies have the financial resources and backing to compete financially for oil and gas leases—the independent does not.

The truth of the matter is that the large oil companies would just as soon be placed in a position of being able to better any small oil company's bid. Competition would be substantially lessened. Because his resources are limited, the urgency characterizing his search distinguishes the independent's activity from that of the majors.

Every one is well aware of the great oil discovery which has occurred in the Prudhoe Bay on the North Slope of Alaska.

What the public generally does not realize is that Prudhoe Bay, in all prob-

ability, would never have been discovered if the industry had not been able to go up on the Arctic Slope and engage in the most expensive exploratory effort in one of the most inhospitable areas of the world without the incentive of being able to control large blocks of land. Most of us fail to realize that 131 of the 174 parcels offered for bid at the September 1969 sale were previously offered at sales in 1964 and 1965 and received no bids at all. A majority of the lands that were acquired by Mobil–Phillips in the 1964 and 1965 sales were acquired for $1.55 per acre as compared with the high of $28,233.25 per acre at the September sale in Alaska.

As with the North Slope and Prudhoe Bay areas, something has to be done to the land in order to make it valuable. Prudhoe Bay represents but a very small part of Alaska and is largely State-owned land. It is the independent, willing to take risks—whose presence in the vanguard of those searching for oil—who gives the best assurance that all Americans will have energy adequate to meet every task, from sources under our exclusive control.

It should be noted that even in the fabulous Prudhoe Bay field itself, several dry holes have already been drilled. Within the general area encompassing the Prudhoe Bay field, at least a dozen dry holes have been drilled. There can be no doubt that any number of parcels for which millions of dollars in bonuses were paid in the Prudhoe Bay sale will be found unproductive of oil or gas. This is the history of oil and gas exploration.

No one can predict whether one or more oil fields will be found in Alaska approaching even remotely the size of the Prudhoe Bay discovery. It is, however, a foregone conclusion that untold millions will be spent in exploration of the wildcat areas which remain available for noncompetitive leasing under existing law. It is much more important for the economy of Alaska, and for the good of the Nation, that exploration be encouraged—not discouraged—by placing the additional burden of competitive leasing on the oil development in Alaska.

Mr. GRAVEL. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Alaska is recognized for 1 minute.

Mr. GRAVEL. Mr. President, I can only say that my distinguished colleague from Wyoming stated a very fine case for greater attention to oil. I share that view.

I think the situation in Alaska is a little different. I can only offer one slight correction, and that is that oil in Alaska was not discovered by the independent but by the U.S. Navy.

Mr. President, with that remark I would like to yield back all the time we have. If the Senator is prepared to yield back his time we could get to a vote.

Mr. HANSEN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. HANSEN. Mr. President, when the distinguished Senator from Washington (Mr. JACKSON) was in the Chamber earlier I had not objected to the unanimous-consent request. Although I had thought 30 minutes would be adequate, I call attention to the fact that the distinguished Senator from Colorado took about 10 minutes, and if there is a little time remaining there are a few additional things I would like to say. I am sure the Senator from Washington would not object if he were here.

Mr. GRAVEL. Mr. President, I am happy to yield additional time to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Alaska has yielded back his time.

Mr. GRAVEL. Mr. President, I ask unanimous consent that I may have returned to me the time I had yielded back.

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

Mr. GRAVEL. Mr. President, I yield such additional time to the Senator from Wyoming as he may desire.

The PRESIDING OFFICER. The Senator from Wyoming has 3 minutes remaining of his own time.

Mr. GRAVEL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Alaska has 8 minutes remaining.

Mr. GRAVEL. I yield to the Senator whatever time he needs.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. HANSEN. Mr. President, I thank the Senator. I wish to point out that there are two other considerations to which I would like to call the attention of the Senate.

First, this is a very basic change in the public land laws of the United States. My plea to the Senate is that the Public Land Law Review Commission has been working for 6 years trying to understand this matter and to determine how relevant these public land laws that we have are to our conditions today. The cost of the study was $5 million.

If we are to change the public land laws in such an important respect as this is, it seems to me to be only good sense that we should make any changes applicable throughout all 50 States instead of singling out the State of Alaska and have them apply only to that State.

Mr. GRAVEL. Mr. President, will the Senator yield on that point?

Mr. HANSEN. I am happy to yield to the Senator from Alaska.

Mr. GRAVEL. Mr. President, I wish to state for the RECORD and to have it noted that the State of Alaska does not mind being singled out in that particular regard.

Mr. HANSEN. The State of Alaska may not mind being singled out in that regard but I think it is in the public interest of all of us, those of us in the lower 48, as well as the State of Hawaii, to see that we pursue a policy which will serve all of us.

I am sure my good friend from Alaska joins me in that hope.

The Public Land Law Review Commission recommended changes not reflected by this bill. The members spoke specifically of some changes that they think should be brought in and generally they can be summoned up in this way. They state that a "competitive interest can reasonably be expected" in the following situations: In the general area of producing wells; for land covered by relinquished or forfeited leases or permits; and where past activity and general knowledge suggest reasonably good prospects for success.

In those instances the Public Land Law Review Commission recommends the sale of lands or the leasing of lands on a competitive bid basis. I think that is a rather important distinction.

I am pleased that my good friend from Washington has returned to the Chamber so that he might be aware of my having made the distinction between what this amendment calls for and what has been recommended by the Public Land Law Review Commission.

I thank my good friend from Alaska. If the Senator has no further need for time, I am happy to yield back whatever time I have remaining.

Mr. McGEE. Mr. President, the proposal by the distinguished Senator from Washington (Mr. JACKSON) to amend the Alaska native claims bill imposing a system of competitive bidding for oil and gas leases on public lands causes me grave concern.

If this amendment were adopted, it would be in conflict with a longstanding basic policy of the Federal Government which provides for noncompetitive leasing of oil and gas leases which are not "within any known geologic structure of a producing oil and gas field." I have long supported the noncompetitive bidding policy. The years of experience under this policy, evidenced by the widespread development of oil and gas on public lands, demonstrates most persuasively the wisdom of continuing the policy.

There is no sound reason to change our course of direction and policy in the State of Alaska. I respectfully suggest that this bill is a poor vehicle with which to institute such a drastic change in Federal mineral leasing practices.

The Public Land Law Review Commission's report has only recently been made available to Congress. We have not had sufficient time to digest the wealth of information contained in this report nor to draw sound conclusions from the Commission's recommendations.

The mineral leasing policy and the much-discussed changes with regard to simultaneous versus competitive leasing is a very complicated matter that has concerned both Government and industry for some time. There are a great many other Federal lands in other States of the Union, aside from those located in Alaska, which are involved in this total question and a policy change in this regard should apply equally to all of the public domain.

My State of Wyoming, its citizens, and the many small, independent operators and companies engaged in exploration and development have a large stake in this proposed amendment. We feel that its adoption will open the door to widespread changes in Federal leasing policies in the petroleum industry. The adoption of a competitive leasing policy would put the small, independent oper-

ator at a distinct economic disadvantage. In many cases, it would put him out of business. The smaller independent and individual operators could not compete with the large major companies which have unlimited capital and resources.

Competitive bidding for Federal oil and gas leases would more than likely place control of large tracts of land in the hands of the large companies. A pronounced slowdown in wildcat activity would result.

As an example of wildcat activity in my State, the March 19, 1970, issue of Petroleum Information for the State of Wyoming showed that there were 120 wildcat locations. Of those 120 locations, 104 were made by the independent operators and only 16 by major oil companies. Furthermore, the 1969 "Petroleum Information Annual Review of the Rocky Mountain Region" reveals that there were 133 new field discoveries. Of these 133 discoveries, only 10 were found by major oil companies. The remaining 123 were found by individuals and independent oil companies. In recent years the small independents have accounted for approximately 80 percent of all new discoveries in the continental United States.

In analyzing the above statistics, it is clear that the independent and individual operators are expending the majority of time and expense in exploring for oil and gas in the Rocky Mountains. In considering the proposed amendment we should bear in mind the adverse effect that the adoption of a competitive leasing policy would have upon the large number of small, independent operators, and businessmen who are making a substantial contribution to the discovery and the development of our petroleum reserves in this country. Competitive leasing would place the independents at a costly disadvantage resulting in diminished exploration at a time when it is vital to this country's economy and our national defense that we expand our known petroleum reserves and meet the increasing demands for production.

Mr. President, I strongly urge the defeat of this amendment and the retention of the mineral leasing provisions in the bill as reported by the Committee on Interior and Insular Affairs.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. JACKSON. 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. JACKSON. 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. JACKSON. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

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

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), the Senator from Georgia (Mr. RUSSELL), the Senator from Alabama (Mr. SPARKMAN), the Senator from Maryland (Mr. TYDINGS), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Minnesota (Mr. MONDALE) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK) and the Senator from Delaware (Mr. BOGGS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) and the Senator from Maine (Mrs. SMITH) are absent because of illness.

If present and voting, the Senator from Maine (Mrs. SMITH) would vote "yea."

On this vote, the Senator from Delaware (Mr. BOGGS) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Delaware would vote "yea" and the Senator from South Dakota would vote "nay."

The result was announced—yeas 47, nays 35, as follows:

[No. 242 Leg.]

YEAS—47

Aiken	Harris	Nelson
Allen	Hart	Pastore
Anderson	Hartke	Pell
Bayh	Holland	Prouty
Bellmon	Hollings	Proxmire
Burdick	Hughes	Ribicoff
Byrd, Va.	Jackson	Saxbe
Byrd, W. Va.	Jordan, N.C.	Schweiker
Case	Kennedy	Scott
Cooper	Long	Spong
Cranston	Magnuson	Symington
Eagleton	Mathias	Talmadge
Ellender	McGovern	Williams, N.J.
Ervin	McIntyre	Williams, Del.
Fong	Miller	Young, Ohio
Gravel	Muskie	

NAYS—35

Allott	Griffin	Murphy
Baker	Gurney	Packwood
Bennett	Hansen	Pearson
Bible	Hatfield	Percy
Brooke	Hruska	Randolph
Cook	Javits	Smith, Ill.
Cotton	Jordan, Idaho	Stennis
Curtis	Mansfield	Stevens
Dole	McClellan	Thurmond
Fannin	McGee	Tower
Goldwater	Metcalf	Young, N. Dak.
Goodell	Moss	

NOT VOTING—18

Boggs	Fulbright	Mundt
Cannon	Gore	Russell
Church	Inouye	Smith, Maine
Dodd	McCarthy	Sparkman
Dominick	Mondale	Tydings
Eastland	Montoya	Yarborough

So Mr. JACKSON's amendment was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRAVEL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HANSEN. Mr. President, I regret very much that the distinguished chairman of the Senate Committee on Interior and Insular Affairs has chosen to amend the Mineral Leasing Act by means of the Alaskan Native claims settlement legislation. The committee has made this legislation its prime concern for the 91st Congress. Every member of the committee has personally devoted countless hours to the consideration of the many proposals presented to the committee. We have all done our best to insure that fair and equitable action to settle these claims is taken this year.

As I stated in the committee's executive sessions, the purpose of this legislation is to settle the Native claims. These claims have been ignored too long and it is the duty of the Congress to enact a settlement now. But the bill is too important to be used as a vehicle for amending the public land law of the United States. I was heartened when the committee adopted this position and struck language identical to the chairman's amendment from the bill reported by the committee.

However, the able Senator from Washington decided to amend the act on the Senate floor. Since the chairman has decided that this legislation is to be used for the amendment of the Mineral Leasing Act of 1920, I feel obligated to call the attention of my colleagues to another provision of that act which urgently needs updating in fairness to the public land States of this Nation.

Mr. President, the Mineral Leasing Act of 1920 permits the Federal Government to lease its rights to certain minerals, notably oil and gas, to private parties for development and production in return for a royalty payment to the United States.

The act provided that 37½ percent of all moneys received from sales, bonuses, royalties, and rentals of public lands under its terms be paid to the State within the boundaries of which the leased lands or deposits are located.

However, in the State of Alaska, a State which contains one-half of all the public lands in the United States, the Federal Government returns 90 percent of the moneys collected from leasing Federal mineral rights to the State of Alaska. The coastal States receive the royalties from lands lying off their shores. The twelve remaining public lands States continue to receive only 37½ percent of the royalties on minerals on public lands located within their borders. Their only sin seems to be they were admitted to statehood too soon, at a time before the Federal Government realized the importance of this mineral wealth to the State and was prepared to let the States benefit from the minerals on public lands within their borders.

Wyoming is the ninth largest State in the Nation and has a population of 330,000 people. The State is trying desperately to compete in today's dynamic so-

ciety. The State is sensitive to the beauties of its wide open spaces and wishes to protect them. The State also is working hard to provide needed governmental services for its people.

However, as the State undertakes these activities, it finds itself being drained of its mineral treasure. The Federal Government holds 48 percent of Wyoming's land surface, 72 percent of its mineral resources. Though coastal States receive all the mineral royalties from State tidelands under the ocean off their shores, Wyoming receives only 38½ percent of the mineral royalties from public lands within its own borders. While Alaska, which became a State in 1959, receives 90 percent of the revenues produced on its public lands, Wyoming, which became a State in 1890, receives only 37½ percent. Thirty-eight States prosper from the mineral treasure within their borders. But the Federal Government is the beneficiary of a great portion of the mineral wealth from 12 public lands States. In Wyoming the Federal Government holds the mineral rights on 72 percent of the mineral land in the State.

The continued syphoning of revenues from Wyoming's mineral resources to the Federal Government is a great hindrance to the State's development. Wyoming should not be forced to remain a colony as the Federal Government continues to take a large share of the mineral resources from the State.

How do the States stand on this subject? The Interstate Committee on Mineral Resources of the Western Conference of the Council of State Governments unanimously passed a resolution calling on the Federal Government to return a greater percentage of the mineral royalties to the States. This Western Governors' Conference has passed a resolution seeking a greater return on mineral royalties. The Governors are aware of the difficulties in meeting the problems of the States. The major share of mineral wealth of the States is not now used for the benefit of the States, but instead, it is taken to the U.S. Treasury in Washington.

Alaska receives 90 percent of the return of the royalties on public lands in that State. I believe that we can all recognize the opportunities open to Alaska as a result of this farsighted act of the Congress. Alaska is beginning to develop her mineral wealth today. The other public land States should share in the mineral returns from public lands in a like manner.

Seventy percent of the population of the United States lives on 2 percent of the land. This is a major cause of the problems we face today. A return of the royalties will aid the public land States in meeting these problems. Development in the less sparsely populated States will relieve the pressures on the larger States.

Now let me turn to just what this change will cost the Federal Government. In the last 48 years the percentage of the mineral royalties which the Federal Government kept and which I propose to return to the States has amounted to almost $800 million. This is less than $20 million per year. This amount is less than what we spend on most of the programs we undertake today, yet I can think of nothing which would provide a greater opportunity for public land States.

Such an action by the Congress is just and equitable. It would stand as a symbol of the Congress good faith in working with the States to meet the problems of the citizens. While I do not believe that the important legislation before us should be further delayed by efforts to substantially change our public land laws and therefore will not introduce an amendment today, I do feel compelled to direct the attention of the Senate to this inequity and urge that hearings be held by the appropriate committees of Congress on this subject immediately.

The PRESIDING OFFICER (Mr. GOLDWATER). The question is on agreeing to the committee substitute as amended.

Mr. HARRIS. Mr. President, the Chair has put the question with reference to the substitute amendment. If that were agreed to would that thereafter cut off additional amendment?

The PRESIDING OFFICER. That is correct.

Mr. HARRIS. I should like to be recognized in order to offer an amendment. First, Mr. President, I suggest the absence of quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JACKSON. 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. HARRIS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER (Mr. GOLDWATER). The amendment will be stated.

The LEGISLATIVE CLERK. The Senator from Oklahoma (Mr. HARRIS) for himself and the Senator from Alaska (Mr. GRAVEL) proposes an amendment beginning on page 113, line 7, of S. 1830, to delete all of sections 13, 14, 15, and 16 (through page 145 line 5), and insert the following:

WITHDRAWAL OF PUBLIC LANDS

Section 13 (a) Public Land Order Numbered 4582, 34 Federal Register 1025, is hereby revoked.

(b) (1) There are hereby withdrawn, subject to valid existing rights, from selection by the State and from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, all public lands in each township as shown on current plats of survey or protraction diagrams of the Bureau of Land Management, or protraction diagrams of the State where protraction diagrams of the Bureau of Land Management are not available, which encloses all or part of any Native village listed in subsection (c) hereof, plus all public lands in each township which is contiguous to or corners upon the township or townships in which such Native village is located.

(2) In the event fewer than nine townships are withdrawn around a Native village pursuant to paragraph (1) because of the location of such village on an island, along the coast or near an international boundary, there shall be and hereby are withdrawn, in order of proximity to the center of such Native village, and on the same terms and conditions specified in paragraph (1), one or more additional townships contiguous (except as separated by bodies of water or by lands unavailable for withdrawal) to the withdrawn townships until a total of nine townships has been withdrawn.

(c) The following Native villages are qualified for land withdrawals under the provisions of subsection (b):

NAME AND PLACE OF REGION

Akhiok, Kodiak.
Akiachak, Southwest Coastal Lowland.
Akiak, Southwest Coastal Lowland.
Akutan, Aleutian.
Alaganik, Gulf of Alaska.
Alakanuk, Southwest Coastal Lowland.
Aleknagik, Bristol Bay.
Alatna, Koyukuk-Lower Yukon.
Allakaket, Koyukuk-Lower Yukon.
Ambler, Bering Strait.
Anaktuvuk Pass, Arctic Slope.
Andreafsey, Southwest Coastal Lowland.
Angoon, Southeast.
Aniak, Southwest Coastal Lowland.
Anvik, Koyukuk-Lower Yukon.
Arctic Village, Upper Yukon-Porcupine.
Atka, Aleutian.
Attu, Aleutian.
Atkasook, Arctic Slope.
Barrow, Arctic Slope.
Beaver, Upper Yukon-Porcupine.
Belkofsky, Aleutian.
Bethel, Southwest Coastal Lowland.
Bill Moore's Southwest Coastal Lowland.
Biorka, Aleutian.
Birch Creek, Upper Yukon-Porcupine.
Brevig Mission, Bering Strait.
Buckland, Bering Strait.
Candle, Bering Strait.
Cantwell, Cook Inlet.
Canyon Village, Upper Yukon-Porcupine.
Chalkyitsik, Upper Yukon-Porcupine.
Chanilut, Southwest Coastal Lowland.
Chefornak, Southwest Coastal Lowland.
Chenenga, Gulf of Alaska.
Chevak, Southwest Coastal Lowland.
Chignik, Kodiak.
Chignik Lagoon, Kodiak.
Chignik Lake, Kodiak.
Chilcat, Gulf of Alaska.
Chistochina, Copper River.
Chukwuktoligamute, Southwest Coastal Lowland.
Circle, Upper Yukon-Porcupine.
Clark's Point, Bristol Bay.
Copper Center, Copper River.
Cordova, Gulf of Alaska.
Craig, Southeast.
Crooked Creek, Upper Kuskokwim.
Deering, Bering Strait.
Dillingham, Bristol Bay.
Dot Lake, Tanana.
Eagle, Upper Yukon-Porcupine.
Eek, Southwest Coastal Lowland.
Egegik, Bristol Bay.
Eklutna, Cook Inlet.
Ekuk, Bristol Bay.
Ekwok, Bristol Bay.
Elim, Bering Strait.
Ellanar, Gulf of Alaska.
Emmonak, Southwest Coastal Lowland.
English Bay, Cook Inlet.
Eyak Village, Gulf of Alaska.
False Pass, Aleutian.
Fort Yukon, Upper Yukon-Porcupine.
Gakona, Copper River.
Galena, Koyukuk-Lower Yukon.
Gambell, Bering Sea.
Georgetown, Upper Kuskokwim.
Golovin, Bering Strait.
Goodnews Bay, Southwest Coastal Lowland.
Grayling, Koyukuk-Lower Yukon.
Gulkana, Copper River.
Haines-Port Chilkoot, Southeast.
Hamilton, Southwest Coastal Lowland.
Haycock, Gulf of Alaska.
Holkaichuk, Koyukuk-Lower Yukon.
Holy Cross, Koyukuk-Lower Yukon.
Hoonah, Southeast.
Hooper Bay, Southwest Coastal Lowland.

Hughes, Koyukuk-Lower Yukon.
Huslia, Koyukuk-Lower Yukon.
Hydaburg, Southeast.
Igiugig, Bristol Bay.
Iliamna, Cook Inlet.
Inalik, Bering Strait.
Ivanof Bay, Aleutian.
Juneau, Southeast.
Kake, Southeast.
Kaktovik, Arctic Slope.
Kalskag, Southwest Coastal Lowland.
Kaltag, Koyukuk-Lower Yukon.
Karluk, Kodiak.
Kasaan, Southeast.
Kashiga, Aleutian.
Kasigluk, Southwest Coastal Lowland.
Katalla, Gulf of Alaska.
Kenai, Cook Inlet.
Ketchikan, Southeast.
Kiana, Bering Strait.
King Cove, Aleutian.
Kipnuk, Southwest Coastal Lowland.
Kivalina, Bering Strait.
Klawock, Southeast.
Klukwan, Southeast.
Kobuk, Bering Strait.
Koliganek, Bristol Bay.
Kokhanok, Bristol Bay.
Kongigonak, Southwest Coastal Lowland.
Kotlik, Southwest Coastal Lowland.
Kotzebue, Bering Strait.
Koyuk, Bering Strait.
Koyukuk, Koyukuk-Lower Yukon.
Kwethluk, Southwest Coastal Lowland.
Kwigillingok, Southwest Coastal Lowland.
Lake Manchumina, Koyukuk-Lower Yukon.
Larsen Bay, Kodiak.
Latauche, Gulf of Alaska.
Levelock, Bristol Bay.
Lime Village, Upper Kuskokwim.
Livengood, Koyukuk-Lower Yukon.
Lower Kalskag, Southwest Coastal Lowland.
McGrath, Upper Kuskokwim.
Makok, Kayukuk-Lower Yukon.
Makushin, Aleutian.
Manley Hot Springs, Tanana.
Manokotak, Bristol Bay.
Mansfield Village, Koyukuk-Lower Yukon.
Marshall, Southwest Coastal Lowland.
Mary's Igloo, Bering Strait.
Medfra, Upper Kuskokwim.
Mekoryuk, Southwest Coastal Lowland.
Mentasta Lake, Copper River.
Metlakatla, Southeast.
Minchimina Lake, Upper Kuskokwim.
Minto, Tanana.
Moses Point, Gulf of Alaska.
Mountain Village, Southwest Coastal Lowland.
Mummy Island, Gulf of Alaska.
Nabesna Village, Tanana.
Naknek, Bristol Bay.
Napaimute, Upper Kuskokwim.
Napakiak, Southwest Coastal Lowland.
Napaskiak, Southwest Coastal Lowland.
Nelson Lagoon, Aleutian.
Newhalen, Cook Inlet.
Nenana, Tanana.
New Stuyahok, Bristol Bay.
Newtok, Southwest Coastal Lowland.
Nightmute, Southwest Coastal Lowland.
Nikolai, Upper Kuskokwim.
Nikolski, Aleutian.
Ninilchik, Cook Inlet.
Noatak, Bering Strait.
Nome, Bering Strait.
Nondalton, Cook Inet.
Nooiksut, Arctic Slope.
Noorvik, Bering Strait.
Northeast Cape, Bering Sea.
Northway, Tanana.
Nulato, Koyukuk-Lower Yukon.
Nunapitchuk, Southwest Coastal Lowland.
Ohogamiut, Southwest Coastal Lowland.
Old Harbor, Kodiak.
Oscarville, Southwest Coastal Lowland.
Ouzinkie, Kodiak.
Paradise, Koyukuk-Lower Yukon.
Paulof Harbor, Aleutian.
Pedro Bay, Cook Inlet.
Perryville, Kodiak.
Petersburg, Southeast.
Pilot Point, Bristol Bay.
Pilot Station, Southwest Coastal Lowland.
Pitkas Point, Southwest Coastal Lowland.
Platinum, Southwest Coastal Lowland.
Point Hope, Arctic Slope.
Point Lay, Arctic Slope.
Portage Creek (Ohgsenakale), Bristol Bay.
Port Ashton, Gulf of Alaska.
Port Graham, Cook Inlet.
Port Lions, Kodiak.
Port Heiden (Meshik), Aleutian.
Port Nellie Wayn, Gulf of Alaska.
Quinhagak, Southwest Coastal Lowland.
Rampart, Upper Yukon-Porcupine.
Red Devil, Upper Kuskokwim.
Ruby, Koyukuk-Lower Yukon.
Russian Mission (Kuskokwim) (or Chauthaluc), Upper Kuskokwim.
Russian Mission (Yukon), Southwest Coastal Lowland.
Saint George, Aleutian.
Saint Mary's, Southwest Coastal Lowland.
Saint Michael, Bering Strait.
Saint Paul, Aleutian.
Salamatof, Cook Inlet.
Sand Point, Aleutian.
Savonoski, Bristol Bay.
Savoonga, Bering Sea.
Saxman, Southeast.
Scammon Bay, Southwest Coastal Lowland.
Selawik, Bering Strait.
Seldovia, Gulf of Alaska.
Seward, Gulf of Alaska.
Shageluk, Koyukuk-Lower Yukon.
Shaktoolik, Bering Strait.
Sheldon's Point, Southwest Coastal Lowland
Shishmaref, Bering Strait.
Shungnak, Bering Strait.
Sitka, Southeast.
Skituk, Cook Inlet.
Slana, Copper River.
Sleetmute, Upper Kuskokwim.
Solomon Council, Gulf of Alaska.
South Naknet, Bristol Bay.
Squaw Harbor, Aleutians.
Stebbins, Bering Strait.
Stevens Village, Upper Yukon-Porcupine.
Stony River, Upper Kuskokwim.
Tanacross, Tanana.
Tanana, Koyukuk-Lower Yukon.
Tatitlet, Gulf of Alaska.
Telida, Upper Kuskokwim.
Teller, Bering Strait.
Tetlin, Tanana.
Togiak, Bristol Bay.
Toksook Bay, Southwest Coastal Lowland.
Tuluksak, Southwest Coastal Lowland.
Tuntutuliak, Southwest Coastal Lowland.
Tununak, Southwest Coastal Lowland.
Twin Hills, Bristol Bay.
Tyonek, Cook Inlet.
Ugashik, Bristol Bay.
Unalakleet, Bering Strait.
Unalaska, Aleutian.
Unga, Aleutian.
Uyak, Kodiak.
Valdezan, Gulf of Alaska.
Venetie, Upper Yukon-Porcupine.
Wainwright, Arctic Slope.
Wales, Bering Strait.
White Mountain, Bering Strait.
Wiseman, Koyukuk-Lower Yukon.
Wrangell, Southeast.
Yakutat, Southeast.

(d) There are also hereby withdrawn, subject to valid existing rights, from selection by the State and from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, all public lands within sections 5 to 8, inclusive, of every township in the State of Alaska not otherwise withdrawn pursuant to this section.

SELECTION OF PUBLIC LANDS

SEC. 14. (a) (1) Each Native village listed in section 10(c) is hereby granted and shall be entitled to select, within eighteen months after the effective date of this Act, a total of ninety-two thousand one hundred and sixty acres or five hundred acres per member, as shown on the temporary census roll prepared pursuant to section 7(a), which ever amount is greater, from the lands withdrawn in accordance with section 10: *Provided*, That a Native village having a reserve set aside for its use or benefit prior to the effective date of this Act shall have a right to select such reserve in accordance with section 15 (b) and (c).

(2) Where the Native villages within any region of Alaska, as defined in section 9(a) of this Act, are entitled to select in the aggregate less than 5 per centum of the total land area of such region, such villages are hereby granted and shall be entitled to select, within eighteen months after the effective date of this Act, such additional amount of land as is necessary to increase their aggregate entitlement to 5 per centum of the total land area of such region. Selection rights under this subsection shall be apportioned among the various Native villages of a region in direct relation to the population thereof, as shown on the temporary census roll prepared in accordance with section 7(a).

(3) In exercising its selection rights pursuant to paragraphs (1) and (2), a village shall first select from among the public lands withdrawn pursuant to section 10(b), and all such selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water or by lands which are unavailable for selection, and, wherever feasible, shall be in units of not less than one thousand two hundred and eighty acres. In the event the public lands withdrawn pursuant to section 10(b) are not sufficient in amount to satisfy the entitlement of any Native village under paragraphs (1) and (2) hereof, such village may select non-contiguous tracts from among the public lands withdrawn pursuant to section 10(d), in order of their proximity to the center of the village, until its selection rights are exhausted.

(b) If a Native village possesses a council, board of directors or other governing body recognized by the Secretary as having authority to act for such village, and which is both composed of and elected exclusively by Natives, such council, board or governing body is hereby authorized to exercise the land selection rights of its village. In the absence of a recognized council, board of directors or other governing body of a Native village listed in section 10(c), the Secretary shall hold an election for such village, under such rules and regulations as he may prescribe, at which a five-man village land selection committee shall be chosen, and the committee so elected is hereby authorized to exercise the land selection rights of its village. The Secretary shall hold all village elections hereunder within one year after the effective date of this Act, and the persons entitled to vote therein or serve on the land selection committee shall be the members of each Native village nineteen years of age or over, as shown on the temporary census roll prepared pursuant to section 7(a).

(c) (1) Where two or more Native villages, because of proximity in location, are entitled to select lands in the same townships and actually select the same lands, their respective village councils, boards, governing bodies or land selection committees, as the case may be, shall be authorized to settle the overlap by negotiation and, in furtherance of any such settlement, to release selected lands to each other. A Native village at any time may, and, if the villages which are parties to the overlap do not reach agreement within six months after the date such overlap arises, the Secretary shall refer the overlap to the Commission for decision in accordance with section 6 of this Act. The Commission shall

award the land, or portions thereof, to the village or villages shown historically to have made greater use and occupancy thereof by a preponderance of the evidence, or in such manner as will do substantial justice.

CONVEYANCE OF LANDS

SEC. 15. (a) The Secretary shall promptly survey the townships withdrawn under section 10(b) and the areas selected for conveyance to Native villages and regional corporations pursuant to the provisions of sections 11 and 15 of this Act, but need monument only the exterior boundaries of these townships or areas. He also shall promptly survey (1) within the townships withdrawn or areas selected all lands occupied as a primary place of residence, a primary place of business, subsistence campsites, reindeer grazing grounds, and for other purposes as required under subsection (b)(2) hereof, and (2) any other land to be patented under this Act.

(b)(1) Upon completion of the survey of lands selected by a Native village, as provided in subsection (a) hereof, the Secretary promptly shall issue a patent or patents to such village to the land and all interests therein, except minerals covered by the mining and mineral leasing laws, subject to valid existing rights, and subject to the provisions of paragraph (2) hereof: *Provided,* That the Secretary shall hold the lands and interests in lands to which the village may be entitled in trust until such village organizes as a corporation or otherwise qualifies to own real property. At the time of conveyance, the village corporation shall succeed and become entitled to any and all interests of the United States or the State, as lessor or landowner, in any leases, permits, contracts or rights-of-way covering the lands.

(2) Upon receipt of a patent or patents to selected lands, a Native village—

(A) shall issue deeds to the occupants, without payment of any consideration, to the surface of tracts occupied by Natives on September 1, 1969, as a primary place of residence, as a primary place of business, for subsistence campsites (up to five acres per individual or forty acres per group), or for reindeer husbandry (up to two thousand and five hundred acres per individual and a maximum of five tracts per village), subject to valid existing rights;

(B) shall issue deeds to the occupants, upon payment of the fair market value for such property, to the surface of tracts occupied by non-Natives on September 1, 1969, as a primary place of residence or a primary place of business, subject to valid existing rights;

(C) may issue deeds to the occupants, either in the discretion of the village without consideration or upon payment of an amount not in excess of fair market value for such property, to the surface of tracts occupied on September 1, 1969, by nonprofit organizations for the purposes for which such organizations were established, subject to valid existing rights: *Provided,* That all nonprofit organizations of the same general character shall be accorded similar treatment with respect to payment for land; and

(2) A Native village which releases selected lands in order to settle an overlap, or which loses selected lands under a Commission award in accordance with paragraph (1), shall be entitled to select additional public lands pursuant to subsection (a)(3) until its selection rights are exhausted, and, notwithstanding the provisions of subsection (e) hereof, all townships withdrawn under section 10(b) around a Native village which is a party to a selection overlap shall remain in withdrawn status until three months after final settlement of the overlap or a final decision of the Commission concerning such overlap, including any appeal.

(d) The regional corporations created pursuant to section 9(b) of this Act are hereby granted and shall be entitled to select, during the period beginning eighteen months and ending ten years after the effective date of this Act, from the public lands withdrawn in accordance with section 10(d), such amount of land as represents the difference, if any, between forty million acres and the total acreage selected by Native villages under this section and section 15 hereof. Selection rights under this subsection shall be apportioned among the various regional corporations in direct relation to the population of the Native villages within each region, as shown on the temporary census roll prepared in accordance with section 7(a); *Provided,* That, in exercising selection rights under this subsection, each regional corporation may give consideration to the needs of Native villages which are entitled to select an area of land substantially smaller than the acreage actually used by such villages for subsistence hunting, fishing, and gathering on the effective date of this Act.

(e) Except as otherwise provided in subsection (c)(2) hereof, all public lands withdrawn pursuant to section 10(b), which have not been selected by a Native village under this section, shall be restored eighteen months after the effective date of this Act, or six months after the selection required under subsection (b) hereof, whichever later occurs, to the status in which such lands had been placed prior to the effective date of this Act: *Provided,* That any such lands previously included within a reserve revoked pursuant to section 15(a) hereof shall be restored to the public domain. All public lands withdrawn pursuant to section 10(d), which have not been selected by a Native village or regional corporation under this section, shall be restored ten years after the effective date of this Act to the status in which such lands had been placed prior to the effective date of this Act.

(D) may issue deeds to the occupants upon payment of the fair market value for such property, to the surface of tracts occupied on September 1, 1969, subject to valid existing rights.

Any dispute over the boundaries, use, occupancy or value of any tract which is covered by this paragraph may be submitted by any party to such dispute to the Commission for decision.

(3) Upon completion of the survey of lands selected by a Native village, as provided in subsection (a) hereof, the Secretary promptly shall issue a patent or patents to all minerals covered by the mining and mineral leasing laws, subject to valid existing rights, to the regional corporation for the region in which such village is located. At the time of such conveyance, the regional corporation shall succeed and become entitled to any and all interests of the United States or the State, as lessor, in any mineral leases covering such lands.

(4) Upon completion of the survey of lands selected by a regional corporation, as provided in subsection (a) hereof, the Secretary promptly shall issue a patent or patents to such corporation to the land and all interests therein, including minerals covered by the mining and mineral leasing laws, subject to valid existing rights. At the time of such conveyance, the regional corporation shall succeed and become entitled to any and all interests of the United States or the State, as lessor or landowner, in any leases, permits, contracts or rights-of-way covering such lands.

(c) Nothing in this Act, except the withdrawal of public lands pursuant to section 10, shall repeal, modify or otherwise affect the right of any Native to acquire public lands of the United States under the Native Allotment Act of May 17, 1906 (34 Stat. 197), as amended. In addition, upon application to the Commission within ten years after the effective date of this Act, and upon certification by the Commission that such application is valid and proper, the Secretary shall issue a patent to the Native applicant, subject to valid existing rights, without payment therefor, to the surface of public lands outside the areas withdrawn pursuant to section 10(b) and patented pursuant to section 12(b)—

(1) which have been used by a Native or group of Natives for a period of more than three years immediately prior to the effective date of this Act as a campsite for the harvesting of fish, wildlife, berries, fuel, or other products of the land: *Provided,* That such patents shall be issued (A) for five-acre tracts for each subsistence use campsite separate from the campsite of any other applicant, (B) for forty-acre tracts when the campsites of several applicants are in such proximity to each other as to make it not feasible to patent individual five-acre campsites, or (C) for larger tracts, not to exceed sixty acres, where individuals can establish under such rules and regulations as the Commission may prescribe, historic occupancy and use of the larger tracts; or

(2) which have been used by a bona fide reindeer husbandryman, family, or village community reindeer association or group, which was practicing reindeer management on the effective date of this Act: *Provided,* That such patents shall be up to, but shall not exceed, two thousand five hundred and sixty acres, may include more than one tract, and shall cover only lands that have been leased, permitted, or used for reindeer management purposes, including summer and winter range facilities and intervening line camps, for at least three years prior to the date of application to the Commission; or

(3) which have been used by a Native nineteen years of age or over as a primary place of residence or business for one year prior to the date of application to the Commission: *Provided,* That such patent shall be up to, but shall not exceed, one hundred and sixty acres: *And provided further,* That such patent shall include title to minerals subject to the mining laws, but not to the mineral leasing laws.

Pending the issuance of a patent under this paragraph, the Secretary may permit continued use of the lands for the purposes upon which the application for patent is based. The Secretary shall apply the rule of approximation with respect to acreage limitations set forth in this paragraph.

(d)(1) Where, prior to patent of any land under subsection (c), a lease, contract, or permit has been issued for the utilization of surface or mineral resources covered under such patent (including a lease issued under section 6(g) of the Statehood Act), the patent shall contain provisions making it subject to the lease, contract, or permit and the right of the lessee, contractee, or permitee to the complete enjoyment of all rights, privileges, and benefits granted him by such lease, contract, or permit. Upon issuance of the patent, the patentee shall succeed and become entitled to any and all interests of the United States or the State, as lessor, contractor, or permitter, in any such leases, contracts, or permits covering the surface or minerals patented.

(2) The Secretary shall provide as a condition to the granting of each permit to prospect, or to the granting of each lease to mine or drill for minerals covered by the mineral leasing laws, which minerals are situated in lands patented pursuant to subsection (c), and are not covered by such patent, that the permittee or lessee shall provide a bond, satisfactory to the Secretary, to indemnify the surface patentee for any damages which such permittee or lessee may

cause in connection with the development of such permit or lease, and further the Secretary shall include provisions in such lease or permit which will protect the surface patentee against unreasonable interference in the enjoyment of his land.

ADMINISTRATION OF LANDS

SEC. 16. (a) Village and regional corporations may exchange lands, interests in lands and water rights with each other, or with the State or the United States, and the Secretary, the Secretary of Agriculture and the Secretary of Defense, under such rules and regulations as they respectively may prescribe, may exchange land, interests in lands and water rights under their jurisdiction with village and regional corporations, for the purpose of effecting land consolidations or for facilitating the management or development of land. Exchanges of lands, interests in lands and water rights hereunder shall be made on the basis of equal value, and the value of improvements on lands shall be given due consideraiton and allowance made therefor in any valuation: *Provided,* That either party to an exchange under this subsection may pay or accept cash in order to equalize the values of the properties exchanged.

(b) Pending the selection by a Native village or regional corporation pursuant to sections 11 or 15 of public lands withdrawn in accordance with section 10, or the restoration of such lands to the status in which they had been placed prior to the effective date of this Act, the Secretary may take such actions as shall be necessary to administer, manage and protect such withdrawn public lands: *Provided,* That the Secretary shall not sell or otherwise permanently dispose of lands or interests therein, except as provided in this subsection: *And provided further,* That the Secretary shall not, without the consent of the village or regional corporation for the benefit of which the land was withdrawn, issue, enter into or renew any lease, contract or permit covering withdrawn lands which will be in effect more than eighteen months after the effective date of this Act. The Secretary, with the approval of the Commission, and in accordance with such rules and regulations as he shall prescribe, may grant an easement or right-of-way for a public purpose over, across, under or through withdrawn public lands on condition that the grantee of such easement or right-of-way: (1) shall provide a bond, satisfactory to the Secretary, in an amount sufficient to pay the fair market value of any interest it acquires in lands subsequently selected by a Native village or regional corporation; and (2) shall agree to conserve the natural resources of the land, including fish and wildlife, and to protect the surface owner from unreasonable interference in the enjoyment of his land. All payments or revenues attributable to the use or other disposition of withdrawn lands selected by a Native village or regional corporation, after deducting the cost of administration thereof, shall be paid by the Secretary to such village or corporation.

(c) After the selection by a Native village or regional corporation pursuant to sections 11 or 15 of public lands withdrawn in accordance with Section 10, but before the issuance of a patent thereto under section 12, such village or corporation shall have a right to lease or dispose of the lands and interests in lands so selected, including minerals, on the same terms and conditions (except that approval shall be by the Commission rather than by the Secretary) as an Indian tribe organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476; 48 Stat. 987), may dispose of unallotted lands and interests therein, including minerals, to which its title has been recognized by treaty or statute: *Provided,* That easements or rights-of-way for public purposes may be acquired within such lands by condemnation in accordance with the laws of the State. For purposes of this subsection, the board of directors of the regional corporation, and the council, board of directors or other governing body recognized by the Secretary as having authority to act for a Native village, shall have the same rights, powers, duties and authority as a tribal council possesses in acting for an organized tribe; the village land selection committee, elected pursuant to section 11(b) of this Act, shall be authorized to exercise the same rights, powers and authority, and assume the same duties, if the Secretary and the Corporation both approve. Notwithstanding any other provision of law, all payments or revenues attributable to the leasing or other disposition of selected lands in accordance with this subsection shall be paid directly to the Native village or regional corporation, as the case may be.

(d) After the patenting of selected lands pursuant to section 12 of this Act, the village and regional corporations may hold, manage, lease or dispose of such lands and interests therein, including minerals, in accordance with the laws of the State: *Provided, however,* That for a period of ten years after the effective date of this Act, any sale (other than a sale pursuant to section 12(b)(2)), mortgage, surface lease for a term (including renewals) of more than fifty years, grant of a permanent easement of right-of-way, or gift of such lands, or interests in lands, shall require the approval of the Commission in order to be valid. Land deeded to a non-Native individual or organization by a Native village pursuant to section 12(b)(2), and land sold by a village or regional corporation to any person or entity other than a Native, the Corporation, or other village or regional corporation shall not be exempt from taxation pursuant to section 18(c) of this Act as of the date of such deed or sale.

Mr. HARRIS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 5 minutes.

Mr. HARRIS. Mr. President, the amendment would expand a portion of the settlement contained in the bill, that portion in regard to the amount of land which would be allowed to the Natives of Alaska.

The bill is essentially a three-part settlement—cash, land, and an overriding royalty interest on the production of the land. The amendment would expand one part of the settlement, that part having to do with land.

The Natives ask for 40 million acres, which is one-half their original request. As a matter of law, the Native people of Alaska own outstanding, unextinguished aboriginal title to approximately 93 percent of the State of Alaska. Their claim rests not only on moral grounds, but also on firm legal ground.

There is no doubt as to that firm legal ground. Most recently, on December 19, 1969, the U.S. Court of Appeals for the Ninth Circuit, in the case of Alaska against Udall and Alaska against Native Village of Nenana, affirmed the Natives' position:

That their aboriginal rights were preserved in the Alaska Statehood Act; that the power of Congress to confirm to the Natives' interest in those lands was preserved in the Statehood Act. The opinion also casts substantial doubt on the authority of the Secretary of the Interior to have issued any patents to the State on Native lands without first having conducted hearings to determine the validity of Native claims.

Mr. President, as I have previously said, the distinguished chairman of the committee, the Senator from Washington (Mr. JACKSON), the members of the committee and the two Senators from Alaska are entitled to high commendation for the excellent work they have done and the interest they have shown in producing a good settlement bill.

We have agreed to certain amendments in the Senate. Some of them have been offered by the chairman and some have been offered by other Senators. These amendments have improved the bill. They are amendments which I have been pleased to support.

There is one remaining and basic improvement which, most of all, the Alaskan Natives would hope to see made in the bill. That concerns the amount of land which the settlement would provide.

The distinguished Senator from Alaska (Mr. GRAVEL) is a cosponsor of this amendment which would carry out the recommendations of the Alaskan Federation of Natives. It also responds to what the people who live in the villages think is the most important aspect of this bill, that dealing with the land itself.

When we consider the value of the State of Alaska in 1970, what the Native people ask in the way of compensation seems modest indeed. They are willing to accept among other things, fee simple title to 40 million acres of land from the public domain to which they now have aboriginal title.

They ask us to approve that request as a way of doing justice in this case, and I think we can see the modesty of that request when we recall the generosity of Congress to the State of Alaska at the time Congress passed the Alaska Statehood Act in 1958.

From the public domain of 365 million acres, we gave the State of Alaska the right to select 103 million acres. From the remainder of the public domain, we gave the State 90 percent of the revenues from minerals and liberal portions of receipts from other important resources. In only one sale of oil and gas leases on the North Slope, the State of Alaska received $900 million in lease bonus payments.

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

Mr. HARRIS. Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 1 additional minute.

Mr. HARRIS. Mr. President, all agree that we have seen only the beginning of discoveries of Alaska's vast mineral resources.

This amendment has to do with the land which the American Indians, Eskimos, and Aleuts themselves value so highly. It is land that they have used for all of these years in history, for sustenance, for hunting carribou.

This bill basically involves a land question, a land settlement question. It is their land. They live on the land. They are dependent on it for their livelihood.

The 10 million acres which are provided in the bill represent only two percent of the land to which they have aboriginal title, 325 million acres.

Mr. President, we are really dealing now with the basic part of this bill. I hope that the bill will be amended to do what will more nearly constitute justice in this case.

The PRESIDING OFFICER. Who yields time?

Mr. HARRIS. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. STEVENS. Mr. President, will the Senator yield me 5 minutes?

Mr. HARRIS. Does the Senator expect to speak in favor of the amendment?

Mr. STEVENS. In a way.

Mr. HARRIS. Mr. President, I would like to know a little more clearly. Would the Senator get time from the other side?

Mr. JACKSON. Mr. President, I yield 5 minutes to the senior Senator from Alaska.

The PRESIDING OFFICER (Mr. GOLDWATER). The senior Senator from Alaska is recognized for 5 minutes.

Mr. STEVENS. Mr. President, in the committee, we originally sought to use the Alaskan Federation of Natives bill as the vehicle for consideration of this subject. By that means, we would have started out with a figure of 40 million acres.

I understand what my friend the Senator from Oklahoma is doing. And I think that it is proper to make a record that the Native people of Alaska and the Alaskan Senators sought more land than actually is included in the bill.

I feel that the amendment should be supported by the Senators from Alaska as an indication that we did in fact seek more land.

I am sure that the chairman will affirm that in the committee we sought additional land beyond the 10 million acres involved in the pending bill.

The bill is a package; $1 billion is involved. I know members of the committee who feel that if the amount of land is increased, they will seek to decrease the amount of money involved. We have that knowledge. We have their assurances that this would happen.

I cannot see urging my fellow Senators to upset this package. Therefore, while I will vote for the amendment, as I sought in the committee to get additional land, I am fearful that it will be rejected.

Mr. HARRIS. Mr. President, I yield 5 minutes to the Senator from Alaska, who is a cosponsor of the amendment.

Mr. GRAVEL. Mr. President, I thank the Senator from Oklahoma. I am pleased to see us on the same side of an issue today, an issue that has great validity.

Mr. President, I think we become confused with numbers. I wish to make some comparisons to place this matter properly in a frame of reference. Alaska has 375 million acres. The State, under the Statehood Act can select a little more than 104 million acres. The Natives, in their claims which were filed in a court of law, claimed 70 percent of the land. The amendment would permit Natives to retain 40 million acres, which would be about 10 percent of the total amount. I do not think this is exorbitant; I think it is just. I think it is unfortunate that we lost on this in committee. We may lose it here on the floor of the Senate, I do not think we should go down without an effort to secure this because I think it is realistic to expect that the House may be of a disposition not to be as generous as the Senate and the realities would beg the logic of establishing generosity in the Senate so that we can have a proper and unified position when we settle differences with the House of Representatives.

For that reason I hope the Senate will agree to this very good amendment.

Mr. JACKSON. Mr. President, I shall address myself to the amendment very briefly.

The committee had various options presented to it in connection with the settlement: Payment in land; payment in cash; and payment over a long period of time in the form of trust proceeds. At the outset, on the land issue, let us try to put this matter in proper perspective. An outstanding study, Alaska Natives and the land, was made of the entire Native land claims issue by the Federal Field Committee for Development Planning in Alaska. The Field Committee has been operating in Alaska for many years. They went into this problem in great detail. After careful consideration the Field Committee recommended that 2 million acres of land be granted to the Alaska Native people. They also made other recommendations that were very useful and helpful to the committee. The committee relied heavily on the concepts for land grants, land management, and corporate investment which the Field Committee recommended and which later became a part of this bill.

The Department of the Interior recommended a little over 10 million acres of surface title with a reservation to the United States of the mineral estate. I personally wanted to see more acreage than was approved by the committee. That is why I offered and supported on the floor the amendments we adopted yesterday which enlarged the land grant provisions.

However, I think what the Senate has to face up to in connection with this vote is whether or not they are going to give a grant of 40 million acres which can be selected anywhere in Alaska; 40 million acres could and would tie up the economic development of Alaska. Under the proposed amendment these selections could be made in such a way so to severely damage the best interests of all people in the United States. It could affect conservation measures, national parks and forests, and hinder proper State and Federal land-use planning.

A further problem is whether we want to carve Alaska into a series of large racial land enclaves. That is what would happen if 40 million acres were set aside.

I think the land grants the committee proposes was most generous in American history and are fair and just to the Native people of Alaska. We have made available $500 million of federally appropriated funds that will be paid over a 12-year period; a 2-percent override on royalties from mineral revenues in Alaska up to a total of $500 million. That would be a total of $1 billion in cash. The committee places emphasis on cash rather than land. Cash is certain and land values are speculative. This money will be protected through prudent investments by the corporation established by the bill. The committee has set up a trustee relationship so that the assets of the trust can be properly protected and managed.

This will be ongoing income. The committee provided this large cash settlement in lieu of a huge land selection. It would be unwise, in my judgment, for the Senate to attempt now to carve out huge enclaves totaling 40 million acres of land after the largest cash settlement in history, and without carefully considering all of the facts and ramifications of what is proposed.

The whole basis of the cash settlement, and this unique provision to which there was much objection—the 2-percent share of Alaska's mineral resources was to avoid huge reserves and racial enclaves. I cannot think of anything more disastrous sociologically and disastrous to the future better relations between Native Alaskans and white Alaskans than to provide now for a 40-million-acre land grant.

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

Mr. JACKSON. I yield.

Mr. ALLOTT. Mr. President, would the Senator agree that if an amendment like this were agreed to it would destroy the whole theory, structure, and backbone of the bill, and all of the work that the Alaska Native Federation, the committee, and everyone has done?

Mr. JACKSON. The Senator is correct. It would undo the entire concept by which we put together the settlement.

Mr. ALLOTT. And there would be no recourse for any of us except to start with additional amendments to cut down the cash benefits; and in this way, although it would be necessary, it would still destroy the structure of the bill as the committee conceived it. Is that correct?

Mr. JACKSON. We would undo the whole concept. I would say the Alaska Natives understand the reasoning we had for doing certain things, such as the 2-percent override on royalties and investment procedures we set up in lieu of land selection. I think it would be a step backward sociologically in the United States to set aside these large enclaves.

Mr. ALLOTT. I thank the Senator.

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

Mr. JACKSON. I yield.

Mr. COOK. Mr. President, rather than to go into the technical arguments of the bill, in listening to the debate it seems to me there would be 60,000 claims.

Mr. JACKSON. The Senator means 60,000 Native people?

Mr. COOK. Yes; if that is the case. If the measure were to be increased to 40 million acres it would mean each of these individuals would be entitled to 666 acres plus another 160 acres, which they would

be entitled to under the Homestead Act. Is that correct?

Mr. JACKSON. That is correct.

Mr. COOK. By establishing the $1 billion fund and paying them out of the $1 billion fund for the taking of Alaska—and I thought we had gotten fee title to it from the Russians in 1867—does the Senator agree this means if there are 60,000 claims filed, each individual could secure 200 acres plus another 160 acres under homestead, which means under the present bill he could receive 360 acres, while under the amendment it would be 826 acres. Is that correct?

Mr. JACKSON. The Senator is correct in saying that Native people could still get their homestead rights; but the allotment of large amounts of land to individuals is not authorized by this bill. This would depend on the decisions made by the individual village corporation. All individuals would, of course, receive title to homesites, businesses and so forth.

Mr. COOK. The point is there is distributed under the terms of this act already a little over 12 million acres.

Mr. JACKSON. 10.2 million acres.

Mr. COOK. Just a minute. There is another figure. I believe of possibly 12-plus million acres——

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

Mr. JACKSON. I yield.

Mr. STEVENS. It is conceivable. It depends on the number of people in the villages. If the people in the cities move back to the villages it increases and it is possible to go to 12 million under the bill.

Mr. JACKSON. The Senator is correct.

Mr. COOK. If 12 million acres were available, and they were still entitled to homestead, and 60,000 claims would be filed, beside having the billion dollar fund, the individual could receive 360 acres, and under this amendment he could receive 826 acres. Is that correct?

Mr. JACKSON. It is possible.

Mr. MURPHY. Mr. President, will the Senator yield for a question at that point?

Mr. JACKSON. I yield.

Mr. MURPHY. I have just done some rough figuring. I was told the average size of the population of a village is 50 Natives. Is that correct?

Mr. JACKSON. It is pretty hard to generalize on the number in the villages but it is on the average higher than 50 individuals.

Mr. MURPHY. I was going to say that if the number were 50, that would give each village some 33,000 to 35,000 acres. What would they do with that amount of land? I have visited Alaska twice in the last year. I wonder what use they could make of that land. I would think they would be better off with some industry and some means of making a living, rather than so much land up there.

Mr. JACKSON. I think we provide for a balanced, equitable, fair, and just settlement. This has been the most fair, just, and generous settlement, to my knowledge, in the history of the United States' dealing with our first Americans. The committee has labored for 3 years on this measure. I think if one studies very carefully all the provisions of the bill, he cannot help coming to the conclusion that this is indeed a very fair, logical adjudication of Native claims that have been pending now for 103 years.

Mr. MURPHY. I would like to congratulate the distinguished chairman. I would only add that, somehow or other, there should be provided some good overseeing and good management to make certain that those people make the best possible use of the money and the land, so they will have the prosperity the committee is hoping they will have.

Mr. JACKSON. I thank the Senator.

I yield now to the Senator from Illinois (Mr. PERCY).

Mr. PERCY. Mr. President, as one of many Senators who has no vested interest in this question, I would like to express appreciation for this excellent example of the finest kind of committee work on a very complex issue and the dedicated efforts of the two distinguished Senators from Alaska, who have worked on behalf of the best interests of their own State. Justice and fairness have been the objective throughout, and I think an equitable compromise has been reached. We can put behind us now, with the passage of this legislation, the adjudication and the judicial procedures that have been followed for so many years. So may times we put a tough problem on the back burner and delay decisions. This Senate committee has faced up to the situation and made some tough decisions. I appreciate what the committee has accomplished. I understand why the two Senators from Alaska would support the present amendment. But because I think the committee has reached an equitable solution, I shall support the committee and oppose the amendment. I congratulate my own Republican colleague Sen. Stevens for his untiring efforts on behalf of his great state of Alaska and members of the Interior Committee who have participated in this effort, particularly the chairman of the committee, Sen. Jackson, the Senator from Washington, and Senator ALLOTT, the senior Senator for Colorado.

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

Mr. JACKSON. I yield.

Mr. KENNEDY. I was somewhat interested in the observations of the Senator from California and the Senator from Kentucky as to how many acres per person will be provided by this bill. When do we start deciding? When they actually have title to that land? Are we in the Senate going to decide whether they have the title to that land? Are we going to decide how many people should own the King Ranch and that that is too many acres for any one family in Texas to have? Why do we not use the same logic for people in Alaska? Or are we taking this position just because Alaskan Natives are involved and they are therefore not entitled to certain land or as much land?

They claim title to over 300 million acres of land in the first place. Now we are saying, when they comprise 20 percent of the population and are getting 4 percent of the land, how generous we are.

I think we are being told that, with this delicate balance between all the interests concerned, do not disturb, do not rock the boat, or we are going to leave ourselves open to many other amendments. If we make any adjustments and change the formula, we are opening ourselves wide to other proposals and the Alaska Natives will not get any satisfaction.

I think we in this body have an obligation to inquire into and to determine whether this is a matter of equity and justice. Twenty percent of the population, 4 percent of the land—that is what this legislation is saying. The Senator from Oklahoma is trying to recognize a need to adjust that. Yet we are told how well off they are if they get 2 percent of the royalties, for example. We are the ones who are supposed to decide how they will be better off. We are the ones to decide for them. What about the Natives? Suppose they say they would rather have the land. Should they not have the opportunity to have their feelings regarded to a greater degree?

I rise in support of this amendment knowing that it is enormously complex. After listening to the discussion by the distinguished chairman, I credit him with the greatest sense of obligation, duty, and wisdom in this matter. Those who rise here and talk about the generosity of the Senate of the United States and their trips to Alaska always interest me. May I say to the Senator from California, who was there at least a few hours when I was up there at one time, that I think we do ourselves a great disservice by beating on our breasts here on the floor of the Senate and saying what a good deal the Alaskan Natives are getting. This is what is said each time our native Americans are deprived of what is rightfully theirs. "See, we are letting you use some of the land that belongs to you. How generous we are."

Mr. THURMOND and Mr. MURPHY addressed the Chair.

The PRESIDING OFFICER. To whom does the Senator from Washington yield?

Mr. JACKSON. Mr. President, I yield first to the Senator from South Carolina (Mr. THURMOND).

VISIT TO THE SENATE BY MEMBERS OF THE WEST GERMAN PARLIAMENT

Mr. THURMOND. Mr. President, we are honored by having with us two members of the German Parliament, Dr. Herbert Czaja and Dr. Herbert Hupka, accompanied by Mr. Dirnecker, First Secretary of the German Embassy.

I ask unanimous consent that they may be presented to the Senate and that the Senate recess for a few minutes, so that Senators may greet them. [Applause.]

RECESS

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Carolina? The Chair hears none, and it is so ordered.

Thereupon, at 2:37 p.m., the Senate took a recess.

At 2:40 p.m. the Senate reconvened, when called to order by the Presiding Officer (Mr. GOLDWATER).

ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1970

The Senate resumed the consideration of the bill (S. 1830) to provide for the settlement of certain land claims of Alaska Natives, and for other purposes.

Mr. COOK. Mr. President, will the Senator from Washington yield?

Mr. JACKSON. I yield 5 minutes to the Senator from Kentucky.

Mr. COOK. Mr. President, I hope that the Senator from Massachusetts did not gather from my remarks that I talked about the generosity of this bill, or in terms of anything other than the mathematics of the figures themselves.

Let me also say, Mr. President, that I do not know a great deal about Alaska. I have spent 1 week there and know very little about it. But I think there are some things that should go into the RECORD in this regard, and some things that Senators should know.

For instance, they should know that while the State of Kentucky pays on a 50–50 basis on its ABC highway funds, the State of Alaska gets 93 percent Federal contributions, and the State pays 7. I think we should also know that when the State of Alaska, through its Federal lands, takes deposits out, 90 percent of the value of those deposits goes to the State of Alaska, and this is not true for any other State in the Union.

I think we also ought to know that we now stand prepared, at least some time in the near future, to allow the State of Alaska—the only such State in the Union—10 percent of its Federal highway funds for maintenaince, because they do not have sufficient funds.

Mr. President, we are not just talking about the Natives as such. We are talking about the development of the State. We are talking about what it receives. We are talking about the benefits it gets, and the benefits to all of the people of that State.

Mr. President, I shall vote for this bill, but what bothered me while I was in Alaska is that I went there, and I saw a railroad that belongs completely and thoroughly to the Federal Government. It was started in 1914, and we have spent perhaps a couple of hundred million dollars building it, for the benefit of all the people there.

While I was there, I saw a polluted bay. Nothing is being done about it, and yet here we have a State where we can, once and for all, solve problems on which, as they affect the rest of us, we shall have to spend billions of dollars to solve. We can solve those problems in Alaska for much, much less. But yet we are setting up a program that is going to serve one particular group who are, after all, residents of that State.

I am proud of the fact that I have been there; but we do have one State left where we can solve all the pollution problems, all of the environmental problems, all of those things for an absolute pittance compared to what it will cost to solve those things in the continental United States. If there is a slight degree of pollution in a river in Alaska, its correction will cost very little. Yet it will cost billions of dollars to solve the problem of pollution in this river that lies right down here.

We are not looking at that problem. We are trying to solve another problem. All I want to get into the RECORD is that there are things done for the State of Alaska that are done for no other State in the Union. There are things that will be done more and more in the future that are done nowhere else.

It is said that this is not for the benefit of a State, it is for the benefit of its people. Mr. President, what is a State but its people? This is the one remark I want to get into the RECORD, because the Senator from Massachusetts is correct. We are not talking about whether we are generous with 200 acres or 800 acres. I agree with him. We have other problems in that State, and I hope we are as willing to see to it that those problems are solved in the immediate future.

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

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

Mr. KENNEDY. Will the Senator yield me 1 minute, to respond?

Mr. JACKSON. I yield the Senator from Massachusetts 1 minute.

Mr. KENNEDY. Mr. President, I commend the Senator from Kentucky for his observation. He pointed out the special kind of relationship Alaska has with the lower 48. But I would certainly hope that this special relationship which exists today would not be used, and that the legitimate rights of the Native Alaskan people would not be prejudiced, because the State of Alaska has this special relationship with the Federal Government.

We should not say that Alaska does better on building its road system, combatting pollution, and developing its minerals, and therefore we can take a good deal more out of the adjustment and settlement we make with the Natives. I know that is not the reasoning of the distinguished chairman of the committee, or the feeling of the Senator from Kentucky. We certainly should not have that attitude.

Several Senators addressed the Chair.

Mr. GRAVEL. Mr. President, will the Senator from Oklahoma yield me 1 minute?

Mr. HARRIS. Mr. President, I yield 1 minute to the distinguished Senator from Alaska.

Mr. GRAVEL. Mr. President, on the matter of suggesting that Alaska enjoys a more favorable position with respect to the 90–10 which Alaska receives under the mineral lease program, the reason why we receive it is that we do not partake of the reclamation moneys. The reclamation moneys go to other Western States, to aid them. Alaska has been deprived of those funds, and we have turned around and given of the 90–10 so as to replace that money, and give it added impetus toward fiscal strength.

The next point as to the highways is that we do not have a highway system similar to that of any other State.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARRIS. One additional minute.

Mr. GRAVEL. Congress approved $14 million annually for 5 years to increase and improve our highway program, because it was recognized it was so deficient, and because this country had not heretofore applied its wealth to Alaska as it had to other States.

Now some of this money has gone for a study with respect to the Alaskan Railroad. The State has not received any of this money with respect to many other areas where it might appear that we might receive great largess from the Federal establishment. Much money goes there for purposes of national defense, and that money is not for special benefits to the areas involved. It is for the benefit, not of Alaska alone, but all the rest of the States also.

Mr. MURPHY. Mr. President, will the Senator from Washington yield to me?

Mr. JACKSON. I yield 2 minutes to the Senator from California.

Mr. MURPHY. Mr. President, the distinguished Senator from Massachusetts apparently did not understand my reference. I spoke of what I had seen in Alaska on what was truly a short visit, with his committee. But also, while there, I saw a village that was not on the itinerary of that committee. My concern, when I came back, was more with management than with land and dollars.

I saw a village that was a very well organized village. They had 35 new houses, paved streets, and a fine school. I found out how they had accomplished that, and that is why my remarks were pointed more to the area of help in management than to the amount in dollars or the amount of land.

I mentioned the figure of 30,000 acres for a village because it was my experience, on my two trips to Alaska, that these people need some industry, they need some way of making a living. It is very fine for us to stand here and say we will only be giving away 10 percent of 30 million acres, or 5 percent, or whatever it is. These people need more than land, more than money, more than great speeches here in this Chamber. They need help in figuring out how better to work out the economics of this great new area; and I hope the distinguished Senator did not misunderstand my remarks.

I think the bill is charitable. I think it is fully fair. I have confidence in the committee and in the chairman of the committee. That is why I said what I did. But I also think they should have all the help, all the brains, and all the planning that we can give them, to make sure that this is not just a hollow gift, such as we have made all too often in the past.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. MURPHY. I ask for 1 additional minute.

Mr. JACKSON. One minute.

Mr. MURPHY. Too often the land disappears, the money disappears, the good actions of Congress disappear, and the Natives are back where they started from, simply because we have not taken a complete look at the picture and done all the things that are necessary. I sincerely hope my distinguished colleague from Massachusetts will understand that that was the concern of the Senator from California.

Mr. HARRIS. Mr. President, I yield 3 minutes to the distinguished Senator from Massachusetts.

Mr. KENNEDY. Mr. President, to re-

spond to the Senator from California, that was the Tyonek Village of Alaska, and our colleagues from Alaska can certainly testify as to the legitimacy of the observations made by the Senator from California as to its prosperity.

But, as I understand, that is a village unique unto itself. The reason it has been able to modernize and improve its streets and other public facilities, is because it has been able to sell the land. That has been valuable land in terms of prospective mineral development. That is precisely the point of the Senator from Oklahoma. If the Natives are able to get clear title to their land, to be able to make their own plans and initiate their own projects, I agree that they will be a good deal better off.

In conclusion, I point out that the Alaska Natives have never alienated their land in the past. They have always held their lands. They have never been conquered by a military force or negotiated a treaty.

What we are doing here, by extinguishing what has to be recognized as their legitimate rights to ownership of at least 80 million acres, perhaps three times that, is to produce what the Senate feels, in its wisdom, is a balanced bill. We are leaving the Natives with 10 million acres, and we think we are giving them a marvelous deal.

I would just say that this amendment goes a long way toward remedying that situation. If this is going to so violate any delicate balance, we might as well know about it right now. I am sure the Alaskan Natives would like to know about it. We surely cannot say that by voting against the amendment of the Senator from Oklahoma and restricting it this narrowly we are being overly generous and munificent to these people.

Mr. MURPHY. Mr. President, will the Senator yield 30 seconds?

Mr. JACKSON. I yield 1 minute to the Senator from California.

Mr. MURPHY. Mr. President, for the RECORD, it is my understanding, with respect to the village of Tyonek, that the land still belongs to the Natives, that the construction company that built their housing is now owned by those Natives. They have managed their affairs so well that they own two buildings in Anchorage, Alaska, one of which they rent to the Bureau of Indian Affairs. So it really was a matter of good management, which they arranged through the proper use of some moneys paid to them by one oil company for the right to drill for oil. I might add oil never was discovered. But that money, from the first downpayment, was well managed.

Again I stress that what is extremely important, so that these people, who are unused to these business matters, as the distinguished Senator knows, will have all the benefit of all the help that the Federal Government can give them to manage their affairs properly in order to make certain that the other villages do as well as the village of Tyonek. I asked the people in Tyonek, and they said they would be glad to help the other villages. This is what I would hope to see, not just a certain number of acres of land which may be useless and of little value.

The PRESIDING OFFICER. Who yields time?

Mr. HARRIS. I yield myself 5 minutes.

Mr. President, in connection with the debate on this amendment and the amount of land involved, which would be raised to 40 million acres by this amendment, it has been said, rightly, that this is the largest cash settlement in history for American Indians and the largest land settlement in history. That is true.

It has, however, been inadvertantly said by some—not by the distinguished Senator from Kentucky, who later spoke about this issue—that this is the most "generous" settlement in history. Mr. President, this is the largest settlement in history; but, since what we are trying to do here is to accomplish justice, I do not believe that "generosity" is a proper word. I think that really gets down to the nub of the argument in regard to this amendment.

The distinguished Senator from Kentucky (Mr. COOK) earlier said—I imagine this was inadvertent as well, and I believe it is an exact quotation from the RECORD—

> I thought that we got fee title to it from Russia.

That is exactly the point. Russia did not have fee simple title to this land, and neither does the United States, nor the State of Alaska.

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

Mr. HARRIS. I yield.

Mr. GRAVEL. Not only did they not have fee title, but also, they never got beyond the border areas on the Aleutian Chain. They only won a couple of battles. By and large, most of the battles that were fought by white men against the Natives of Alaska were lost. So they never got to the interior, to the North Slope, and never made a deep incursions into the southeastern area. These Natives have really had control from time immemorial.

Mr. HARRIS. The Senator is correct, and he emphasizes the point I am making. There has also been inadvertent use during the debate of the word "give"—it is said that we are "giving" something to the Alaska Natives by this bill.

Again, Mr. President, that brings us back to the basic point. We are talking about justice. The Alaska Natives have aboriginal claim as held by the Federal courts, to most of this land.

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

Mr. HARRIS. I yield.

Mr. KENNEDY. Are we not, in effect, really taking away land from the Natives? They have the land now; they use the land now. Their families have been using it for centuries. What we are doing, in effect, by this measure is to limit their ownership under the present bill, to some 10 million acres, when now they are using and claiming ownership between 80 million acres and more.

Mr. HARRIS. The Senator is correct.

The courts have held that the Alaska Natives have aboriginal claim to this land, and, under this bill, they will have title only to approximately 2 percent of the land to which they have been held to have aboriginal claim.

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

Mr. HARRIS. I yield.

Mr. JACKSON. Will the Senator cite the case in which the court has held that the Alaska Natives have aboriginal title to the lands of Alaska?

Mr. HARRIS. I invite the Senator's attention to the most recent case—December 19, 1969—U.S. Court of Appeals for the Ninth Circuit, Alaska against Udall, and the other one is Alaska against Natives.

Those cases affirmed the Native's position that their aboriginal rights were preserved in the Alaska Statehood Act, and that the power of Congress to affirm to the Natives their interest in those lands was preserved in the Statehood Act. I might say that I believe that in the first case, the Supreme Court has recently refused to take jurisdiction.

Mr. JACKSON. The Ninth Circuit held in Alaska against Udall that in order for State land selections to be made the Native claims, if any, to the lands in question had to be presented and litigated first, as I understand it. The Supreme Court has never held that Alaska Natives have aboriginal title to all of Alaska. I do not want to confuse the record any more than it has been confused about title, but the Supreme Court has never held that the Natives of Alaska are entitled to the land of Alaska by aboriginal right. That is a sweeping statement the Senator has made, and of course there is no such ruling by the U.S. Supreme Court or any other court.

Bear in mind what the courts have held in connection with aboriginal rights. Generally speaking—that where Native people are in occupancy and where they have made use of the lands in question, they have a right against all third parties. They do not, however, have any right against the United States. In fact, the Supreme Court ruled in the Tee Hit Ton case, where the suit had been brought by Indians in southeastern Alaska seeking compensation for extinguishment of their rights of occupancy by the United States, that their aboriginal occupancy had not been recognized by Congress as a right protected by the fifth amendment against taking or extinguishment by the Government.

The point is that under the doctrine of aboriginal rights, the rights of Alaska Natives have not been judicially determined. To my knowledge, in the 48 States——

Mr. HARRIS. I believe the Taos case——

Mr. JACKSON. Perhaps in some limited areas. But the whole concept of the Indian Claims Commission procedure——

The PRESIDING OFFICER. The time has expired.

Mr. JACKSON. I yield myself 2 minutes in response.

I just wanted to say that when we talk about aboriginal rights, it is a right of occupancy, where they occupy it, as against third parties. But it does not constitute fee title. I think it should be made very clear that the Supreme Court

has never made any such ruling. The Court has ruled over and over again—and that is why we are discussing this on the floor of the Senate today—that Congress must grant to Native people whatever fee title or other title they need or should have.

That is the history of the legal rulings going way back. I just wanted to point out that the case to which the Senator referred did not pass judgment on the question that was raised on the floor of the Senate. I am referring to Alaska against Udall.

Mr. HARRIS. And the other cases as well. I would point out once again that these were cases by the Circuit Court of Appeals, Ninth Circuit. It is true that the Supreme Court has not ruled on this but it has refused, as I understand it, to take up that case on appeal. Therefore, it is the law. Whatever holdings were made in the case, that is the law. I trust that the Senator from Washington would not want to go further into the question of rights to this land. I would not think that by right of discovery someone would have gotten a better title to the land than those living there when they were "discovered." I would not think we would want to open that up again. What we are talking about is the aboriginal claim to this land, which, it seems to me, they clearly have.

Mr. JACKSON. If that is the case, why does not the Senator suggest that 337 million acres—all of the State—be turned over, if that is his philosophy and line of reasoning?

Mr. HARRIS. Well, would the Senator cosponsor that?

Mr. PASTORE. May I get into this act?

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

Mr. JACKSON. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator from Washington is recognized for 2 minutes.

Mr. JACKSON. May I also point out that I have been interested in Indian claims for a long time, being a cosponsor with the late Senator O'Mahoney of the Indian Claims Commission Act. We made a conscious decision there to try to adjudicate the proper claims of the Indians before this Commission by cash payments.

If the Senator wants to proceed on the line of reasoning he has just advocated, regarding land adjudication, need I say much more as to what will happen in the other 49 States?

Mr. HARRIS. I hope, perhaps in one way, that we will. I testified before the Senator's own committee, or the subcommittee, just lately, in regard to a land settlement for the Taos Pueblo. I do not believe we can always do full justice with money alone, and I think the Senator would surely agree with that——

Mr. JACKSON. I agree with the Senator on that, but——

Mr. HARRIS. This bill would provide some land, so, apparently, the Senator from Washington believes that the Natives involved are entitled to something more than money, because his committee has so recommended; but they have not recommended enough. That is what I am talking about now.

Mr. JACKSON. I understand that point, but——

Mr. HARRIS. If the Senator is to proceed on the question of settlements——

Mr. JACKSON. On the basis of restoring the land, let me point out that the obvious logic there is to turn over all of the land in Alaska, and then to turn over all of the land in the United States.

The fact is, we face some very serious conservation fights if this line of reasoning is carried too far. We have national parks and national forests throughout the great western part of the United States that can be subjected to that kind of adjudication. We will find ourselves in an impossible situation in the United States. I want to see justice for all Indians. I sponsored that legislation. I am sorry that the Indian Claims Commission is still trying to solve the claims, but I would much prefer trying to bring all our people together regardless of their ethnic origin, and not build enclaves in the United States. That is not justice compatible with the American concept of democracy. If we set up huge enclaves, we will invite the kind of discrimination I want to see eliminated in the United States. We have too much of it already.

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

Mr. HARRIS. I have the floor. I yield myself such additional times as I may find necessary.

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. HARRIS. Five minutes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 5 minutes.

Mr. HARRIS. I yielded to the Senator from Washington for a statement.

Mr. JACKSON. On whose time I yielded to other Senators.

Mr. HARRIS. The Senator from Washington (Mr. JACKSON) in all sincerity, has raised two objections to the amendment. First, I assume he really does not wish to push too strongly; that is, if we allow Alaska Natives 40 million acres, we will have to consider assuring them over 300 million acres. That is obviously not the issue here. Neither are other claims made in other States involved here. The case is, what is justice here? Forty million acres is better justice than 10 million acres. That is my argument.

The second argument is that we should not establish enclaves. That argument is late by 100 years. Reservations were established a long time ago over the objections of the Indians involved in various sections of the country. It is certainly too late for non-Indians to come along and say now that they will make the decision to do away with reservations. What we need to do is, at long last, to begin to ask the Natives in Alaska, and American Indians generally in this country, to join in decisionmaking generally, and not to make such decisions in the Senate, not to make them in the Bureau of Indian Affairs, but allow Indians themselves some self-determination, some ability to decide for themselves.

I merely say here, and I trust that no one will question it, that we are not giving something to the Alaskan Natives that is not rightly theirs. That is the whole question here, regardless of the talk about the exact condition of the law, and so forth.

Mr. JACKSON. I know the Senator from Oklahoma wants to keep the record straight, because the situation in Alaska is entirely different.

Mr. HARRIS. I understand that. We have been through all that.

Mr. JACKSON. He does not want to leave the record with the impression that we have established enclaves in Alaska. That is one thing we do not have up there. We do not have reservations or enclaves in Alaska.

Mr. HARRIS. I understand that, but the land there, as was pointed out by the Senator from Massachusetts, land that the Natives have not sold. It has not been taken away from them by war. They have not entered into some treaty which gave up their land. It is still there. They are still there.

Mr. President, what we are trying to do is to do justice. That is the question here. Land means life to the Natives. Surely everyone in the Senate knows that it takes a vast expanse of land in Alaska for people to survive. A village of 200 Indians up there may need 100,000 acres of land in order to survive. They depend on the land and the water for the food they eat and whatever small income they may derive from it.

I will point out further—and then I shall be glad to yield to the Senator from Rhode Island—that the Native Alaskans are the most impoverished of America's people.

The average family income of the Natives there is only one-fourth that of the non-Natives in America. Their average age at death is 35. Only one in 10 has received a high school education; 93 percent are living in homes which, according to Public Health surveys, need to be replaced; and, as we know, employment is extremely difficult to come by.

The Senator from Kentucky talked about environment, and the Senator from Washington talked about conservation. There has been talk about pollution. This amendment involves a very serious question on environment and on pollution. I fear that the present land provision in this bill will create a instant population problem. Overpopulation is due, as we all know, to spare resources as well as an abundance of people. If we take away land from the Natives, land which they depend upon for sustenance and support, we must realize that the village population may be far too large for a resource base.

That question is involved here, and it is basic and fundamental.

I am now pleased to yield to the Senator from Rhode Island.

Mr. PASTORE. I am curious to know why all of this was not settled before we granted statehood to Alaska.

Mr. HARRIS. I wish it had been. I was not in the Senate at that time. I wish it had been.

Mr. PASTORE. Were the Natives the Senator is talking about allowed by ref-

erendum to decide whether they wanted statehood?

Mr. HARRIS. I believe that the Senator from Alaska (Mr. GRAVEL) wants to answer that.

Mr. GRAVEL. Maybe I can answer that question. First off, there was a referendum and that was on the constitution of the State of Alaska and it did carry overwhelmingly within Alaska.

Mr. PASTORE. They were free to vote on that?

Mr. GRAVEL. Yes.

Mr. PASTORE. Did they vote?

Mr. GRAVEL. Yes; a very high percentage.

Mr. PASTORE. To become a part of the United States?

Mr. GRAVEL. We can conclude that they did.

Mr. HARRIS. It should be noted, however, that it was stated in the enabling legislation which Congress had passed that the Natives would not in any way lose whatever legal rights they had. Is that not correct?

Mr. GRAVEL. The Statehood Act Specifically stated that that problem was unsolved and that it would have to be solved by Congress at some future date. What we are doing here is what Congress decided in 1958.

Mr. PASTORE. So the question before us is whether they should have a claim to 10 million acres or to 40 million acres; is that the question?

Mr. GRAVEL. That is the question in the amendment.

Mr. PASTORE. In other words, the Senator from Oklahoma feels that 10 million acres is not enough and that it should be 40 million acres.

Mr. HARRIS. That is right; 40 million acres.

Mr. PASTORE. How did we reach that formula of 40 million acres?

Mr. HARRIS. This is a figure which the Alaskan Federation of Natives have agreed to accept. It is a part of a three-part settlement. The bill has in it cash, land, and a 2-percent overriding royalty. There are more than 300 million acres of land in Alaska. I am informed that the 10 million acres provided in the bill amounts roughly to 2 percent of the land to which they have aboriginal claim.

Mr. KENNEDY. Mr. President, will the Senator yield on that point?

Mr. HARRIS. I yield.

Mr. KENNEDY. Mr. President, as I understand, that is half of what they initially proposed, what they feel is the bare minimum for subsistance, and what they are using now. That is how we arrived at that figure.

Mr. PASTORE. Mr. President, will they sell this land or use it for the exploration of oil and minerals, or will they cultivate it to raise food?

Mr. HARRIS. Mr. President, there are restrictions concerning alienation for 12 years. In addition, this is primarily land that would normally be used for hunting, fishing, and game gathering.

The PRESIDING OFFICER. The Chair advises the Senator from Oklahoma that he has 2 minutes remaining.

Mr. JACKSON. Mr. President, I yield myself such time as I require.

May I help to respond to the able Senator from Rhode Island? In connection with this question, we provide $1 billion in cash payments. We are doing this in lieu of adding large sections of land.

A lot has been said about subsistence. We provide in section 20 that Alaska Native people can use lands for subsistence purposes—all of the public lands of Alaska.

So, that is not the issue. May I say, so that Senators will know what they are voting on in the amendment, that under the amendment as it is now before the Senate 40 million acres would be granted—much of it out of wildlife refuge, out of the public land, out of McKinley National Park, and out of the national forests.

Mr. HARRIS. Could that not be done with the 10 million acres?

Mr. JACKSON. No; it could not be.

Mr. HARRIS. Why could it not be?

Mr. JACKSON. The bill prohibits it. The amendment would permit it.

I am trying to explain the Senator's amendment and its impact.

I think this points up a serious problem. Senators ought to know when they are voting on the pending amendment that it would simply open for selection all of the 377 million acres of land in Alaska.

This shows what the result of an amendment can be when we come in after 3 years of effort and have very carefully and meticulously detailed all of these conflicting interests and have tried to provide a fair land settlement and not just a generous land settlement. We went out of our way to see to that on the floor yesterday. We made every possible effort to maximize the land grant.

The Native people are granted adequate land for subsistence purposes. The committee provided land for investment purposes. We also tried to protect the public interests in Alaska's great natural beauty and proper conservation practices.

We make available over $1 billion over a period of time.

Mr. PASTORE. Mr. President, with regard to the 40 million acres we are talking about, who is living on it now and who is using it?

Mr. JACKSON. For the most part in Alaska, so that the Senator understands, about 97 percent of the land in Alaska is owned by the Federal Government.

There are 377 million acres of land in Alaska. The State has the right to select 103 million acres.

Mr. STEVENS. Mr. President, I yield myself 5 minutes on the bill and yield it to the chairman.

Mr. JACKSON. Mr. President, I believe that I had completed my statement.

Mr. PASTORE. The Senator was cut off the answer in the middle, because his time expired. I had asked who is living on the land now, who is using it, and who owns it?

Mr. JACKSON. Mr. President, in a moment I will let the the Senator from Alaska respond on that matter.

I want to emphasize the figures. There are 377 million acres of land in Alaska; 103 million acres can be selected by the State of Alaska under the Statehood Act of 1958.

The State has obtained fee title to over 5 million acres. The bulk of this land is not used by anyone. There is limited occupancy and infrequent use, but it is very limited.

Mr. STEVENS. Mr. President, in response to the question raised, 1 percent of the land is in private ownership in Alaska today. About 90 million acres are occupied by the Federal Government.

The problem has been that the Native Villages had no title to the land.

The Senator from Oklahoma said they have not sold it. They have not.

The Tyonek Village that the Senator from California has mentioned is a good point. They have done very well.

The bill gives title to the villages of 10 million or 11 million acres of land. But the major provision has gone unrecognized.

That is the one that the chairman mentioned.

Section 20 of the bill authorizes the Secretary of the Interior to classify all public lands surrounding any or all of the Native villages withdrawn in this bill for subsistence use units.

They can continue the use of the land surrounding their villages for subsistence. But they will have title to their villages in an amount depending upon the areas. There will be from one township to seven or eight townships. They will be able to deal with the land as with any other land under private ownership.

They will not be under lease. It will be land that they can use as they see fit. Their subsistence rights are protected.

My friend, the Senator from Massachusetts is right. They need subsistence land so long as they live in a subsistence economy. The bill would take them out of a subsistence economy.

We realize they have had this right to the land in the past. The existing land laws give the Alaskan Natives the right to use the land they now occupy. They can use any land they want to not reserved by the Federal Government, but they have had no cash. There is $1 billion provided for the Alaskan Native people by this bill. That is what they need most.

Mr. HARRIS. Mr. President, I yield myself 2 minutes.

I think the distinguished Senator from Washington will certainly agree that if this bill passes, we can then agree on an amendment concerning where land can be chosen. I will agree that can be done. That is, therefore, not an issue.

The question is whether we want 10 million acres or 40 million acres. The amount of land which the Natives of Alaska have asked for is the minimum necessary for their subsistence. This is their land.

I think justice requires that we recognize that and be fair with them in regard to this land. I do not think we are being fair otherwise.

The adoption of this amendment would be awfully good strategy for us in conference. We know that we will have a hard time in conference with the other body on this bill. If we start with a larger amount of land, the chances of retaining more will be better.

More importantly, in the name of justice, the land allowed in this amendment is rightly the land of the Alaskan Natives.

The pending bill would give back to them a part of what is already theirs, but only 2 percent of the land to which they already have aboriginal claim. I do not believe that is enough.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from Oklahoma. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Mississippi (Mr. EASTLAND), the Senator from Tennessee (Mr. GORE), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), the Senator from Georgia (Mr. RUSSELL), the Senator from Maryland (Mr. TYDINGS), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Minnesota (Mr. MONDALE) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) and the Senator from Maine (Mrs. SMITH) are absent because of illness.

If present and voting, the Senator from South Dakota (Mr. MUNDT) and the Senator from Maine (Mrs. SMITH) would each vote "nay."

The result was announced—yeas 13, nays 71, as follows:

[No. 243 Leg.]

YEAS—13

Cooper	Hart	Ribicoff
Cranston	Hughes	Stevens
Eagleton	Kennedy	Young, Ohio
Gravel	Mansfield	
Harris	Pell	

NAYS—71

Aiken	Goodell	Muskie
Allen	Griffin	Nelson
Allott	Gurney	Packwood
Anderson	Hansen	Pastore
Baker	Hartke	Pearson
Bayh	Hatfield	Percy
Bellmon	Holland	Prouty
Bennett	Hollings	Proxmire
Bible	Hruska	Randolph
Boggs	Jackson	Saxbe
Brooke	Javits	Schweiker
Burdick	Jordan, N.C.	Scott
Byrd, W. Va.	Jordan, Idaho	Smith, Ill.
Case	Long	Sparkman
Cook	Magnuson	Spong
Cotton	Mathias	Stennis
Curtis	McClellan	Symington
Dole	McGee	Talmadge
Ellender	McGovern	Thurmond
Ervin	McIntyre	Tower
Fannin	Metcalf	Williams, N.J.
Fong	Miller	Williams, Del.
Fulbright	Moss	Young, N. Dak.
Goldwater	Murphy	

NOT VOTING—16

Byrd, Va.	Gore	Russell
Cannon	Inouye	Smith, Maine
Church	McCarthy	Tydings
Dodd	Mondale	Yarborough
Dominick	Montoya	
Eastland	Mundt	

So Mr. HARRIS' amendment was rejected.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended. (Putting the question.)

The amendment was agreed to.

Mr. ALLOTT. Mr. President, the bill before us is a landmark in legislation. It is a landmark, because it attempts to settle an issue that has been before Congress and the Nation for more than 100 years. It is a landmark, because Congress rather than the courts is attempting to adjudicate land claims. It is a landmark, because of the complex corporate structure established to distribute its benefits among the Native people. It is a landmark, because its basic concept is self-determination. It is a landmark, because no reservations are established and no trusteeship is created. It is a landmark, because it reflects the desire of the Native people to get out from under the bureaucratic paternalism of the Bureau of Indian Affairs, and, in effect, terminates the activities of the BIA in Alaska at the end of 5 years. It may be a landmark because if the revenue-sharing features should be considered as a precedent for other Native land claims, it will be a precedent that Congress will regret for years to come.

This measure has been one of the most difficult and complex measures to come before the Interior Committee during my years of service on that committee. I wish to commend the able chairman, the Senator from Washington (Mr. JACKSON), for his diligent work and fair and evenhanded method of conducting the executive sessions. The committee has spent a great deal of time in hammering out this settlement package—15 days in executive session alone—and the settlement must be viewed as a "package" with all parts of it inextricably related. In particular, I wish to recognize the contributions of the able senior Senator from Alaska (Mr. STEVENS). The senior Senator from Alaska was an extremely persuasive advocate, and many of the provisions of this bill were incorporated as a direct result of his suggestions and advocacy.

Mr. President, I would be remiss at this time if I did not pay tribute, not only for myself but also, I am sure, for the chairman, to the wonderful and exhaustive staff work done by Mr. William Van Ness, counsel for the majority, and Mr. Charles Cook, counsel for the minority.

Mr. President, the early settlement of the Alaska Native land claims is highly important to the future of Alaska and its development. As Senators know, late in 1966 Secretary Udall imposed a land freeze on State selections in Alaska, which stopped the approval and conveyance of lands granted to Alaska by the Statehood Act. Just before leaving office in January of 1969, Secretary Udall signed an order which withdrew from entry and for State selection essentially all of the Federal land in Alaska not already withdrawn—approximately 270 million acres, an area comparable to the combined total land areas of the States of Texas and California. Because of this withdrawal order the State of Alaska has been in a "deep freeze" as far as development is concerned since late 1966. During his confirmation hearings, Secretary Hickel agreed to continue in force the withdrawal order until Native claims legislation had been enacted or until the end of 1970 if no legislation is passed. The purpose of the withdrawal order was to preserve the land in Alaska in a status quo posture to provide the Congress with an opportunity to work its will on settlement legislation.

A year and one-half has elapsed since the Secretary made that commitment, and the Senate Interior Committee has produced a bill. It would be unreasonable for us to further delay the development of the State and to prevent the State from proceeding in an orderly fashion with its selection of lands under the Statehood Act. It would be doubly unfair to the Natives to further delay the settlement of their claims. A total of 103 years have passed since we purchased Alaska from Russia and previous Congresses have consistently reserved the resolution of the Native land issue to subsequent Congresses. The time has come for Congress to act, and the 91st Congress has taken upon itself a good faith effort to settle these Native land claims.

The bill produced by the committee is a complex one. It attempts to solve many of the problems of the Natives by establishing a Service Corporation whose purpose it is to attempt to upgrade the social climate of the Natives. In addition, through its Investment Corporation, it grants to the Natives something of value which will produce individual income to him in the form of dividends. Through this mechanism, it is hoped that the Natives will learn to appreciate the values of stock ownership and corporate enterprise.

The committee recommendation, however, presents a delicate balance of settlement features. The amount of land is related to the amount of money to come from the Federal Treasury and must necessarily be related to the revenue-sharing provision. The settlement must be viewed as a package and not viewed as a series of individual compensation features. Thus, when we speak of the package, we are talking in terms of a maximum of 10 million acres, plus $500 million in compensation from the U.S. Treasury, plus $500 million in terms of revenue sharing.

Earlier in my statement I referred to innovative features in this bill. Perhaps the most significant one is, that with a few exceptions, existing reservations are revoked and a reservation system is not established in Alaska. As is pointed out on page 157 of the committee report:

> As noted in connection with Section 4(b), the revocation of these reservations is in keeping with the expressed desire of the Native people in Alaska to be free of the administrative oversight and wardship of the Bureau of Indian Affairs and the Department of the Interior.

Section 4(b) provides that within 5 years of the date of the enactment of this act the United States shall cease to provide services to any citizen of Alaska solely on the basis of racial or ethnic background. As is set forth in section 2(c) the purpose of the bill and the intent of the committee is to avoid per-

petuating in Alaska the reservation and trustee system which has characterized the relationship of the Federal Government to the Indian peoples in the contiguous 48 States. Therefore, the underlying concept of the bill is largely one of self-determination by the Natives, but beyond that, it also includes a type of termination of the Federal trustee obligation and assumption of part of those obligations by the State of Alaska.

Time after time it has been indicated to the committee by representatives of the Natives that the Natives wish to see an end to the Bureau of Indian Affairs in Alaska. Section 4(b) provides for a phasing out of the Bureau of Indian Affairs within 5 years after enactment.

Mr. President, this measure is a compromise as reported from the committee, and I cannot agree with all of the provisions in the bill. It is appropriate to quote from the committee report beginning at the bottom of page 67:

> This bill represents a compromise in many respects. A compromise among the interests and desires of many of the parties involved and also a compromise among the views of many of the members of the Committee. The bill recommended by the Committee reflects a willingness on the part of individual members—after careful study of the issues involved—to concur in the clear necessity for adoption of a settlement package while reserving their right to debate further, at another time and in connection with other legislation, their individual views on some of the specific policies which are of necessity incorporated in this complex omnibus settlement measure.

Certain of the provisions of the bill deserve discussion and comment at this time. Among these are the revenue-sharing provisions, sometimes referred to as the 2-percent overriding royalty, and the total compensation paid from the U.S. Treasury—$500 million.

With respect to the latter, the figure of $500 million is an arbitrary one. It has no basis for formulation and I suspect that it was adopted because it is a "nice round figure," and because the Department of the Interior proposed the figure during the hearings of April 29, 1969. Someone suggested a dollar an acre for settlement, but it is difficult to determine the amount of land over which the Natives may be able to establish suzerainty, and consequently, the amount of the settlement based upon such a figure would be extremely low. It is noteworthy that the committee adopted the $500 million figure over a lesser figure of $350 million by a majority of only one vote.

With respect to the revenue sharing, this particular provision has a number of ramifications. Under the Statehood Act, 90 percent of the revenues from the Mineral Leasing Act in Alaska are paid over to Alaska. Therefore, 90 percent of the burden of revenue sharing is carried by the State, since it amounts to a reduction of its entitlement to share in mineral-leasing revenues on Federal lands in Alaska. The State burden is further increased by a provision requiring that lands patented to the State subsequently are subject to the revenue-sharing provisions. However, the September 1969 lease sale of lands tentatively approved are excepted from this provision.

The difficulty of this revenue-sharing provision is that it may establish certain undesirable precedents. First, it is an abrogation of the revenue sharing granted to the State of Alaska by its Statehood Act. The Congress in its wisdom granted to Alaska the right to select 103.5 million acres plus a right to 90 percent of the mineral revenues received from leases on Federal lands in a recognition of the vastness of Alaska and the tremendous State expenditures which would be required to develop this vast area. Under the terms of the revenue-sharing provision, the State's share is reduced from 90 percent to approximately 88 percent.

Second, it establishes a precedent for Indian land claims against a State. Section 17 appears to establish a claim of the Natives against the State of Alaska inasmuch as the section requires the State to participate in the payment of the Native claims.

Third, and most significantly, it may establish a precedent with respect to the public land States whereby the Natives may claim an overriding royalty interest in the minerals on the public domain and national forest preserves. By granting this royalty interest, the act grants to the Natives a proprietary interest in essentially the entire State of Alaska. This is a proprietary interest based primarily upon race, since it cannot be shown to be compensation for lands taken which were in the exclusive control and possession of the Natives. The same sort of claim to a royalty interest might be advanced by certain Indian tribes to the oil shale deposits of Colorado, Wyoming, and Utah, and those Indians might better be able to display exclusive control and possession of those shale lands at some point of time. Such a result would be intolerable.

There has been an effort to clearly state that the revenue-sharing provision shall not be a precedent for other Native groups in an attempt to advance similar claims. The argument has been made that the Alaska situation is totally unique and, therefore, what Congress does here does not have application with respect to other Natives. Should revenue sharing be a part of the final legislative product of the Congress in the settlement of Alaska Native land claims, it is my fervent hope that these disclaimers with respect to the establishment of a precedent will withstand the test of time and rhetoric. In all candor, though, I have serious misgivings.

In light of the expiration of the withdrawal order, I do feel that it is important that this measure pass the Senate and proceed to the House for its consideration and deliberation. Therefore, I feel there is a certain urgency for the Senate to complete its consideration of this legislation so that the other body will have time to work its will. It is my expectation that there will be a conference, since my information indicates that members of the House committee have significantly different views as to what is an appropriate settlement formula.

Mr. President, in conclusion, there are many considerations that entered into the conclusions we made in the bill. Not the least of which was the fact that when we entered into the Alaska Statehood Act, we granted to them 103 million acres of land. So far, I believe, they have selected approximately 26 million acres, but less than 6 million acres have been patented to the State. With the withdrawals which Secretary Udall made before he left office and continued by Secretary Hickel, it is absolutely impossible for Alaska to develop as it has a right to develop and as it will develop, once they are able to select this "in lieu" land and put them to work for the State.

Thus, if we are going to do justice to the State of Alaska, which we brought into the Union, the No. 1 priority is to move this legislation along so that Alaska may acquire its lands and discharge the obligations that statehood imposed upon it.

I hope that the bill will be agreed to. There are many things in it that I do not agree with but, nevertheless, it will go to conference, and there are different views which will be brought to bear in the House; and with it, at least, we will take a great step forward toward placing Alaska in the position which we intended to place her when she was admitted to the Union.

Mr. President, I ask unanimous consent to have printed in the RECORD an outline of Alaska Native land claims.

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

OUTLINE OF ALASKA NATIVE LAND CLAIMS, S. 1830

I. HISTORICAL

A. Alaska was purchased from Russia in 1867 for $7.2 million. The 1884 Organic Act and the Statehood Act of 1958 left the issue largely untouched, and in essence, leaving the question of the Native title to future Congresses.

B. In late 1966, Secretary Udall imposed a "land freeze" on State selections in Alaska, which stopped the approval and conveyance of lands granted to Alaska (103,500,000 acres) by the Statehood Act. Just before leaving office in January, 1969, Secretary Udall signed an order which withdrew from entry or State selection, essentially all of the Federal land in Alaska not already withdrawn (approximately 270 million acres, an area comparable to the combined total land areas of the States of Texas and California).

C. During the 90th Congress 5 bills were introduced to settle the Native Claims:

1. S. 2690 was a jurisdictional bill for compensation for lands already taken, plus title to all claimed lands not disposed of to 3rd parties. Court of Claims to determine amount of money to be paid.

2. S. 1946 would grant in trust 50,000 acres to each tribe, band, clan, village, community or group, and 25-year hunting, fishing, and trapping permits. State of Alaska, on behalf of Natives would be authorized to file a single action against U.S. for compensation for land taken.

3. S. 2906 which resulted from recommendations of the Governor's Task Force (Walter J. Hickel). It provided for a grant of up to 40 million acres in fee or in trust, plus 100-year hunting, fishing, and trapping licenses, plus 10% royalty interest in proceeds from Outer Continental Shelf for 25 years, with a Congressional redetermination at the end of 25 year period. A minimum payment of $25 million was guaranteed.

4. S. 2586 the administration's bill, would have granted 20 million acres of land in fee. Land to be in trust for 25 years but conveyed in fee upon approval of land use plan. 50 year permissive use of all Federal

lands for hunting, trapping, fishing and berry picking. $3,000 per head to be paid over four year period, but total not to exceed $180 million. Native Development Corp. to receive mineral title to lands plus 10% of cash.

5. S. 3859 would grant 40 million acres and $500 million. This is what the Natives asked for. The $500 million was to be paid at a rate of $50 million per year. In addition, the State of Alaska was to vest 5% of revenues from selected lands in Natives. A framework of regional Native Groups and an Economic Development Corporation would administer minerals and most of the funds.

D. In the 91st Congress there have been essentially four proposals: one by the Federal Field Commission; one by the Department (Amendment 212 to S. 1830); one by the Alaska Federation of Natives (the AFN); and the bill as reported by the Committee.

1. S. 1830—as introduced—Federal Field Commission suggestion. One township of land (23,040 acres) granted to each of 209 villages (total is just under 5 million acres), plus lands to individuals in remote areas. Revenue sharing for 10 years, including revenues from Pet. #4. $100 million per year for 10 year period. Included revenues from hard rock minerals (a 5% royalty).

2. Amendment 212 (Departmental proposal), would grant 2 townships of land (46,080 acres) to each village, but reserves leasable minerals to U.S. 195 villages listed for total of about 9 million acres. Cash settlement was $500 million paid at $25 million per year for 20 years.

3. S. 3041—Native Substitute. Four townships (92,160 acres) for each of the 242 listed villages, for a total of 22.3 million acres, plus selections from sections 5, 6, 7 and 8 in each township to equal a total of 40 million acres. Mineral rights held by regional corporation. Subsistence rights on all public lands for 100 years. Lands to be tax-free for 50 years. $500 million to be paid with $100 million in first year and $50 million thereafter. Additional compensation of a 2% royalty on all resources of the land, including grazing, timber, minerals, water, etc. No termination of royalty interest nor monetary limit, but excluded Outer Continental Shield. There would be village regional and State-wide corporation structures to administer funds and lands.

4. Committee bill (S. 1830) compromises these features. Provides for one township for each listed village (approximately 5 million acres), with $500 million paid over 12 year period, and a 2% royalty interest in minerals until an additional $500 million is paid, with additional land selections of up to 3 million acres. (1.5 million acres to be selected by Service Corp. in withdrawn areas —floor amendment). The details and corporate set-up will be dealt with in detail in later sections of this outline.

II. THE COMMITTEE BILL (S. 1830)

A. Declaration of Policy—this will be the final settlement of all land claims of Alaska Natives. Claims before the Indian Claims Commission will be dismissed by this Act, and the 2.6 million acres of land granted to Tlingit-Haida's by Court judgment would be extinguished in favor of lands and money granted under this bill.

B. Persons Eligible—Alaska Indians, Eskimos and Aleuts of ¼ or more blood.

C. Compensation—$500 million paid over the following 12 year period:

Year:	*Millions*
1	$20
2	50
3	70
4	70
5	70
6	40
7 to 12 ($30 per year)	180
Total	500

D. Division of Compensation—In first year, 80% to Services Corporation, and 20% to Investment Corporation. These percentages change during the pay out period so that 60% is paid to Investment Corporation and 40% is paid to Services Corporation in 12th year. The following table shows the division of the $500 million compensation:

[Dollar amounts in millions]

Year	Native Investment Corp.		Natives Services and Development Corp.	
	Amount	Percent	Amount	Percent
1st	$4.0	20	$16.0	80
2d	12.5	25	37.5	75
3d	21.0	30	49.0	70
4th	24.5	35	45.5	65
5th	28.0	40	42.0	60
6th	18.0	45	22.0	55
7th	15.0	50	15.0	50
8th	15.0	50	15.0	50
9th	16.5	55	13.5	45
10th	16.5	55	13.5	45
11th	18.0	60	12.0	40
12th	18.0	60	12.0	40
Total	207.0		293.0	

E. Alaska Native Commission:

1. Terminates in 7 years unless duties completed sooner.

2. Duties: (see page 61 of bill)

(a.) Preparation of final membership roll.

(b.) Preparation of final village roster.

(c.) Determination of boundary and other disputes.

(d.) Review and approval of certain land transactions.

3. Staff—small legal staff, clerical staff and hearing examiners, if needed.

4. Decisions reviewable by U.S. District Court (Alaska), then Court of Appeals (9th Circuit) and U.S. Supreme Court upon certification or certiorari.

5. Membership—5, of which at least 2 must be Alaska Natives; appointed by President with Senate confirmation; salaries are $32,500 for chairman, and $30,000 for members.

F. Alaska Native Corporations—there is a rather complex structure of corporations, including an Investment Corporation, a State-wide Services and Development Corporation, an Urban Corporation, a National Corporation (these last two serve as substitutes for the Services & Development Corporation for those natives living in the cities of Alaska and those living outside of Alaska) and Village Corporations, with Regional Advisory Boards;

1. Alaska Natives Services and Development Corporation—a non-profit, membership corporation—administers and disburses appropriated funds and funds reecived from revenue sharing to Villages and individual natives.

(a.) Services Corporation's major purpose is to improve the public services and social, economic and educational status of the natives.

(b.) Services Corporation holds title to mineral estate of all lands granted to villages.

(c) Services Corporation holds title to 2 million acres selected for timber potential (title is for timber only) and the surface estate for the additional one million acres to avoid hardships, preserve religious and historical sites, etc. (Reduced to 1 million acres by floor amendment.)

(d.) 18 member board of directors: 4 appointed by President, 14 elected by natives on regional basis, of which 2 are from Urban and National Corporations.

(e.) Each of 12 regions have Advisory Boards to develop plans, and which qualify, as does Services Corp., for Federal grants.

(f.) Services Corporation terminates at end of 13 years—may re-organize as ordinary taxable corporation, or merge with Investment Corporation.

2. Urban Corporation and National Corporations—have functions similar to Services Corporation, except they do not hold title to mineral lands and receive their funds from Services Corporation in proportion to the number of natives in the cities (those natives in the urban centers in Alaska are assigned to National Corporation). Termination and reorganization at the end of 13 years is allowed as nonprofit, business for profit, or merger with other corporations. Liquidation is also allowed and may be required if not reorganized.

3. Village Corporations—each qualified village (25 or more adult natives) to incorporate to hold surface title to lands granted and prepare and administer village plans for improvement.

(a) present occupants of residences and businesses would receive patents, also churches, etc.

(b) streets and other public sites to be conveyed to municipal corporation, which will encourage establishment under Alaska law.

(c) non-natives pay fair market value.

(d) Village Corp. to receive up to one township (23,040 acres) unless village has over 400 population, then up to one additional township for each additional 400 or part thereof.

4. Investment Corporation—whose principal purpose is to invest for profit the funds paid over to it and pay dividends to its shareholders.

(a) Board of Directors with 12 members:

(i) 4 members elected by Natives;

(ii) 5 members appointed by the President;

(iii) 3 non-Native members elected by the other members.

(b) Management contract to be awarded to professional management group by Board of Directors.

(i) Contract term=1 year, and may be renewable.

(ii) Compensation=not to exceed $250,000 or ½ of 1% of invested assets in a year.

(iii) Management group to be subject to periodic audits, and may be granted power of attorney by board to buy and sell securities.

(iv) At the end of 3 years, Board of Directors may, at its option, take over management of investments with in-house management capacity.

(c) Investments and dealings subject to Investment Company Act of 1940, and management Contract subject to review of Securities and Exchange Commission.

(d) Investments may include:

(i) national and international investments and securities;

(ii) businesses having impact upon economy of Alaska and Alaska Natives;

(iii) enterprises wholly or partially owned by Alaska Natives;

(e) Business investments will be such that the Investment Company will retain a creditor's interest which can be converted to an equity interest at option of the Board.

(f) Shares in Investment Corporation issued to all Natives on the final membership roll:

(i) Not more than 100 shares may be outstanding per Native;

(ii) Dividends are declared by Board of Directors, with provision for $4 million per year during first 5 years available from earnings and corpus to pay minimum quarterly dividend;

(iii) Stock is inalienable for 15 years.

(g) At end of 12 years all stock to be recalled and new class of stock issued. 10% conveyed to "Alaska Native Foundation". Stock issued to Natives freely alienable in 3 years.

G. Alaska Native Foundation—to be established at the end of 12 years and will be to some extent a successor to the Services Corporation which terminates at the end of 12 years.

1. Capital consists of 10% of outstanding stock of Investment Corporation.

2. Purpose of the Foundation would be educational (i.e. scholarships, etc.) and charitable for benefit of Natives.

H. Withdrawal of Public Lands for Villages:

1. Subject to valid existing rights—9 townships (a township is 23,040 acres, 9 X 23,040 = 207,360 acres or 234 square miles) will be withdrawn from all forms of entry, including State Selection under the Statehood Act, for two years.

2. Commission determines exact number of acres village is entitled to, depending upon population, type of land, and use, and within statutory limitations within the bill.

3. Village selection Committee selects lands from those withdrawn, and Secretary surveys the lands and executes conveyances.

4. Villages not listed in bill (there are 194 listed villages) may qualify for withdrawal if there are 25 adult natives (adult—over 19 years of age) and Commission certifies this to Secretary.

5. Provision is made for granting surface estate of 5 acre tracts to individuals for subsistence campsites, 40 acre tracts for group campsites, and up to 160 acre tracts to individuals who can establish historic use of larger tracts.

6. Provision is made for granting surface estate of 2,560 acres to bona fide reindeer husbandryman; must not be in national park, wildlife refuge, national forest, or defense reservation including Pet. No. 4.

7. Also provision for granting 160 acres (excluding leasable minerals) to native not in village if principal place of residence, if it is within the area of withdrawal for village. If outside area of withdrawal, only surface estate is conveyed.

8. There is a withdrawal of four townships per village in the Tongass and Chugach National Forests (Southeast Alaska); limit of grant is one township (23,040); 11 villages listed; villages not listed, but those villages with 25 or more adult natives may qualify for same benefits.

I. Land Selection for Economic Potential.

1. 2 million acres for timber potential—only the timber interests are to be conveyed. (Modified to 1 million acres by floor amendment.)

2. 1 million acres to avoid hardships (this classification is to take care of those natives who did not qualify otherwise, to protect cemeteries, abandoned villages, historical and cultural areas. (Modified to 500,000 acres by floor amendment.)

3. Floor amendment authorizes additional 1.5 million acres for village selection or selection by Services Corporation.

J. Revenue Sharing—this is perhaps the most significant feature of the bill with the most far reaching effects.

1. A share of the revenues from leasable minerals in Alaska (exclusive of the Outer Continental Shelf) will be paid to the Alaska Native Compensation Fund (which in turn pays it over to the Services Corporation and to the Investment Corporation) until the sum of $500 million is paid. This is in addition to the $500 million paid from the U.S. Treasury ($500 million + $500 million = $1 billion compensation).

2. Lands patented to the State are excluded, but tentatively approved and State selected lands are included.

3. A 2% royalty (that is 2% of 100% of the value of minerals extracted) is paid to the fund, plus 2% of the bonus payments, plus 2% of rentals. Under present law, Alaska receives 90% of Federal revenues from mineral leases on Federal land. With a standard ⅛ royalty oil and gas lease, the division of the royalty revenues would be as follows:

Royalty—12.5	*Percent*
Native share	2.00
State share	9.45
Federal share	1.05

4. In a sense, this royalty interest grants to the Natives a proprietary interest in the entire State of Alaska, except that it is limited and expires when $500 million is paid.

K. Attorney Fees and Expenses—are limited to $1.5 million for attorneys fees, but out-of-pocket expenses are to be re-imbursed. Compensation of attorneys for fees and expenses incurred in connection with the Alaska Native land claims legislation, or in connection with claims pending before the Indian Claims Commission which have been dismissed by the terms of the Act, would be set by the Chief Commissioner of the Court of Claims. The bill provides that the fees shall be paid on an hourly basis for services actually performed.

L. Taxation:

1. Funds paid over to Corporations and distributions to natives or dividends paid to individuals shall be exempt from State and Federal taxation until the $500 million deposited in the Compensation Fund from the Treasury including such interest as is earned while on deposit in the Fund, have been fully distributed.

2. The additional compensation ($500 million from revenue sharing) including interest earned while deposited in the Compensation Fund, shall be free of any State or Federal taxation for 12 years.

3. Gains on subsequent sales or other disposition of the shares of the successor corporations to the Service Corporation and Investment Corporation shall be taxable, but the basis shall be the fair market value at time of receipt.

4. Real property interests shall be exempt from State real property taxes for 12 years.

5. Only gains on real property conveyed by the Act are subject to taxation, but the basis for computing gain or loss shall be fair market value of land at time of receipt.

Mr. JACKSON. Mr. President, let me take this opportunity to express my appreciation to all the members of the committee over the 3-year period the committee was involved in hammering out the legislation that is now before the Senate. The committee acted without regard to party lines.

At the outset, I express my special appreciation to the ranking member of the minority, the distinguished Senator from Colorado (Mr. ALLOTT); his able staffman, Charles Cook, counsel for the minority; and his assistant, Dale Shaffer, for their long and continuing efforts; also the two distinguished Senators from Alaska, Mr. STEVENS and Mr. GRAVEL, who worked so long and hard in trying to get a good bill.

I also express my appreciation to the members of the staff on the majority, Jerry Verkler, staff director; and the individual assigned to this special undertaking, Mr. William Van Ness, special counsel to the committee, who was deeply involved in the ramifications and the technical details of this legislation for a period of 3 years. He was ably assisted in that effort by Dan Dreyfus.

Mr. President, this was a full committee effort. The Senator from Alaska (Mr. METCALF) conducted——

Mr. METCALF. That is Montana. [Laughter.]

Mr. JACKSON (hearings in Alaska). I must say, maybe I was right the first time because he acted like a Senator from Alaska when he was in Alaska, because he did such a fair and objective job in conducting the hearings up there, as well as in Washington.

Thus, Mr. President, I thank each and every member of the committee for their fair, impartial, legislative adjudication of these claims which have been pending for over 100 years.

I hope that the bill, on a roll call vote will be overwhelmingly passed by the Senate so that we can get House action before adjournment of Congress.

Mr. President, I ask unanimous consent that the clerk be authorized to make such technical corrections as may be necessary in connection with the pending measure.

The PRESIDING OFFICER (Mr. GOLDWATER). Without objection, it is so ordered.

Mr. JACKSON. Mr. President, I ask for the yeas and nays on final passage

The yeas and nays were ordered.

Mr. METCALF. Mr. President, will the Senator from Washington yield?

Mr. JACKSON. I yield

Mr METCALF. Mr. President, I had not anticipated speaking on the bill. I did conduct many of the hearings and participated in the discussions during the writing up of the bill.

I want to echo what our distinguished chairman has said, as well as the remarks of the Senator from Colorado (Mr. ALLOTT), that this is landmark legislation.

This is legislation that does, in my opinion, contribute to participation in our responsibilities toward the Natives of Alaska. It gives them an opportunity to participate in the growth and the development of the natural resources of their State.

I think that this is a first in the many areas in which we have worked on Indian claims legislation. I am proud, and I think that every member of the committee should be proud, of the results of the bill.

I sincerely hope that it is passed by a substantial majority.

Mr. JACKSON. Mr. President, I yield back the remainder of my time, if my colleague on the other side will.

Mr. STEVENS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. GOLDWATER). The Chair will state that no further amendments are in order.

The question is on the engrossment and the third reading of the bill.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Mississippi (Mr. EASTLAND), the Senator from Tennessee (Mr. GORE), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), the Senator from Georgia (Mr. RUSSELL), the Senator from Maryland (Mr. TYDINGS), the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Minnesota (Mr. MONDALE) is absent on official business.

I further announce that, if present and voting, the Senator from New Mexico (Mr. MONTOYA) would vote "yea".

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) and the Senator from Maine (Mrs. SMITH) are absent because of illness.

If present and voting, the Senator from South Dakota (Mr. MUNDT) and the Senator from Maine (Mrs. SMITH) would each vote "yea."

The result was announced—yeas 76, nays 8, as follows:

[No. 244 Leg.]

YEAS—76

Aiken	Gravel	Muskie
Allen	Griffin	Nelson
Allott	Gurney	Packwood
Anderson	Harris	Pastore
Baker	Hart	Pearson
Bayh	Hartke	Pell
Bellmon	Holland	Percy
Bennett	Hollings	Prouty
Bible	Hruska	Proxmire
Boggs	Hughes	Randolph
Brooke	Jackson	Ribicoff
Burdick	Javits	Schweiker
Byrd, W. Va.	Jordan, N.C.	Scott
Case	Jordan, Idaho	Smith, Ill.
Cook	Long	Sparkman
Cooper	Magnuson	Spong
Cotton	Mansfield	Stennis
Cranston	Mathias	Stevens
Curtis	McClellan	Symington
Dole	McGee	Talmadge
Eagleton	McGovern	Tower
Ellender	McIntyre	Williams, N.J.
Ervin	Metcalf	Young, N. Dak.
Fong	Miller	Young, Ohio
Fulbright	Moss	
Goodell	Murphy	

NAYS—8

Fannin	Hatfield	Thurmond
Goldwater	Kennedy	Williams, Del.
Hansen	Saxbe	

NOT VOTING—16

Byrd, Va.	Gore	Russell
Cannon	Inouye	Smith, Maine
Church	McCarthy	Tydings
Dodd	Mondale	Yarborough
Dominick	Montoya	
Eastland	Mundt	

So the bill (S. 1830) was passed, as follows:

An act to provide for the settlement of certain land claims of Alaska natives, and for other purposes

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 "Alaska Native Claims Settlement Act of 1970".

DECLARATION OF POLICY

SEC. 2. (a) Congress hereby finds and declares that there is an immediate need for a fair, just, and final settlement of all land claims of Alaska Natives, Native Villages and groups; that the claims of Alaska Natives to the lands of Alaska, because they have not been judicially or legislatively determined, constitute a cloud on the title to lands in Alaska; that the best interests of the Alaska Native people, the State of Alaska, and the Federal government are served by a prompt and final legislative settlement; and that the purpose of this Act is to effect such a settlement by providing—

(1) a grant to each Native Village which qualifies under the requirements and procedures set forth in this Act of title to the village site and additional lands adjacent thereto for community use and expansion;

(2) for the organization of Native corporations and, in order to promote economic self-sufficiency as well as enhance the Natives' present and future welfare, for a transfer of lands, rights, and revenues to such corporations;

(3) a payment of $500,000,000 over a period of twelve years as compensation for lands taken in the past for Federal purposes or conveyed by patent or otherwise to the State of Alaska or to other third parties and for the extinguishment by this Act of all remaining aboriginal rights;

(4) a right to receive a portion of the revenues from the leasing and sale of minerals on certain lands in Alaska, subject to the limitations of this Act, as compensation for lands taken in the past and for the extinguishment by this Act of all remaining aboriginal rights;

(5) authority for individual Natives to acquire ownership of the lands which they use and occupy for homes, businesses, fishing, hunting and trapping camps, and for reindeer husbandry;

(6) a grant to the Alaska Native Services and Development Corporation of the right to select certain lands for their economic potential and to avoid cases of undue hardship; and,

(7) protection of Native subsistence hunting, fishing, trapping and gathering rights and, where it is within the power of the Federal Government, measures for the conservation of subsistence biotic resources.

(b) The Congress further finds and declares that the legal settlement provided in this Act constitutes compensation for the extinguishment of claims to land and does not and will not constitute a precedent for reopening, renegotiating or legislating upon any past settlement involving land claims or other matters with any Native organization or any tribe, band, or identifiable group of American Indians.

(c) It is the intent of Congress to carry out the terms of this settlement promptly, with certainty, and in conformity to the real economic and social needs of Alaska Natives by avoiding litigation, by maximizing the participation by Natives in decisons affecting their rights and property and by vesting in them as rapidly as prudent and feasible control over the land set aside and the corporations organized pursuant to this Act, without (1) establishing any permanent racially defined institutions, rights, privileges, or obligations; (2) creating a reservation system or lengthy trusteeship; or (3) ultimately adding to the categories of property and organizations enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska.

(d) No provision of this Act shall be construed to replace, diminish or otherwise modify any right, privilege, or obligation of Alaska Natives as citizens of the United States and the State of Alaska, nor to relieve, replace, or diminish any obligation of the United States or the State to protect and promote the rights and welfare of Alaska Natives as citizens of the United States and the State of Alaska. The payments and grants authorized under this Act constitute compensation for the extinguishment of claims to land, and shall not be deemed a substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska, nor to effect a change or changes in the petroleum reserve policy reflected in sections 7421 through 7438 of title 10 of the United States Code except as specifically provided in this Act.

(e) No provision of this Act shall be construed to constitute a jurisdictional Act, to confer jurisdiction to sue, nor to grant implied consent to Natives to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(a) "Commission" means the Alaska Native Commission established by this Act;

(b) "Fund" means the Alaska Native Compensation Fund in the Treasury of the United States established under the terms of this Act;

(c) "Investment Corporation" means the Alaska Native Investment Corporation authorized to be established pursuant to this Act under the laws of the United States;

(d) "Municipal Corporation" means any Native Village incorporated as a general unit of municipal government under the laws of the State of Alaska;

(e) "National Corporation" means the Alaska Native National Corporation established pursuant to this Act;

(f) "Native" means a citizen of the United States who is an Alaska Indian, Eskimo, or Aleut of one-fourth degree or more Alaska Indian, Eskimo or Aleut blood, or a combination thereof, including any Native as so defined whose adoptive parent is not a Native and, in the absence of proof of a minimum blood quantum, also any citizen of the United States who is regarded as an Alaska Native by the Native Village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by such village or group: Provided, however, That "Native" as defined in this Act does not include any Tsimshian Indian blood, or the blood of any other Native tribe, band, clan, or group which came to reside upon or occupy lands in Alaska after June 30, 1867;

(g) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska;

(h) "Native Village" means any Native group which is composed of at least twenty-five or more Natives and which meets the requirements set forth in section 13 or 22 of this Act;

(i) "public lands" means all Federal lands and interests therein situated in Alaska as of the effective date of this Act, except: (1) the smallest practicable tract (but not less than forty acres), as determined by the Secretary, enclosing improved land actually used in connection with the administration of any Federal installation, and (2) land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act as amended (72 Stat. 341, 77 Stat. 223);

(j) "Secretary" means the Secretary of the Interior;

(k) "Services Corporation" means the Alaska Native Services and Development Corporation established pursuant to this Act under the laws of the United States;

(l) "State" means the State of Alaska;

(m) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native Village in accordance with the terms of this Act; and

(n) "Urban Corporation" means the Alaska Native Urban Corporation established pursuant to this Act.

DECLARATION OF SETTLEMENT

SEC. 4. (a) The provisions of this Act shall constitute a full and final settlement and extinguishment of any and all claims against the United States, the State and all other persons which are based upon aboriginal right, title, use, or occupancy of land in Alaska (including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist) by any Native, Native Village, or Native group or claims arising under the Act of May 17, 1884 (23 Stat. 24), or the Act of June 6, 1900 (31

Stat. 321), or any other statute or treaty of the United States relating to Native use or occupancy of land, including all land claims (but not claims based on grounds other than loss of original Indian title land) pending before any court or the Indian Claims Commission on the effective date of this Act.

(b)(1) The Secretary is authorized and directed, together with other appropriate agencies of the United States Government, promptly to initiate a study and to develop programs for the orderly transition of educational, health, welfare, and other responsibilities for the Alaska Native people from the United States to the State of Alaska. Within five years from the date of enactment of this Act, the United States shall cease to provide services to any citizen of Alaska solely on the basis of his racial or ethnic background: *Provided,* That nothing in this subsection shall affect services furnished the Natives through the Department of Health, Education, and Welfare, or diminish the applicability of the Act of April 16, 1934, as amended (48 Stat. 596), or the Acts of September 23, 1950, as amended, (64 Stat. 967), and September 30, 1950, as amended (64 Stat. 1100).

(2) The Secretary shall report annually to the Congress on the implementation of this subsection, on the need for any additional legislative authority, and on the availability of State and general Federal assistance programs to provide any necessary and needed services to Alaska Natives as citizens of the State of Alaska and the United States. Within four years of the date of enactment of this Act the Secretary shall present a plan to the Congress for the transition of programs referred to in subsection (b)(1) hereof. The plan presented by the Secretary shall take effect within five years from the effective date of this Act: *Provided,* That the plan presented by the Secretary shall be subject to the provisions and the procedures set out in section 906, title 5 of the United States Code.

(3) None of the provisions of this subsection 4(b) shall apply to the services and programs furnished the Tsimshian Indians on the Annette Islands Reserve.

ALASKA NATIVE COMPENSATION FUND

SEC. 5. (a) There is hereby authorized to be appropriated $500,000,000 as compensation to the Natives for lands and interests in lands taken in the past or to which their rights and claims are extinguished by this Act, such compensation to be paid into the Alaska Native Compensation Fund in accordance with the following twelve-year payout schedule:

(1) $20,000,000 during the fiscal year in which this Act becomes effective, of which $1,500,000 shall be set aside in the Fund for the purpose of paying attorneys' fees pursuant to section 26 of this Act, and $350,000 shall be set aside in the Fund for the purposes set out in subsection 5(g) hereof;

(2) $50,000,000 during the second fiscal year;

(3) $70,000,000 during the third, fourth, and fifth fiscal years;

(4) $40,000,000 during the sixth fiscal year; and

(5) $30,000,000 during each of the next six fiscal years.

(b) As additional compensation to the Natives for lands and interests in lands taken in the past or to which their rights and claims are extinguished by this Act, there shall be paid into the Fund all revenues derived from revenue sharing pursuant to section 18 of this Act and the limitations therein.

(c) No interest shall be paid on the unappropriated or unaccrued balance of the compensation under subsections 5 (a) and (b) of this section: *Provided,* That annual payments or portions of annual payments which are due under the schedule set out in subsection 5(a), but have not been appropriated within six months after the end of the fiscal year in which payable, shall draw interest at the then current rate on short term treasury obligations.

(d) All moneys paid into the Fund shall bear interest from the date of deposit at the rate of 4 per centum per annum until paid to the Services Corporation or its successor and the Investment Corporation or its successor. Until incorporation and formal organization of the corporations pursuant to sections 8 and 10 of this Act, the Secretary may temporarily withdraw moneys from the Fund for investment in short-term obligations of the United States or for deposit with financial institutions qualified to receive and hold public funds of the United States: *Provided,* That any such investment or deposit made by the Secretary shall be at the highest current rate obtainable.

(e)(1) Moneys paid or deposited into the Fund shall be paid or distributed for the benefit of the Natives in accordance with the provisions of this Act. The Secretary of the Treasury shall make such payments and distributions pursuant to the following payment schedule to the Services Corporation and to the Investment Corporation:

Fiscal year (commencing in the fiscal year of enactment)	Alaska Native Investment Corp. (percent)	Alaska Native Services and Development Corp. (percent)
1st	20	80
2d	25	75
3d	30	70
4th	35	65
5th	40	60
6th	45	55
7th	50	50
8th	50	50
9th	55	45
10th	55	45
11th	60	40
12th	60	40

(2) For the first five fiscal years from the date of enactment of this Act, prior to making the payments and distributions required by subsection (e)(1) hereof, the Secretary of the Treasury shall pay from the Fund to the Investment Corporation the difference between the Investment Corporation's current earnings on its investments and $4,000,000. Moneys paid to the Investment Corporation pursuant to this subsection shall be used to pay shareholders a minimum quarterly dividend pursuant to the provisions of subsection 10(h)(1).

(f) All moneys paid or deposited into the Fund after the twelfth fiscal year from the date of enactment of this Act shall be distributed to the Services Corporation and the Investment Corporation or their successors on the same basis as in the twelfth year in the payment schedule set out in subsection (e)(1) hereof.

(g) Up to $350,000 of the moneys paid or deposited into the Fund in the first fiscal year shall be paid by the Secretary of the Treasury upon certification by the Commission to recognized Associations of Alaska Natives to reimburse them for actual costs incurred in filing protests, preserving land claims, advancing land claim settlement legislation, and presenting testimony to the Congress on the Alaska Native land claims. Moneys paid pursuant to this subsection shall be paid first to the recognized Statewide association, and then, to the extent funds are available, to regional Native Associations as determined by the Commission. The determination of the Commission shall be final without regard to subsection (6)(j) of this Act. Such moneys shall not be used to pay any attorney's fees or expenses.

(h) None of the funds paid or distributed pursuant to this section to any of the Corporations established pursuant to this Act shall be expended, donated, or otherwise used for the purpose of carrying on propaganda, or intervening in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office. Any person who willfully violates the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than twelve months, or both.

ALASKA NATIVE COMMISSION

SEC. 6. (a) The Alaska Native Commission is hereby established. The Commission shall be in existence for seven years from the date of its first meeting, or for less than seven years if its duties under this Act are completed. The Commission shall be composed of five members to be appointed by the President with the advice and consent of the Senate. Not more than three members of the Commission shall be members of the same political party, and at least two of the members appointed by the President shall be Natives who are residents of the State. Upon assuming office, each member of the Commission shall become a full-time Federal employee. The Federal laws and regulations on conflicts of interest applicable to other Federal employees shall be applicable to the members of the Commission, but this provision shall not be deemed to preclude a Native from serving as a member: *Provided,* That such Native Commissioner shall not participate in any proceeding before the Commission in which his participation would be in conflict with section 208 of title 18, United States Code.

(b) The term of office of members of the Commission shall be for four years for the first three members appointed, and three years for the remaining two members. Thereafter the terms shall be until the Commission expires: *Provided,* That any member appointed to fill a vacancy on the Commission occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Upon the expiration of his term of office, a member of the Commission shall continue to serve until his successor has been appointed and has qualified to take office. The President shall choose a Chairman from the Commission's membership, and the Commission may elect by a majority vote of its membership other officers, such as a Vice Chairman, as it may find necessary to perform its functions. A member of the Commission may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(c) The Chairman shall initially receive compensation at the rate of $32,500 per year. The other four Commissioners shall receive compensation at the rate of $30,000 per year. The salaries of the Commission members and the Chairman may increase at the same rate as general salary increases for classified Federal employees. No member of the Commission's staff shall be compensated at a rate in excess of that paid to members of the Commission.

(d) The principal office of the Commission shall be in Alaska. Whenever the Commission deems that the convenience of the public or the parties may be promoted, or delay or expenses may be minimized, or at the request of any party, it may establish other offices, hold hearings or conduct other proceedings at any other place, including other States, for the convenience of the parties involved, that a majority of the Commission shall direct. The Commission shall have an official seal which shall be judicially noticed, and which shall be preserved in the custody of the secretary of the Commission.

(e) The Commission shall, without regard to the civil service laws, appoint and prescribe the duties of a secretary of the Commission and such legal counsel as it deems necessary. Subject to the civil service laws, the Commission shall appoint such other employees as it deems necessary in exercising its power and duties. The compensation of all

employees appointed by the Commission shall be fixed in accordance with chapter 53 of title 5, United States Code, subject to the provisions of subsection 6(c) hereof.

(f) (1) For the purpose of carrying out its functions under this Act, three members of the Commission shall constitute a quorum and official action may be taken only on the affirmative vote of at least three members, but a special panel composed of one or more members upon order of the Commission may conduct any hearing or other proceeding provided for in this Act and submit the record of such hearing or proceeding to the entire Commission for its action thereon. Such record shall be made available to the parties, and they shall be afforded an opportunity to comment thereon, before any final action of the Commission.

(2) The Commission shall give reasonable notice to the interested parties and an opportunity for them to appear and be heard, and shall afford the parties an opportunity to present evidence before making a final determination upon any protest, claim, or other contested matter.

(3) A party to any proceeding before the Commission may appear on his own behalf or be represented by counsel of his own choice.

(g) The Commission shall have power to establish its own rules of procedure to carry out its duties under this Act. Except where inconsistent with this Act the Federal Administrative Procedure Act (5 U.S.C. 500 et seq.) will apply. Each official action of the Commission shall be entered in writing, and its hearings and records thereof shall be open to the public.

(h) (1) Any member of the Commission may sign and issue subpoenas for the attendance and testimony of witnesses and production of relevant papers, books, and documents, and may administer oaths. Witnesses, other than direct parties in interest, summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any person who fails to comply with a Commission subpoena shall be subject to punishment in accordance with section 104 of title 43, United States Code. The Commission may order testimony to be taken by deposition in any proceeding before it and in any stage of such proceeding after reasonable notice is first given in writing by the party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition.

(2) The Commission shall have the power to call upon any of the departments or agencies of the United States for any information it may deem necessary for carrying out its functions under this Act.

(3) In any hearing or other proceeding before the Commission, letters, papers, documents, maps, transcripts, or records of any executive agency or court of the United States (or a certified copy thereof) may be used in evidence insofar as relevant and material. Every executive agency of the United States having possession thereof shall make available for copying and inspection such letters, papers, documents, maps, transcripts, and records bearing upon matters before the Commission to any interested Natives, Native group, Native Villages, or Native corporations, or their representatives as provided by section 552 of title 5, United States Code.

(i) Each decision made by the Commission shall show the date on which it was made, and shall bear the signatures of the members of the Commission who concur therein and, upon issuance of a decision under this Act, the Commission shall cause a true copy thereof to be sent by certified mail to all parties and their attorneys of record. When appropriate, each decision also shall include the findings of fact upon which the Commission's conclusions are based, and a statement of its reasons for such findings and conclusions. The Commission shall cause each decision to be entered on its official record together with any written opinion prepared by any members in support of, or dissenting from, any decision.

(j) Except where otherwise provided, decisions issued by the Commission shall be subject to judicial review by the United States District Courts upon the filing in such court within sixty days from the date of such decision of a petition by any person aggrieved by the decision praying that the action of the Commission be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to any other party to the proceeding and to the Commission, and thereupon the Commission shall certify and file in such court the record upon which the decision complained of was based. The court shall hear such appeal on the record made before the Commission. The findings of the Commission, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any decision or may remand the proceedings to the Commission for such further action as it directs. The judgment of the court shall be subject to review by the United States Court of Appeals for the Ninth Circuit and by the Supreme Court of the United States upon certiorari or certification as provided in section 1254, title 28, United States Code.

(k) The duties and responsibilities of the Commission shall include during the period of its existence—

(1) the issuance of rules and regulations for preparing a final membership roll of Natives and a roster of Native Villages qualified for benefits under this Act;

(2) the determination of eligibility for inclusion on such roll and roster, respectively, and of protests with respect thereto;

(3) the hearing of, and decision upon, any appeal from a refusal of the Services Corporation to approve a village plan for the management and expenditure of funds, as provided in section 11(e);

(4) the determination of Village land entitlement, the determination of regional boundaries under section 9(a), the determination of land disputes between Native Villages, the determination of disputes relating to land patents, and the certification of eligibility for patents under this Act;

(5) the approval of land transactions as provided under this Act; and

(6) such other duties and responsibilities as are provided under this Act.

(l) During the same period of time no person may serve in more than any one of the following capacities:

(1) as a member of the Commission;

(2) on the board of directors or as an officer of the Services Corporation;

(3) on the board of directors or as an officer of the Investment Corporation.

(m) Upon termination of the Commission's existence or upon completion of its duties under this Act pursuant to subsection 6(a) hereof, any pending business, any uncompleted matters, or any duties required to be performed by the Commission shall be performed by the Secretary in accordance with the provisions of this Act insofar as is practicable, and the Secretary, in consultation with the Commission and the General Services Administration, shall provide for the dispositon and preservation of the Commission records: Provided, such records shall remain available for public inspection, copying, and other appropriate use.

ENROLLMENT

SEC. 7. (a) (1) In order to facilitate the selection and management of lands, the use of funds and the organization of corporations in furtherance of this Act, the Secretary shall prepare wtihin six months after the effective date of this Act, pursuant to such rules and regulations as may prescribe, a temporary census roll of all Natives born on or before April 15, 1969, and living on the date of enactment of this Act. Such roll shall show with respect to each Native, insofar as is practicable, his name, date and place of birth, date and place of parents' birth, degree of Native blood and the Native Village or Native group of which he is a member. The decision of the Secretary regarding the eligibility of any person for inclusion on the temporary census roll shall be final: *Provided,* That any person listed on an existing membership roll of any Native Village or group pursuant to requirements similar to those set out in subsection 3(f) shall be presumed to be eligible for enrollment.

(2) Any person listed on the temporary census roll who is nineteen years of age or over at the time of voting shall be entitled to vote in the election of directors for the Corporations, as provided in this Act, and in the election for the Land Selection Committee of the village, if any, of which he is a member, as provided in sections 11, 14, and 23. The population of each Native Village which meets the requirements set out in, as is appropriate, section 13 or 23 of this Act, as shown on the temporary census roll and as corrected at the time of determination, shall be the basis for determining the number of acres of land to which the Native Village Corporation is entitled pursuant to this Act. Except as provided in this subsection, however, the temporary census roll shall not be used as a basis for determining the right of any Native, any Native Village Corporation, or any other corporation to receive funds and property or otherwise to share in the benefits accorded the Native people of Alaska under this Act.

(b) (1) The Commission shall prepare, in accordance with such rules and regulations as it may prescribe: (A) within five years after the effective date of this Act a final membership roll of all Natives born on or before April 15, 1969, and living on the effective date of this Act, including a separate listing and designation of the membership of each Native Village Corporation, the Urban Corporation and the National Corporation; and (B) a roster of all Native Villages which meet the requirements of section 13 or 23 and are eligible for benefits hereunder, within three years after the effective date of this Act. Before any such roll or roster is finally approved by the Commission, it shall be published in the Federal Register and in such other manner as the Commission shall find practicable and effective (including posting in each Native Village listed in the roster and in each village which was denied inclusion in the roster). Any applicant denied enrollment or any village omitted from the roster shall be notified by the Commission in writing of the Commission's action and of his or their right to protest such action.

(2) Within three months after notice of the Commission's action, any person denied enrollment or any Native group whose village is omitted from the village roster, as the case may be, shall have the right to protest such denial or omission to the Commission, and within three months after publication in the Federal Register, the Secretary or any Native Village eligible under section 13 or 23 or the Urban and National Corporations shall have the right to protest to the Commission the inclusion of any individual on the membership roll or any village on the roster of Native Villages. Any Native Village shall have the right, for three months after publication of the membership roll in the Federal Register, to protest a designation of membership therein by a Native on behalf of himself or his children below the age of nineteen under subsection (c) hereof. Such protests shall be the subject of a hearing by the Commission and judicial review as provided in section 6(j) of this Act. The mem-

bership rolls and village roster prepared by the Commission, as modified after any hearing or judicial review, shall be final and shall be promulgated by publication in the Federal Register.

(c) Each Native shall have the right to designate the Native Village in which he and his children under the age of nineteen years are to be listed as members and, in the absence of a protest by the named village pursuant to subsection (b)(2) hereof, such designation shall be final. In the event a Native Village does protest a designation of membership, the Commission shall determine the Native Village or villages, if any, of which the Native and his children under the age of nineteen are members, and the burden of proof of membership shall be upon the individual. In making its determination, and subject to the provisions of subsections (d) and (e) hereof, the Commission shall give priority to villages in the following order: (1) to the Native Village where the Native resides on the effective date of this Act, if such residence has continued without substantial interruption for a period of more than two years; (2) to the Native Village where the Native previously resided for a period or periods which aggregate ten years or more; (3) to the Native Village where the Native was born; (4) to the Native Village where either parent of such Native was born; (5) to the Native Village where the Native resides on the effective date of this Act; and (6) to a Native Village from which an ancestor of the Native came: Provided, That the Commission, upon the request of any Native, shall have discretion to deviate from the foregoing priorities and declare such person and/or his child under the age of nineteen to be a member of a Native Village from which he otherwise would be excluded in order to avoid hardship (such as the division of a family) or any other unreasonable classification.

(d) Natives who do not meet the requirements to qualify as members of a Native Village set out in this section or Native residents of urban areas who do not indicate or state their intention to return to a Native Village shall be enrolled as members of the Urban Alaska Native roll and shall be entitled to receive benefits under this Act through the Urban Corporation established pursuant to section 12.

(e) Natives living outside the State and who do not meet the requirements to qualify as members of a Native Village or who do not indicate or state their intention to return to a Native Village shall be listed as members of the Alaska Native National roll and shall be entitled to receive benefits under this Act through the National Corporation established pursuant to section 12.

(f) In preparing the final membership roll the Commission shall insure that each Alaska Native is designated a member of an eligible Native Village or a member of either the Urban or the National Corporations established pursuant to section 12.

(g) Any person who gives false information to qualify himself or any other person for inclusion on the temporary census roll or upon a Native membership roll, willfully and with knowledge that such information is false, shall be guilty of perjury and, upon conviction, shall be fined not more than $1,000 or imprisoned not more than a year, or both.

ALASKA NATIVE SERVICES AND DEVELOPMENT CORPORATION

SEC. 8. (a)(1) There is hereby established the Alaska Native Services and Development Corporation as a non-profit membership corporation which shall have the powers hereinafter granted. The Services Corporation shall be a Federally chartered corporation but shall not be an agency or establishment of the United States Government and shall cease to be in existence after twelve fiscal years from the date of enactment of this Act.

(2) The members of the board of directors appointed by the President shall serve as the incorporators and shall prepare the original articles of incorporation for the Services Corporation in a form consistent with the provisions of this section, and shall serve as the initial board of directors until the Native members of the board are elected. The incorporators shall file the articles of incorporation with the Secretary within six months after their appointment as members of the board of directors, and the Services Corporation shall be deemed to be incorporated and formally organized as of the date of such filing. The incorporators also shall transmit a copy of the articles of incorporation to the Commissioner of Commerce of the State. The Secretary of the Treasury is authorized and directed to advance from the Services Corporation's share of moneys in the Fund such sums as may be reasonably necessary for the organization of the Services Corporation.

(b)(1) The management of the Services Corporation shall be vested in a board of directors, which shall consist of eighteen members:

(A) four members of which shall be appointed by the President of the United States and each member shall serve a term of one, two, three or four years. Members so appointed shall serve until their successor has been appointed; and,

(B) fourteen members of which shall be elected by the voting members of the Services Corporation on the following basis:

(i) one member representing and elected by each of the twelve regions of Alaska as determined by section 9 of this Act;

(ii) one member representing and elected by the members of the Urban Alaska Native roll; and

(iii) one member representing and elected by the members of the Alaska Native National roll.

Members of the board so elected shall serve for terms of four years or until their successors have been elected and qualified: Provided, That among the directors first elected, two shall serve for terms of one year, four shall serve for terms of two years, four shall serve for terms of three years, and four shall serve for terms of four years: And provided further, That the directors who serve the shorter terms shall be determined by a drawing of lots conducted by the initial board. Any director elected to fill a vacancy shall serve only for the period of the unexpired term of the director whom he succeeds. Elections for membership on the board of directors shall be conducted in accordance with procedures set forth in the articles of incorporation or bylaws of the Services Corporation: Provided, That the first such election shall be held not less than six months nor more than one year after the effective date of incorporation of the Services Corporation.

(2) The board of directors shall elect a chairman annually from among its own membership. The board also may appoint a member of the Services Corporation to fill a vacancy within its membership, but such appointed director shall serve only until the next regular election of directors.

(3) Notwithstanding any other provision of this Act or the articles of incorporation to the contrary, the initial board of directors of the Services Corporation appointed by the President shall exercise only the following corporate powers: (A) completion of the organization of the Corporation and qualifying it to do business, including, but not limited to, the adoption of a corporate seal, the opening of bank accounts, the establishment of a place or places of business and the rental or acquisition of all necessary offices, furnishings, equipment and supplies related thereto, subject to the condition that no lease shall be for a period in excess of one year; (B) approval of amendments to the articles of incorporation; (C) the appointment of officers of the Corporation, the hiring of other employees and the employment of consultants, accountants, and other professional or financial advisers, subject to the condition that no contract of employment shall be for a period in excess of one year; (D) the receipt, investment, and distribution of moneys from the Fund in accordance with subsections 8 (e) and (f) hereof; (E) the expenditure of corporate funds to pay for or carry out the activities authorized under this section; (F) the conduct of the first election for membership on the board of directors; and (G) take any actions necessary to organize the Urban and National Corporations.

(c) The Services Corporation shall have a president, and such other officers as may be named and appointed by the board, at rates of compensation fixed by the board and serving at the pleasure of the board. The president and other officers of the Services Corporation may, but need not, be members of the board. No officer of the Services Corporation shall receive any salary from any source other than the Services Corporation during the period of his employment by the Corporation. The president shall be responsible for conducting the business and affairs of the Services Corporation in a manner consistent with the provisions of this Act, the articles of incorporation, and the policies of the board of directors, and shall appoint such employees as the board deems appropriate.

(d)(1) Until publication of the membership roll in accordance with subsection 7(b)(1) of this Act, the members of the Services Corporation shall consist of all Natives shown on the temporary census roll prepared pursuant to section 7(a). After publication of the membership roll in accordance with subsection 7(b)(1) and before such roll becomes final in accordance with subsection 7(b)(2), the members of the Services Corporation shall consist of all Natives shown on the temporary census roll, and any other Native whose name is listed on the membership roll except an individual whose inclusion thereon is the subject of a pending protest. After promulgation of the final membership roll in accordance with subsection 7(b)(2), the members of the Services Corporation shall consist of all Natives listed upon such roll, as amended to reflect the death of any individuals so listed.

(2) The right to vote for directors and on such other matters as properly may be placed before the membership for decision shall be limited to members of the Services Corporation nineteen years of age or over at the time of voting.

(e) As soon as the Services Corporation is incorporated and formally organized in accordance with subsection (a) hereof, the Secretary of the Treasury shall pay to the Services Corporation all moneys deposited in the Fund to which the Services Corporation is entitled up to the date of such incorporation, together with any accrued interest. Thereafter, on January 1, April 1, July 1, and October 1 of each calendar year, the Secretary of the Treasury shall pay to the Corporation additional moneys deposited in the Fund to which the Services Corporation is entitled up to the date of payment, together with any accrued interest. The Secretary of the Treasury shall also furnish to the Services Corporation each month a statement showing the amount and source of moneys on deposit in the Fund.

(f)(1) Except as otherwise provided in this section, and pursuant to the provisions of subsection 11(e), the Services Corporation shall distribute moneys paid to it out of the Fund after the receipt thereof to the Native Village Corporations, and to the Urban and National Corporations in accordance with the provisions of this Act. The amount of money distributed shall, except as provided in section 9 (d)(1), be apportioned in direct pro-

portion to the membership of each of the Village Corporations, the Urban Corporation and the National Corporation as shown on the final membership rolls promulgated in accordance with section 7. Moneys received from the Fund which the Services Corporation must distribute in accordance with this subsection shall not constitute income to the Services Corporation for any purpose.

(2) Until the membership roll becomes final in accordance with subsection 7(b)(2) of this Act, the Services Corporation shall distribute only eighty per centum of all moneys paid to it out of the Fund. The amount of money distributed to each Native Village Corporation and to the Urban Corporation and the National Corporation shall be apportioned in direct proportion to the Native population before publication of the membership roll in accordance with subsection 7(b)(1) as shown on the temporary census roll prepared in accordance with section 7(a), and after publication of the membership roll in accordance with subsection 7(b)(1) as shown thereon. Appropriate adjustments shall be made in actual distributions to reflect any prior advances, and the relative rights of the beneficiaries under this paragraph: *Provided*, That all distributions made pursuant to this paragraph shall be deemed advances of moneys to which the beneficiaries will become entitled upon promulgation of the final membership roll in accordance with section 7(b) and shall not constitute a determination of their relative rights to receive funds or property under this Act. Moneys paid to the Services Corporation out of the Fund, which are withheld by it pursuant to this paragraph, shall be invested by the Services Corporation for the benefit of the beneficiaries as their interests therein ultimately are determined.

(3) After promulgation of the final membership roll in accordance with subsection 7(b)(2), the Services Corporation shall distribute all moneys withheld under subsection (f)(2) hereof (adjusted to reflect earnings or losses from investment), after appropriate adjustments in the amounts of actual distributions also to reflect prior distributions and their respective rights in moneys derived from the Fund, to the beneficiaries as provided in subsection (f)(1) hereof.

(4) The Services Corporation shall withhold and invest any moneys due a Native Village Corporation or the Urban or National Corporations until such corporations are organized and qualified. The Services Corporation may withhold and invest in trust any moneys due a Native Village Corporation or the Urban or National Corporations if it is found that a corporation is violating any provision of this Act or of its articles of incorporation. All moneys so withheld (adjusted to reflect earnings or losses from investment) shall be paid over to the affected corporation upon a determination that the violations have been corrected or upon termination of the Services Corporation.

(5) The Services Corporation shall prepare and distribute to the Native Villages proposed articles of incorporation and other appropriate forms necessary to their organization and shall provide funds to the Native Villages for organization of the Village Corporations.

(g) The Services Corporation shall retain out of moneys paid to it out of the Fund: (1) such amounts as are necessary, but not in excess of 5 per centum for carrying on the business and affairs of the Service Corporation; and (2) 5 per centum as a contingency fund to be used for purposes specified in the articles of incorporation: *Provided*, That payments to the contingency fund shall not exceed a total unused balance of $5,000,000 and moneys in the contingency fund shall be prudently invested.

(h)(1) The Services Corporation shall be considered a public instrumentality eligible for grants and contracts for planning and development programs under any Federal law which will assist Natives, Native Villages, and Native Village Corporations. For a period of twelve fiscal years after the date of its formal organization, the Services Corporation shall be subject to audit by the General Accounting Office. Copies of such audits together with a report of the Administrator shall be filed with the appropriate committees of Congress. At the end of twelve fiscal years, and after a final audit by the General Accounting Office and the filing of a final financial report with the Congress, the limitations established, and the powers granted under this Act for the Services Corporation shall terminate.

(2) Upon expiration of the Charter of the Services Corporation, the assets and liabilities of the Services Corporation may, at the option of its membership:

(A) be transferred to the Investment Corporation or the successor to the Investment Corporation;

(B) be transferred to a new corporation organized pursuant to subsection 8(h)(3) hereof; or

(C) be liquidated and distributed among the members in any form permitted by law.

(3) In the event that the members of the Services Corporation, pursuant to subsection 8(h)(2)(B) hereof, elect to establish a new corporation to succeed the Services Corporation, the Directors of the Services Corporation shall appoint the incorporators of a new business for profit corporation (hereinafter called the successor to the Services Corporation), to which the assets and liabilities of the Services Corporation shall be transferred. Ten per centum of the total number of shares issued and outstanding shall be reserved for the Foundation established pursuant to section 24 of this Act. The remaining number of shares issued shall be distributed equally among Natives on the final roll and to those who have succeeded to their interest by request or pursuant to the statutes of descent or distribution. The successor to the Services Corporation will not be an agency or establishment of the United States and shall be governed entirely by the Federal and State laws ordinarily governing business corporations of the same type, and shall not be governed by the terms of this Act, except as follows:

(A) payments from the Fund to the Services Corporation or its successor as provided in subsection 5(f);

(B) shares of stock in the successor to the Services Corporation shall not be alienable for fifteen years from the date of enactment of this Act, and shall be subject to the provisions of subsection (h)(4) hereof.

(4) Any shares of stock held by Alaska Natives under any successor corporation established pursuant to this section for the benefit of Alaska Natives shall be inalienable for a period of fifteen years from the date of enactment of this Act. No contract to sell, pledge, or otherwise alienate such stock during this period of time shall be of any validity or enforceable in any court of law. Any person who knowingly seeks to acquire from an Alaska Native such stock in violation of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

(i) The Services Corporation shall have and may exercise all rights and powers vested in a nonprofit membership corporation under the laws of the State. In addition, and without limitation upon any of the powers so conferred, or the powers conferred elsewhere in this Act, the Services Corporation shall have the following powers—

(1) to maintain an appropriate staff to provide professional, technical, engineering, social services, and financial assistance and advice to Natives, Native villages, and Native Village Corporations: (A) in the selection, use, management, leasing, and disposition of lands or interests therein; (B) in the development of comprehensive land use plans; (C) in the use, investment, and expenditure of funds; and (D) in the acquisition, use, and disposition of other property;

(2) to assist Native villages and Native Village Corporations in the planning and execution of programs for community development, including, but not limited to, housing, the establishment of local industry and the construction of public works;

(3) to enter into contracts with Natives, Native villages and Native Village Corporations, where appropriate, for the use, management, investment, economic development or disposition of lands, interests in lands, funds and other property for the benefit of such Natives and Native organizations;

(4) to provide loans and grants for the education and relief of distress of individual Natives, or their descendants and subject to the provisions of this Act, make distributions of funds to Native Village Corporations, and to municipal corporations in predominantly Native areas;

(5) to exercise authority to conduct the business and affairs of any Native Village Corporation shown to be violating any provision of this Act or of its articles of incorporation;

(6) to carry out any and all activities directed toward promoting the health, welfare, education and social and economic development of Natives and their descendants; and

(7) to provide any advice or assistance requested by the Urban and National Corporations.

(j) The internal affairs of the Services Corporation shall be governed in accordance with the laws of the State relating to nonprofit membership corporations, except to the extent inconsistent with the provisions of this Act; and except that—

(1) amendments to the articles of incorporation and annual reports shall be filed with the Secretary and certified copies thereof shall be transmitted to the State Commissioner of Commerce;

(2) the Services Corporation shall not be subject to any State licensing requirements, incorporation fees or other corporate charges, except the designation of a registered office and registered agent, and nominal fees for the filing of corporate papers, or to the imposition of State taxes as provided in this Act; and

(3) the Services Corporation shall not be subject to any State law which places a burden or duty upon it greater than is placed upon any other nonprofit membership corporation, or, unless the Corporation so consents, to any State corporate law which is in effect applicable only to the Services Corporation.

REGIONAL ADVISORY BOARDS

SEC. 9. (a) For purposes of this Act, the State shall be divided by the Commission within one year after the effective date of this Act into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

(1) Arctic Slope Native Association (Barrow, Point Hope);

(2) Bering Strait Association (Seward Peninsula, Unalakleet, St. Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);

(5) Tanana Chief's Conference (Koyukuk,

Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);

(6) Cook Inlet Association (Kenai, Tyonek, Ekutna, Iliamna);

(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

(8) Aleut League (Aleutian Islands, Pribilof Islands, and that part of the Alaska Peninsula which is in the Aleut League);

(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);

(10) Tlingit-Haida Central Council (southeastern Alaska);

(11) Kodiak Area Native Association (all villages on and around Kodiak Island); and

(12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Any dispute over the boundaries of any region or regions shall be determined by the Commission and, without regard to subsection 6(j), shall be final.

(b)(1) There are hereby authorized to be established, at the option of the Natives within each region, pursuant to such procedures as the Commission may prescribe, a Regional Advisory Board for each of the regions defined under subsection (a) of this section. The Services Corporation, the Investment Corporation and the Village Corporations shall establish procedures for consultation from time to time with the appropriate Regional Advisory Boards on matters affecting the region represented thereby.

(2) There is hereby authorized to be established under the laws of the State by the Natives of the region described in section 9(a)(1) a North Slope Native Corporation which may carry out the duties of a Regional Advisory Board as specified in section 9, and shall in addition hold title to lands patented to it pursuant to section 19(f)(1). The North Slope Native Corporation shall be so organized that it may manage such lands, distribute to its members or shareholders revenue therefrom, and carry on such other activities as its members or shareholders may decide.

(3) The Regional Advisory Boards established pursuant to this subsection shall not be agencies or establishments of the United States Government. The Regional Boards shall be considered political subdivisions of the State solely for the purpose of being eligible for grants, loans, and contracts for regional planning, housing assistance, economic development, public works, construction, transportation and other programs under any Federal law which will assist Natives, Native villages, and Native Village Corporations. Village Corporations located within each region may allocate funds for that Regional Board.

(c) For purposes of electing the regional members to the board of directors of the Services Corporation as provided in section 8(b)(1) of this Act, the regional boundaries determined by the Commission under this section shall be used as the boundaries for the election.

(d)(1) In the distribution of funds the Services Corporation shall segregate, on a regional basis, revenues derived from the sale, lease, permit, development, use or other disposition of the leasable mineral estate of the lands to which the Services Corporation acquires a patent under section 15(d) of this Act and of the Village lands to which the Services Corporation acquires a patent under section 15(c) and 23(m)(3) of this Act. The Native Village Corporations within each region as defined in subsection (a) of this subsection shall be entitled, on a direct proportion of membership basis, to 50 per centum of the net proceeds derived from the disposition of the mineral estate to Village lands located within that region's boundaries. The remaining 50 per centum of such net proceeds shall be distributed among all the other Native Village Corporations and the Urban and National Corporations in direct proportion to their membership. For purposes of this subsection, membership shall be as shown on the final membership roll promulgated in accordance with subsection 7(b)(2).

(2) Moneys distributed pursuant to paragraph (1) hereof shall not constitute income of the Services Corporation, but shall constitute income of the receiving Native Village Corporations and the Urban and National Corporations and shall be subject to taxation on the same basis as like income is taxed when received by any other nonprofit membership corporation.

ALASKA NATIVE INVESTMENT CORPORATION

SEC. 10. (a)(1) There is hereby established the Alaska Native Investment Corporation (hereinafter referred to as the "Investment Corporation") as a business for profit corporation, which shall have the powers and duties hereinafter granted. The Investment Corporation shall be subject to the provisions of this Act and, to the extent consistent with subsection (1), to the Investment Company Act of 1940, as amended (11 U.S.C. 72a, 107f; 15 U.S.C. 80a–1 to 80a–52 et seq.). The Investment Corporation shall be a Federally chartered corporation, but shall not be an agency or establishment of the United States Government.

(2) The directors appointed by the President pursuant to subsection (b)(1)(A) hereof shall serve as the incorporators and as the initial board of directors, and shall take whatever actions are necessary to formally establish the Investment Corporation, including the preparation of the original articles of incorporation in a form consistent with the provisions of this Act. The incorporators shall file the articles of incorporation with the Secretary within six months after their appointment, and the Investment Corporation shall be deemed to be incorporated and formally organized as of the date of such filing. The incorporators also shall transmit a copy of the articles of incorporation to the Commissioner of Commerce of the State of Alaska and to the appropriate office of the State designated pursuant to subsection (e) hereof. The Secretary of the Treasury is authorized and directed to advance to the incorporators from the Investment Corporation's share of moneys in the Fund such sums as are reasonably necessary for the organization of the Investment Corporation.

(b)(1) The management of the Investment Corporation shall be vested in a board of directors, which shall consist of twelve members:

(A) five members of which shall be appointed by the President of the United States, within six months of the date of enactment of this Act: *Provided*, That no more than three members of the initial board shall be members of the same political party;

(B) four members of which shall be elected by Alaska Natives as provided in subsection (b)(6) hereof; and

(C) three members of which shall be elected by the nine directors named in subsections (b)(1)(A) and (B) hereof.

(2) Directors appointed by the President pursuant to subsection (b)(1)(A) hereof, and directors elected pursuant to subsection (b)(1)(C) hereof, shall, insofar as is possible, be persons who have demonstrated business ability and who have diplayed a high degree of expertise in national and international investments or corporate enterprise.

(3) Members of the board of directors shall serve for terms of six years or until their successors have been elected and qualified: *Provided*, That among the directors first appointed and elected, two shall serve for terms of six years; two for terms of five years; two for terms of four years; two for terms of three years; two for terms of two years; and two for terms of one year. The directors who serve the shorter terms shall be determined by a drawing of lots conducted by the initial board, except that the member appointed by the President to serve as the initial Chairman of the board of directors pursuant to subsection (b)(4) hereof shall serve for a full six-year term. Elections for membership on the board of directors shall be conducted in accordance with procedures set forth in the articles of incorporation or the bylaws of the Investment Corporation. Any director elected to fill a vacancy shall serve only for the period of the unexpired term of the director whom he succeeds. Upon the expiration of each director's term of office the shareholders of the Investment Corporation shall elect a new director to serve a term of six years, or until reorganization of the Investment Corporation as required in subsection (1) hereof.

(4) The President of the United States shall appoint one of the members of the initial board of directors to serve as Chairman of the board. The member appointed shall serve as Chairman for a three-year term. Thereafter, the board of directors shall elect a Chairman annually from among its own membership. The board also may appoint persons to fill vacancies within its membership, but such appointed directors shall serve only until the next regular election of directors.

(5) Notwithstanding any other provision of this Act or the articles of incorporation to the contrary, the initial board of directors appointed pursuant to subsection (b)(1)(A) hereof shall exercise only the following corporate powers: (A) completion of the organization of the Corporation and qualifying it to do business, including, but not limited to, the adoption of a corporate seal, the opening of bank accounts, the establishment of a place or places of business and the rental or acquisition of necessary offices, furnishings, equipment and supplies related thereto, subject to the condition that no lease shall be for a period in excess of one year; (B) approval of amendments to the articles of incorporation; (C) the appointment of officers of the Corporation, the hiring of other employees and the employment of consultants, accountants, and other professional or financial advisers, subject to the condition that no contract of employment shall be for a period in excess of one year; (D) the receipt, investment and distribution of moneys from the Fund in accordance with the provisions of this Act; and (E) the expenditure of corporate funds to pay for or carry out the activities authorized under this paragraph.

(6) Within ninety days after the filing of the articles of incorporation of the Investment Corporation, the initial board of directors shall organize and conduct an election for the four directors named in subsection (b)(1)(B) hereof.

(c) The Investment Corporation may establish such executive committees as are necessary for the conduct of business and may have a president and such other officers as may be named and appointed by the board, at rates of compensation to be fixed by the board and serving at the pleasure of the board. The president and other officers of the Investment Corporation may, but need not, be members of the board. No officer of the Investment Corporation shall receive any salary from any source other than the Investment Corporation during the period of his employment by the Corporation. The executive committee or committees or the president, as determined by the board, shall be responsible for conducting the business and affairs of the Investment Corporation in a manner consistent with the provisions of this Act, the articles of incorporation, and the policies of the board of directors, and shall appoint such other employees as the board deems appropriate.

(d)(1) The board of directors of the Investment Corporation shall contract with a Business Management Group or groups to manage and advise upon the conduct of the

affairs of the Investment Corporation, subject to the terms of this Act and the policies established by the board. The Business Management Group or groups, to the extent consistent with this section and subsection (i) hereof shall be subject to the terms of the Investment Advisers Act. The Business Management Group or groups may, if the board of directors so decides, have a power of attorney for the sale, purchase, exchange, and transfer of securities of the Investment Corporation. The terms of the original contract between the Investment Corporation and the Business Management Group or groups shall be no longer than a renewable term of one year, and the contract shall be subject to review and comment by the Securities and Exchange Commission as provided in subsection (i) hereof.

(2) At the end of any year or upon cancellation of a contract the Investment Corporation may:

(A) award new contracts to the Business Management Group or groups;

(B) award contracts to another Business Management Group or groups; or

(C) at the end of three years establish an in-house management and investment capacity and staff to manage the affairs of the Investment Corporation.

The Investment Corporation through the board of directors and the Business Management Group or groups shall, to the extent consistent with sound management practices and the provisions of this section and the policies of the board, train and employ Alaska Natives in executive, management, and staff positions.

(3) The board of the Investment Corporation and the Business Management Group or groups shall manage the Investment Corporation's assets in such a manner as to maximize the financial interests of the shareholders, by investing in a balanced and diversified portfolio of:

(A) national and international public and private securities ("securities" as used in this section shall have the same meaning as defined in the Investment Company Act of 1940, as amended) (11 U.S.C. 72a, 107f; 15 U.S.C. 80a–1 to 80a–52);

(B) enterprises based in, or doing business in Alaska;

(C) enterprises having an impact on sectors of the economy especially important to Natives; and

(D) enterprises wholly or partially owned by Natives.

Neither (B), (C), nor (D) of this subsection shall be construed as obliging or authorizing the board of the Investment Corporation or the Business Management Group to make any investment which does not meet prudent investment standards and which is not in the best financial interests of the shareholders.

(e) The Investment Corporation shall have and may exercise, in addition to the powers and rights granted by this Act, all rights and powers vested in a business for profit corporation under the laws of any State which the board of directors designate in the articles of incorporation as the state whose law is to be applied in resolving legal questions arising from the corporate activities of the Investment Corporation. In addition, and without limitation upon any of the powers so conferred, the Investment Corporation may—

(1) make any lawful investments in local, national, and international business enterprises and securities which the board of directors determines would yield an acceptable return; and

(2) make loans and investments in such a manner as to maintain a creditor's protected interest which may, at the option of the board of directors, be converted into an equity interest: *Provided,* That notwithstanding any other provision of this Act, no more than twenty percent of the assets of the Investment Corporation may at any time be invested in venture capital situations.

(f) (1) As soon as the Investment Corporation is incorporated and formally organized in accordance with subsection (a) (2) hereof, the Secretary of the Treasury shall pay to the Investment Corporation all moneys deposited in the Fund to which the Investment Corporation is entitled up to the date of such incorporation and formal organization, together with any accrued interest. Thereafter, on January 1, April 1, July 1, and October 1 of each calendar year, the Secretary of the Treasury shall pay to the Investment Corporation or its successor additional moneys deposited in the Fund to which the Investment Corporation is entitled up to the date of payment, together with any accrued interest. The Secretary of the Treasury also shall furnish to the Investment Corporation or its successor each month a statement showing the amount and source of moneys on deposit in the Fund.

(2) The board of directors may retain out of moneys paid to the Investment Corporation such funds as are necessary for contingency funds, for the payment of dividends and for the administrative costs and the business expenses of the Corporation: *Provided,* That the compensation to be paid to the Business Management Group or groups during any year shall not exceed $250,000 or not more than one-half of 1 per centum of the invested assets of the Investment Corporation.

(3) The Investment Corporation and the Business Management Group shall be subject to periodic audits by a qualified group of certified public accountants to be selected by the board of directors. Such audits as are in accord with standard business practice shall be made at least once a year.

(g) (1) The Investment Corporation shall issue and have outstanding not more than one hundred shares of no par common stock for each Native.

(2) Until publication of the membership roll in accordance with section 7(b), the stockholders of the Corporation shall consist of all Natives shown on the temporary census roll prepared pursuant to section 7(a). After publication of the membership roll in accordance with section 7(b) (1) and before such roll becomes final in accordance with section 7(b) (2), the stockholders of the Corporation shall consist of all Natives shown on the temporary census roll, except an individual whose inclusion thereon is the subject of a pending protest. Stock held pursuant to this paragraph shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, and the right to file a stockholder's derivative suit, but shall not vest in the holder any rights to dividends or other distributions from the Corporation, except as provided in subsection (h) hereof.

(3) Upon promulgation of the final membership roll in accordance with section 7(b) (2), all stock issued pursuant to section 10 (g) (2) shall be deemed canceled, new shares shall be issued and thereafter the stockholders of the Corporation shall consist of all Natives shown on the final membership roll. Stock held pursuant to this paragraph shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State designated pursuant to subsection (e) of this section.

(4) Upon the death of any stockholder holding stock in the Corporation pursuant to section 10(g) (2) or (3), ownership of such stock shall be transferred to natural persons in accordance with his last will and testament or under the laws of intestacy: *Provided,* That such stock shall carry voting rights only if the holder thereof through inheritance also is a Native; *And provided further,* That in the event the deceased stockholder fails to dispose of his stock in the Corporation by will and has no heirs under the laws of intestacy, such stock shall escheat to the Corporation.

(5) (A) In the event that a Native under the age of nineteen shall become entitled to shares of stock in the Investment Corporation pursuant to section 10(g), such shares shall be issued to that member of such Native's family who is highest in the order of priority set forth in section 10(g) (5) (B) who shall agree, within thirty days of his receipt of notice of eligibility, to accept such shares as custodian for such Native. If a person designated as custodian or successor custodian under this section dies, resigns, is removed, or becomes legally incapacitated before such Native attains the age of nineteen, there shall be designated as successor custodian that member of such Native's family who is next highest in the order of priority set forth in section 10(g) (5) (B) who shall agree, within thirty days of his receipt of notice of eligibility, to accept such shares as successor custodian for such Native. In the event that no member of the Native's family accepts such shares as custodian (or successor custodian) pursuant to this sections, such shares shall be held by the Secretary as custodian for such Native.

(B) The order of priority in which members of the family of a Native under the age of nineteen shall be eligible to receive shares of stock in such business corporation as custodian for such Native is the following:

(i) the father;
(ii) the mother;
(iii) a brother;
(iv) a sister;
(v) an uncle;
(vi) an aunt;
(vii) a grandparent.

If more than one individual shall occupy any of the foregoing priority categories, the individuals within such category shall have priority in accordance with date of birth, with the individual having the earliest date of birth being assigned the highest priority.

(C) The custodian or successor custodian for a Native under the age of nineteen appointed pursuant to subsection (5) (A) hereof shall have the rights and obligations of, and be subject to the terms and conditions applicable to, custodians under the Alaska Gifts of Securities to Minors Act (Alaska Stat. Ann. § 45.60.010 et seq.), or corresponding provisions of subsequent law, except where inconsistent with the foregoing provisions of this subsection.

(6) The stock issued pursuant to this section and the right to any dividends paid pursuant to section 10(h) may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated. Any person who knowingly seeks to acquire from a Native such stock in violation of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than twelve months, or both.

(7) Contemporaneous with any issuance of stock pursuant to this Act, each stockholder shall receive a report which shall contain the type of information similar to that normally contained in a prospectus of a corporation subject to the provisions of the Investment Company Act of 1940. Such additional information shall be included as the board of directors may require.

(h) (1) Commencing no later than eighteen months from the date of its incorporation, the Investment Corporation shall pay to its shareholders a quarterly dividend. Regardless of the current or cumulative earnings on the investments of the Investment Corporation,

the total cash dividends paid in any quarter shall not be less than $1,000,000 for the first five fiscal years after enactment of this Act: *Provided, however,* That dividend payments prior to the first distribution of stock shall be made only subject to the provisions of subsection (g) hereof.

(2) The Investment Corporation shall pay out in dividends to holders of stock issued pursuant to section 10(g)(2) no more than 80 per centum of the moneys available in any quarter for payment of dividends. The Investment Corporation shall retain in a reserve account sufficient moneys to pay dividends, plus interest at 4 per centum, to persons not listed on the temporary census roll who are later determined to be eligible for benefits under this Act and enrollment on the final membership roll.

(3) The Investment Corporation may withhold any dividends due to a person eligible to receive stock pursuant to section 10(g)(2) whose eligibility for inclusion on the final membership roll is subject to a pending protest or is subject to substantial doubt, until such time as the stockholder's eligibility for benefits under this Act has been determined. Any stockholder who receives dividends and who is later determined to be ineligible for enrollment on the final membership roll shall repay the amount of those dividends, plus interest at 4 per centum to the Investment Corporation.

(i)(1) The provisions of the Investment Company Act of August 22, 1940 (54 Stat. 789), as amended; the Investment Advisers Act of August 22, 1940 (54 Stat. 847), as amended; the Securities Act of May 27, 1933 (48 Stat. 74), as amended; and the Securities Exchange Act of June 6, 1934 (48 Stat. 881), as amended, relating to public disclosure, reporting, and protection of the interests of stockholders shall, to the extent consistent with the purposes of this Act, be applicable to the activities of the Investment Corporation for a period of thirteen years.

(2) The Investment Corporation and its duly authorized representatives may, by application to the Securities and Exchange Commission, in accord with the procedures of section 6(c) of the Investment Company Act of 1940, request appropriate waivers and exemptions from any of the provisions of the Acts referred to in subsection (1) hereof if necessary to accomplish the purposes of this Act or to avoid hardship. This provision shall apply only to the Investment Corporation and only during its period of existence as a federally chartered corporation under this Act.

(3) The Securities and Exchange Commission is authorized, should it prove necessary to provide business certainty, to prepare rules and regulations which identify those provisions of applicable law or existing regulations of the securities law which, consistent with the purposes and provisions of this Act, may be applied to the Investment Corporation. Rules and regulations prepared pursuant to this subsection may be waived or exemptions made thereto in accord with subsection (2) hereof. Such rules shall be prepared and issued according to the procedures set forth in section 4 of the Administrative Procedure Act, section 553 of title 5, United States Code, and shall be subject to judicial review only as rules issued in such manner are normally reviewed.

(j) The Directors shall annually prepare and cause to be deposited with the Securities and Exchange Commission a report or reports which shall include information and data required under the provisions of the Investment Company Act of 1940 and such additional information and reports as the Securities and Exchange Commission and the Investment Company Act of 1940 may require. Copies of the report or reports herein required shall be made available for public inspection at the chief offices of the Investment Corporation and a summary shall be furnished upon request to any shareholder of the Investment Corporation. The report herein required shall be in addition to, and not in lieu of, any other report or disclosure required by law.

(k) The internal affairs of the Investment Corporation shall be governed in accordance with the laws of the State designated by the board of directors pursuant to subsection (e) hereof, except to the extent inconsistent with the provisions of this Act, and except that—

(1) amendments to the articles of incorporation and annual reports shall be filed with the Securities and Exchange Commission and certified copies thereof shall be transmitted to the appropriate office of the State referred to in subsection (e) hereof; and

(2) the Investment Corporation shall not be subject to any State law which places a burden or duty upon it greater than is placed upon any other similar corporation, or, unless the Corporation so consents, to any State corporate law which is in effect applicable only to the Investment Corporation.

(l)(1) At the end of the twelfth fiscal year commencing with the fiscal year in which this Act becomes effective, by operation of law all of the assets of the Investment Corporation shall be transferred to and all of its liabilities assumed by a new business for profit corporation (hereinafter called the Successor Corporation) established pursuant to this subsection, and the Investment Corporation shall terminate.

(2) During the fiscal year preceding the date specified in section 10(l)(1), the directors of the Investment Corporation shall draft the articles of incorporation for the Successor Corporation, appoint incorporators, and take all other steps necessary to create the Successor Corporation under the laws of any State selected by the directors. The Successor Corporation will not be an agency or establishment of the United States, and shall not be governed by the terms of this Act, except as follows:

(A) payments from the Fund to the Investment Corporation provided in section 5(f);

(B) limitations on disposition of shares within fifteen years of incorporation of the Investment Corporation in section 10(g); and

(C) merger of the Services Corporation with the Successor Corporation to the Investment Corporation as allowed pursuant to subsection 8(h).

(3) The stock in the Investment Corporation issued pursuant to section 10(g)(3) shall be deemed canceled on the date specified in section 10(l)(1), and shares of stock in the Successor Corporation shall be issued in replacement to all stocknolders in the Investment Corporation on that date.

(4) The Successor Corporation shall also issue shares of stock to the Foundation established pursuant to section 24 in such number that the Foundation shall hold 10 per centum of stock issued and outstanding under this section.

NATIVE VILLAGE CORPORATIONS

SEC. 11. (a) The Native members of each Native Village entitled to receive lands and benefits under this Act shall organize as a nonprofit membership corporation under the laws of the State before the Village Corporation may receive patent to lands or benefits under this Act except as otherwise provided. The initial articles of incorporation for each Village Corporation shall be subject to the approval of the Services Corporation. Amendments to the articles of incorporation and the annual budget of the Village Corporations shall, for a period of five years, be subject to review by the Services Corporation. The Services Corporation shall assist and advise Native Villages in the preparation of articles of incorporation and other documents necessary to meet the requirements of this subsection.

(b) Native Villages which are qualified under Alaska State law to organize as Municipal Corporations are encouraged to do so to be eligible for Federal grant-in-aid programs. In Native Villages which do not meet the population and other requirements of the State to organize as Municipal Corporations, and only for so long as they do not meet these requirements, the Village Corporations required to be established pursuant to this section shall be considered political subdivisions of the State solely for the purpose of being eligible for grants, loans, and contracts for planning, housing assistance, economic development, public works, construction, and other programs under Federal law which will assist Natives and Native Villages.

(c) Each Village Corporation shall have five incorporators. The incorporators shall be the Village Land Selection Committee as elected by the Native Village members pursuant to subsection 14(c) of this Act. After promulgation of the final membership roll in accordance with subsection 7(b)(2) the board of directors shall be elected by the Natives shown on the final membership roll in accordance with the articles of incorporation and the bylaws of the Village Corporation.

(d) Each Village Corporation shall be devoted to promoting the health, welfare, education, and economic and social well-being of its members and their descendants, and shall be authorized by its articles of incorporation, among other purposes, to construct, operate and maintain public works and community facilities, to engage in medical, educational, housing and charitable programs, to make loans and grants consistent with its corporate purposes, to foster industrial and economic development, to lease, sell, and manage real property and to distribute funds to its members and their descendants in furtherance of family plans.

(e) The Services Corporation shall not distribute more than the reasonable sums required for planning and administrative purposes and to deal with any pressing health and social problems to a Village Corporation until the Village Corporation has developed an initial program for the management, investment, and expenditure of such funds, and such program has been approved by the Services Corporation: Provided, That a failure or refusal of the Services Corporation to approve a Village program within ninety days after its receipt may be appealed to the Commission, and the Commission's decision thereon shall, without regard to subsection 6(j), be final. After approval of its initial program, each Village Corporation shall be entitled to distributions from the Services Corporation in accordance with this Act. The Services Corporation may invest for the benefit of a Village Corporation all moneys withheld under this paragraph until the Village program is approved.

(f) The articles of incorporation for each Village Corporation shall include the following provisions—

(1) all persons shown as members of the Native Village on the final membership roll prepared in accordance with section 7(b) of this Act shall be entitled to membership in the Village Corporation;

(2) for a period of at least thirteen years after the effective date of this Act, membership in a Village Corporation shall be limited to Natives and their descendants.

(g)(1) In any Native Village which is now organized or which becomes organized as a Municipal Corporation under State law within five years from the effective date of this Act, the Municipal Corporation shall be entitled to receive title to the surface estate of the land on which the village is located and as much additional land as is necessary for community expansion. Prior to the transfer of lands from a Village Corporation to a Municipal Corporation, lands shall be

granted to occupants pursuant to section 15(b)(2)(A), (B), and (D) and section 23(m)(2)(B)(i), (ii), and (iv). The acreage limitations in section 15(b)(2)(C) and section 23(m)(2)(b)(iii) shall apply to the transfer.

(2) In addition to the land grants referred to in subsection (1) hereof, Village Corporations shall also grant to Municipal Corporations or, where appropriate, to the State, title to existing rights-of-way necessary for public use, airport sites, and such other interests in land as are reasonably necessary for public use and benefit: Provided, That this subsection does not require the creation of floating easements or rights-of-way unless the Village Corporation decides to grant such rights-of-way for future use and expansion.

(3) The Alaska Native Commission shall settle any disputes with respect to the land transfers required under subsections (1) and (2) hereof and the Commission's decision shall, without regard to subsection 6(j), be final.

URBAN AND NATIONAL CORPORATIONS

SEC. 12. (a)(1) There shall be established two nonprofit, membership corporations as follows:

(A) Alaska Native Urban Corporation; and

(B) Alaska Native National Corporation.

(2) The Urban Corporation shall be incorporated under the laws of Alaska. The Natives listed on the temporary census roll under section 7(a)(1) who are listed as residents in Alaska but not as members of any Native Village shall be its temporary members and the Natives listed as members of the Urban Alaska Native roll under subsection 7(d) of this Act shall be its permanent members.

(3) The National Corporation shall be incorporated under the laws of any State other than Alaska determined by the Secretary to be the most appropriate. The Natives listed on the temporary census roll under section 7(a)(1) who are listed as not resident in Alaska and not members of any Native Village shall be its temporary members, and the Natives listed as members of the Alaska Native National roll under subsection 7(e) of this Act shall be its permanent members.

(4) The Secretary shall, within sixty days after the effective date of this Act appoint five incorporators for each of the corporations established under this section and shall select as such incorporators persons whom the Secretary deems to be knowledgeable in the needs of, and benefits desired by, the respective members of each corporation. The incorporators of each corporation shall, within sixty days after their appointment, prepare and submit to the Secretary, articles of incorporation and bylaws for the government of their respective corporations not inconsistent with the provisions of this Act. When the articles of incorporation and bylaws of either of such corporations are approved by the Secretary, or if they shall not have been disapproved by the Secretary within thirty days after they have been received, the articles of incorporation shall be filed with appropriate authorities in the State of incorporation and all other actions necessary to establish corporate existence shall be performed.

(5) The Urban and National Corporations shall be managed by their respective boards of directors, each of which boards shall be comprised of not less than five members.

(A) The incorporators shall constitute the initial board of directors to hold office until their successors are elected. They may engage such legal counsel, advisers and employees and perform such further acts as may be required to carry out the purposes of this Act. Any contract or other obligation of the corporation existing upon the date of the first election of directors shall be terminable at will by the corporation at any time within ninety days thereafter.

(B) All directors other than the initial board of directors shall be elected, by the members of the respective corporations who are nineteen years of age or over at the time of voting. The first election shall be held within four months following

(i) completion of the temporary census roll under subsection 7(a) of this Act, or

(ii) commencement of the existence of the corporation under the laws of its state of incorporation, whichever occurs later.

(6) The article of incorporation and the bylaws of the Urban Corporation and the National Corporation may be amended from time to time. Such amendments made during the first five years after the effective date of this Act shall be filed with the Secretary and the Services Corporation.

(7) The Urban Corporation and the National Corporation shall manage and use the funds distributed to them in accordance with this Act to serve the needs of their members and members' descendants. They shall have all of the powers granted to nonprofit corporations under the laws of their respective states of incorporation, except as such powers may be limited by their articles of incorporation and bylaws; and they shall carry out activities, either directly or through other instrumentalities, directed toward promoting the health, welfare, education, and cultural, social and economic development of their members and members' descendants.

(8) The National Corporation shall maintain an office or offices in its state of incorporation and in such other location or locations as will best serve the needs of its members.

(b) The provisions of subsection 11(e) of this Act relating to the distribution, withholding and investment of sums to, and for the benefit of, Village Corporations shall apply also with regard to sums received by the Services Corporation for distribution to the Urban and National Corporations.

(c) The Urban and National Corporations shall be entitled in proportion of their memberships to the total fund membership roll to receive distributions from the Services Corporation on the same basis as Village Corporations, including, prior to completion of the final membership roll, advances for organizational, planning, and administrative purposes and to deal with pressing health and social problems.

(d) The Urban Corporation and the National Corporation shall be entitled to a share, in proportion of their respecitve memberships to the total final membership roll, of the funds, retained pursuant to subsection 8(g), for administrative expenses and for contingency purposes.

(e) The Urban Corporation and the National Corporation shall be considered public instrumentalities eligible for grants, loans, and contracts for planning, housing, assistance, economic development, and other programs under Federal law which will assist their members and members' descendants.

(f) Upon termination of the Services Corporation pursuant to subsection 8(h) the limitations established and the powers granted under this Act for each of the corporations established under this section 12 shall terminate, and by vote of not less than a majority of its members casting votes in accordance with its articles of incorporation and bylaws, the members of the Urban and National Corporations shall elect to reincorporate either as a nonprofit corporation or a business corporation for profit, or to merge or consolidate with other corporation or otherwise reorganize or liquidate as the members deem appropriate. If either such corporation fails for any reason to make such election and carry it into effect within one year after the Services Corporation shall have gone out of existence, it shall be dissolved and liquidated in accordance with the provisions of its articles of incorporation and bylaws and applicable state law.

WITHDRAWAL OF PUBLIC LANDS

SEC. 13. (a) Public Land Order Numbered 4582, 34 Federal Register 1025, is hereby revoked.

(b)(1) There are hereby withdrawn, subject to valid existing rights, from the selection by the State under the Statehood Act (72 Stat. 341, 77 Stat. 223) and from all other forms of appropriation under the public land laws including the mining and mineral leasing laws, all public lands in each township, which encloses all or part of any Native Village listed in subsection (c) hereof, and any Native Village not listed, but which is approved for benefits under this Act by the Alaska Native Commission pursuant to subsection (e) hereof, plus all public lands in each township which is contiguous to or corners upon the townships in which such Native Villages are located, except lands withdrawn or otherwise reserved for national defense purposes other than Naval Petroleum Reserve No. 4, as shown on current plats of survey or protraction diagrams of the Bureau of Land Management, or protraction diagrams of the State where protraction diagrams of the Bureau of Land Management are not available.

(2) At the time any Native Village not listed in section 13(c) is approved for benefits under this Act by the Commission pursuant to section 13(e), there shall be withdrawn subject to valid existing rights, from selection by the State under the Statehood Act and from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, all public lands in each township which encloses all or part of the Native Village, plus all public lands in each township which is contiguous to or corners upon the township in which the Native Village is located, except lands excepted from withdrawal under section 13(b)(1).

(3)(A) In the event that any Native Village referred to in subsections (b)(1) and (2) hereof is so located that less than nine townships of public lands are available for withdrawal as therein provided, there shall be withdrawn, subject to valid and existing rights, from selection by the State under the Statehood Act and from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, from among the available public lands, except lands excepted from withdrawal under section 13(b)(1), in order of their proximity to the center of the village, as much land of at least an equal character and value as the land upon which such Village is located as may be necessary for a withdrawal of an acreage equivalent to nine townships of public lands for such Native Village.

(B) The land exchange authority granted pursuant to section 16(a) of this Act may be exercised to make land exchanges with the State or other parties for the purpose of making lands in the townships on which villages referred to in subsection (b)(3)(A) hereof are located, or in the contiguous and cornering townships, available for selection: Provided, That the Secretary shall classify those public lands suitable for exchange under this section before any exchanges are made.

(c) The following Native villages are qualified for land withdrawals under the provisions of subsection (b)(1) hereof:

NAME AND PLACE	REGION
Akiachak,	Southwest Coastal Lowland.
Akiak,	Southwest Coastal Lowland.
Akutan,	Aleutian.
Alakanuk,	Southwest Coastal Lowland.
Aleknagik,	Bristol Bay.
Alatna,	Koyukuk-Lower Yukon.

Allakaket, Koyukuk-Lower Yukon.
Ambler, Bering Strait.
Anaktuvuk Pass, Arctic Slope.
Andreafsey, Southwest Coastal Lowland.
Aniak, Southwest Coastal Lowland.
Anvik, Koyukuk-Lower Yukon.
Arctic Village, Upper Yukon-Porcupine.
Atka, Aleutian.
Atkasook, Arctic Slope.
Barrow, Arctic Slope.
Beaver, Upper Yukon-Porcupine.
Belkofsky, Aleutian.
Bethel, Southwest Coastal Lowland.
Bill Moore's, Southwest Coastal Lowland.
Biorka, Aleutian.
Birch Creek, Upper Yukon-Porcupine.
Brevig Mission, Bering Strait.
Buckland, Bering Strait.
Candle, Bering Strait.
Cantwell, Cook Inlet.
Canyon Village, Upper Yukon-Porcupine.
Chalkyitsik, Upper Yukon-Porcupine.
Chanilut, Southwest Coastal Lowland.
Chefornak, Southwest Coastal Lowland.
Chevak, Southwest Coastal Lowland.
Chignik, Kodiak.
Chignik Lagoon, Kodiak.
Chignik Lake, Kodiak.
Chistochina, Copper River.
Chukwuktoligamute, Southwest Coastal Lowland.
Circle, Upper Yukon-Porcupine.
Clark's Point, Bristol Bay.
Copper Center, Copper River.
Crooked Creek, Upper Kuskokwim.
Deering, Bering Strait.
Dillingham, Bristol Bay.
Eagle, Upper Yukon-Porcupine.
Dot Lake, Tanana.
Eek, Southwest Coastal Lowland.
Egegik, Bristol Bay.
Eklutna, Cook Inlet.
Ekwok, Bristol Bay.
Elim, Bering Strait.
Emmonak, Southwest Coastal Lowland.
English Bay, Cook Inlet.
False Pass, Aleutian.
Fort Yukon, Upper Yukon-Porcupine.
Gakona, Copper River.
Galena, Koyukuk-Lower Yukon.
Gambell, Bering Sea.
Georgetown, Upper Kuskokwim.
Golovin, Bering Strait.
Goodnews Bay, Southwest Coastal Lowland.
Grayling, Koyukuk-Lower Yukon.
Gulkana Copper River.
Hamilton, Southwest Coastal Lowland.
Holy Cross, Koyukuk-Lower Yukon.
Hooper Bay, Southwest Coastal Lowland.
Hughes, Koyukuk-Lower Yukon.
Huslia, Koyukuk-Lower Yukon.
Igiugig, Bristol Bay.
Iliamna, Cook Inlet.
Inalik, Bering Strait.
Ivanof Bay, Aleutian.
Kaktovik, Arctic Slope.
Kalskag, Southwest Coastal Lowland.
Kaltag, Qoyukuk-Lower Yukon.
Karluk, Kodiak.
Kasigluk, Southwest Coastal Lowland.
Kiana, Bering Strait.
King Cove, Aleutian.
Kipnuk, Southeast Coastal Lowland.
Kivalina, Bering Strait.
Kobuk, Bering Strait.
Koliganek, Bristol Bay.
Kokhanok, Bristol Bay.
Kongiganak, Southwest Coastal Lowland.
Kotlik, Southwest Coastal Lowland.
Kotzebue, Bering Strait.
Koyuk, Bering Strait.
Koyukuk, Koyukuk-Lower Yukon.
Kwethluk, Southwest Coastal Lowland.
Kwigillingok, Southwest Coastal Lowland.
Larsen Bay, Kodiak.
Levelock, Bristol Bay.
Lime Village, Upper Kuskokwim.
Lower Kalskag, Southwest Coastal Lowland.
McGrath, Upper Kuskokwim.
Makok, Koyukuk-Lower Yukon.
Manokotak, Bristol Bay.
Marshall, Southwest Coastal Lowland.
Mary's Igloo, Bering Strait.
Medfra, Upper Kusokwim.
Mekoryuk, Southwest Coastal Lowland.
Mentasta Lake, Copper River.
Minchumina Lake, Upper Kuskokwim.
Minto, Tanana.
Mountain Village, Southwest Coastal Lowland.
Nabesna Village, Tanana.
Naknek, Bristol Bay.
Napaimute, Upper Kuskokwim.
Napakiak, Southwest Coastal Lowland.
Napaskiak, Southwest Coastal Lowland.
Nelson Lagoon, Aleutian.
Newhalen, Cook Inlet.
Nenana, Tanana.
New Stuyahok, Bristol Bay.
Newtok, Southwest Coastal Lowland.
Nightmute, Southwest Coastal Lowland.
Nikolai, Upper Kuskokwim.
Nikolski, Aleutian.
Ninilchik, Cook Inlet.
Noatak, Bering Strait.
Nome, Bering Strait.
Nondalton, Cook Inlet.
Nooiksut, Arctic Slope.
Noorvik, Bering Strait.
Northeast Cape, Bering Sea.
Northway, Tanana.
Nulato, Koyukuk-Lower Yukon.
Nunapitchuk, Southwest Coastal Lowland.
Ohogamiut, Southwest Coastal Lowland.
Old Harbor, Kodiak.
Oscarville, Southwest Coastal Lowland.
Ouzinkie, Kodiak.
Paradise, Koyukuk-Lower Yukon.
Paulof Harbor, Aleutian.
Pedro Bay, Cook Inlet.
Perryville, Kodiak.
Savoonga, Bering Sea.
Scammon Bay, Southwest Coastal Lowland.
Selawik, Bering Strait.
Shageluk, Koyukuk-Lower Yukon.
Shaktoolik, Bering Strait.
Sheldon's Point, Southwest Coastal Lowland.
Shishmaref, Bering Strait.
Shungnak, Bering Strait.
Slana, Copper River.
Sleetmute, Upper Kuskokwim.
South Naknek, Bristol Bay.
Squaw Harbor, Aleutians.
Stebbins, Bering Strait.
Stevens Village, Upper Yukon-Porcupine.
Stony River, Upper Kuskokwim.
Tanacross, Tanana.
Tanana, Koyukuk-Lower Yukon.
Telida, Upper Kuskokwim.
Teller, Bering Strait.
Tetlin, Tanana.
Togiak, Bristol Bay.
Toksook Bay, Southwest Coastal Lowland.
Tuluksak, Southwest Coastal Lowland.
Tuntutuliak, Southwest Coastal Lowland.
Tununak, Southwest Coastal Lowland.
Twin Hills, Bristol Bay.
Tyonek, Cook Inlet.
Ugashik, Bristol Bay.
Unalakleet, Bering Strait.
Unalaska, Aleutian.
Unga, Aleutian.
Uyak, Kodiak.
Venetie, Upper Yukon-Porcupine.
Wainwright, Arctic Slope.
Wales, Bering Strait.
White Mountain, Bering Strait.

(d) Any of the villages listed in subsection (c) hereof shall not be eligible for land or benefits under this Act if the Commission determines within three years from the effective date of this Act that—

(1) less than twenty-five Natives are residents of the village; or

(2) the village is of a modern and urban character, that the majority of the residents are non-Native, and that the best interests of the Native resident would be served if they derived benefits through the Urban Corporation and other land provisions of this Act rather than as a Native Village; or

(3) the village was not in existence of the date of enactment of this Act: Provided, That this provision shall not be used to exclude any Native Village otherwise eligible which has been required to move to a new location because of a natural disaster or the actions of any governmental agency.

(e) Native Villages not listed in subsection (c) hereof shall be eligible for land and benefits under this Act and added to the village roster if the Commission determines

(1) twenty five or more Alaska Natives are residents of an established village; and

(2) the best interests of the Native residents would be served if they derived benefits under the Act as a Village Corporation; and

(3) the village would not be disqualified by the provisions of subsection (d) hereof.

(f) In making the determinations required pursuant to subsections (d) and (e) hereof, the Commission shall review all relevant evidence offered by the members of the concerned Native group or their representatives and shall review any recommendations of the State and the Secretary. The Commission's determination shall, without regard to section 6(j), be final.

(g)(1) In addition to determining which villages are entitled to land and other benefits under the terms of this Act, the Commission shall determine the total land acreage which eligible Village Corporations shall be entitled to select. The maximum grant of land which the Commission may award to an eligible Village Corporation shall be twenty-three thousand and forty acres for those Villages having an enrollment of less than four hundred Natives and an additional twenty-three thousand and forty acres for each additional four hundred Natives enrolled as members of the Village as follows: four hundred to eight hundred enrolled Natives, forty-six thousand and eighty acres; eight hundred to one thousand and two hundred enrolled Natives, sixty-nine thousand and one hundred twenty acres; one thousand and two hundred to one thousand and six hundred enrolled Natives, ninety-two thousand and one hundred sixty acres; one thousand and six hundred to two thousand enrolled Natives, one hundred and fifteen thousand two hundred acres; and two thousand to two thousand four hundred enrolled Natives, one hundred and thirty-eight thousand two hundred forty acres. In making determinations pursuant to this subsection the Commission shall consider the following factors:

(A) the Native population of the Village;

(B) the nature of the use, both historic and present, of the lands surrounding the Native Village including the carrying capacity of the surrounding lands and biological community in relationship to the village population and subsistence use patterns of the Native residents therein;

(C) the amount of land needed for prospective community expansion, the area to be granted to Municipal Corporations or to the State, and the area to be granted for access, rights-of-way, and other public services and facilities;

(D) the nature and economic value of the lands surrounding the village (without regard to the mineral estate) for the purpose of insuring some degree of comparability in value as between Native Villages; and

(E) the comprehensive land use plan prepared by the Village Corporation with the assistance of the Services Corporation staff pursuant to subsection (8)(i) hereof.

(2) Land acreages equal to the difference between the maximum grants of land which the Commission may award pursuant to subsection (g)(1) and the actual amounts awarded to eligible Village Corporations, together with land in the amount of 1,500,000

acres, shall be granted by the Commission upon application, as follows:

(a) to any Village Corporation which received the maximum grant the Commission may award, but which needs additional lands to maintain historic subsistence use patterns, but not to exceed the balance of the acreage withdrawn for that Village Corporation;

(b) to any Village Corporation which demonstrates that the nature, amount and economic value (without respect to the mineral estate) of the lands granted pursuant to subsection (g)(1) do not result in comparable values with the lands granted to other Village Corporations, but not to exceed the balance of the acreage withdrawn for that Village Corporation; and

(c) any remaining lands shall be granted to the Services Corporation.

In making the determinations required by this subsection the Commission shall consider the geographical relationship of individual villages to the lands in question and should avoid determinations which result in land grants that are separated by large bodies of water unless one of the above factors or the operation of section 13(b)(3) makes such a determination reasonably necessary. The Commission's determinations under this subsection shall, without regard to section 6(j), be final.

(h)(1) The Secretary, after consultation with the Commission and, where appropriate, with the Secretary of Agriculture or the Secretary of Defense, is authorized to withdraw from all forms of appropriation under the public land laws any public lands reasonably necessary to protect: (A) any settlement of a Native group established as of April 15, 1969, and not otherwise eligible for lands under this Act; (B) any historic Native village from which the population has been required to move, because of either direct or indirect actions of the Federal, State, or local government, and to which twenty-five or more adult Natives wish to return and reside; (C) any place which constitutes a new Native village location to which by virtue of natural phenomenon, or direct or indirect governmental actions, twenty-five or more adult Natives wish to relocate; or (D) any land occupied by a Native as a primary place of residence on May 1, 1970, and continuing on the effective date of this Act: *Provided, however,* That any withdrawal made pursuant to this subsection shall not exceed one township.

(2) The Commission shall determine the amount of land to which any Native group or individual is entitled under paragraph (1) hereof. The decision of the Commission shall, without regard to subsection 6(j), be final. Lands granted to Native groups or individuals pursuant to this subsection shall not exceed five thousand seven hundred and sixty acres under subsections (1) (A), (B), and (C) hereof nor more than one hundred and sixty acres under subsections (1) (A), (B), and (C) hereof nor more than one hundred and sixty acres under subsection (1)(D) hereof. Any lands granted under this subsection shall be patented by the Secretary on the basis of the Commission's decision and shall be deducted from the five hundred thousand-acre "miscellaneous" selection right created by subsection 19(b)(2). Patents issued pursuant to this subsection shall not include the leasable or locatable mineral estate.

(3) Where the lands referred to in subsection (h)(1) hereof are located within the national park system, the national forest system or the national wildlife refuge system the Secretary in withdrawing lands, and the Commission in granting lands pursuant to this subsection, may reduce the amount of lands withdrawn and granted to insure that the purposes for which these lands were reserved by the United States may be achieved with a minimum of interference.

(i) If the Secretary determines that a substantial dispute is involved or that the best interests of justice would be served he may direct that a public hearing be held in accordance with such rules as he shall prescribe prior to making any of the withdrawals permitted by subsection (h) hereof. Any hearings held pursuant to this subsection shall be held within five years of the date of enactment of this Act. The Commission shall consider, in any contested case, the hearing record prepared by the Secretary as well as his recommendations in making its determinations. The actions of the Commission under this subsection shall, without regard to section 6(j), be final.

(j) Pending the disposition of any lands withdrawn under this section, the Secretary is authorized to take such actions as may be necessary to administer, manage, and protect the withdrawn public lands for the benefit of the potential beneficiaries and the United States in accord with section 16 of this Act.

SELECTION OF PUBLIC LANDS

SEC. 14. (a) Upon application of any Native Village found eligible for land selections pursuant to section 13 of this Act, and upon certification thereof by the Commission, and after survey of the area selected pursuant to section 15(a), the Secretary shall issue a patent, without payment therefor, to the Village Corporation, or, if not yet incorporated, in trust to the Services Corporation for the benefit of the Native Village pending its incorporation as provided in section 11, for that amount of land to which the Native Village is found entitled by the Commission pursuant to the procedures set out in subsection 13(g). Lands to be patented may be selected, subject to all valid existing rights, from any public land within areas withdrawn for each Native Village under the provisions of section 13 of this Act.

(b) In exercising selection rights pursuant to subsection (a) hereof, Native Village Corporations shall select from among the public lands withdrawn pursuant to section 13, and all such selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water or by lands which are unavailable for selection, and shall be in whole sections and, wherever feasible, in units of not less than one thousand two hundred and eighty acres. In the event the public lands withdrawn pursuant to section 13 are not sufficient in amount to satisfy the entitlement of any Village Corporation, as determined by the Commission, such Corporation may select noncontiguous tracts from among the vacant and unappropriated public lands, without regard to section 23, in order of their proximity to the center of the village until the Village Corporation's selection rights are exhausted.

(c) Within 2 months after a determination by the Commission that a Native Village is eligible for a grant of land pursuant to subsections 13 (d) and (e), the Secretary shall conduct an election for the village, under such rules and regulations as he may prescribe, to choose a five-member Village Land Selection Committee. The committee so selected is hereby authorized to exercise the land selection rights of the village pending organization of the Village Corporation. The persons entitled to vote in the election or serve on the Land Selection Committee shall be the members of each Native Village nineteen years of age or over, as shown on the temporary census roll prepared pursuant to section 7(a).

(d)(1) Where two or more Native Villages, because of proximity in location, are entitled to select lands in the same townships and actually select the same lands, their Village Corporations, or if not yet organized, their Land Selection Committees, shall be authorized to settle the overlap by negotiation and, in furtherance of any such settlement, to release selected lands to each other. If Native Villages making overlapping selections do not reach agreement within six months after the date such conflict arises, the controversy may be referred to the Commission by the Village Corporation or the Land Selection Committee for decision in accordance with section 6 of this Act. The Commission shall award the land, or portions thereof, to the Native Village or Villages shown historically by a preponderance of the evidence to have made greater use and occupancy thereof, or in such manner as will do substantial justice. The decision of the Commission shall, without regard to subsection 6(j), be final.

(2) A Native Village which releases selected lands in order to settle an overlap, or which loses selected lands under a Commission award in accordance with subsection (d)(1) hereof, shall be entitled to select additional public lands pursuant to subsection (b) hereof, until its selection rights are exhausted.

(e) Upon application of the Services Corporation, and upon certification thereof by the Commission, and after survey of the areas involved, the Secretary shall issue patents, without payment therefor, to the Services Corporation for lands to which it is entitled pursuant to subsection 13(g)(2)(c). The Services Corporation shall select such lands from among the lands withdrawn for Native Villagers pursuant to section 13 which remains after Native Village selection rights are exercised as provided in this section. All such selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water or by lands which are unavailable for selection and shall be in whole sections and, wherever feasible, in units of not less than one thousand two hundred and eighty acres.

(f) Except as otherwise provided in subsection (d)(2) hereof, all public lands withdrawn pursuant to section 13, which have not been selected by a Village Corporation or by the Service Corporation under this section shall eighteen months after the effective date of this Act, or nine months after the election required under subsection (c) hereof, whichever later occurs, be placed in the status provided for by section 24 of this Act: *Provided,* That lands withdrawn around a Village whose eligibility for land selection has not been finally determined by the Commission within eighteen months after the effective date of this Act shall remain withdrawn until six months after the Commission makes the determinations required pursuant to subsections 13 (d) through (g).

SURVEY AND CONVEYANCE OF LANDS

SEC. 15. (a) The Secretary shall promptly survey the townships withdrawn under section 13 and the areas selected for conveyance to Village Corporations and to the Services Corporation pursuant to section 14 of this Act, but need monument only the exterior boundaries of these townships or areas. He also shall promptly survey (1) within the townships withdrawn or areas selected all lands occupied as a primary place of residence, a primary place of business, subsistence campsites, reindeer grazing grounds, and for other purposes as required under subsection (b)(2) hereof, and (2) any other land to be patented under this Act.

(b)(1) Upon completion of the survey of lands selected by a Village Corporation, as provided in subsection (a) hereof, the Secretary promptly shall issue a patent or patents to the Village Corporation to the land and all interests therein, except minerals covered by the Federal mineral leasing laws, subect to valid existing rights, and subject to the provisions of paragraph (2) hereof, and the provisions of section 14(a).

(2) Upon receipt of a patent or patents to selected lands, Village Corporations or the Services Corporation on their behalf—

(A) shall issue deeds to the occupants, without payment of any consideration, to the surface estate for any tracts occupied by

Natives as a primary place of residence, as a primary place of business, or used for subsistence campsites or for reindeer husbandry, subject to valid existing rights;

(B) shall issue deeds to the occupants, either without consideration or upon the payment of an amount not in excess of fair market value for such property, determined as of the date of initial occupancy and without regard to any improvements thereon, to the surface estate for any tracts occupied by non-Natives as a primary place of residence or a primary place of business, subject to valid existing rights: *Provided,* That all occupants of the same general character shall be accorded similar treatment with respect to any payment for land;

(C) shall issue deeds pursuant to subsection 11(g), without payment of any consideration, to any Municipal Corporation in the Native Village or to any Municipal Corporation established in the Native Village within five years of the date of enactment of this Act, to the surface estate of the improved land on which the village is located and of as much additional land as is necessary for community expansion, for appropriate rights-of-way for public use, airport sites, and such other interests in land as are reasonably necessary for public use and for foreseeable community needs: *Provided,* That prior to the transfer of lands from a Village Corporation to a Municipal Corporation, individuals shall receive patent to any lands used for residences and businesses: *And provided further,* That the amount of lands to be transferred to the Municipal Corporation shall be no less than one hundred and sixty acres;

(D) shall issue deeds to the occupants, either without consideration or upon payment of an amount not in excess of fair market value for such property determined as of the date of initial occupancy and without regard to any improvements thereon, to the surface estate for any tracts occupied by nonprofit organizations for the purposes for which such organizations were established, subject to valid existing rights: *Provided,* That all nonprofit organizations of the same general character shall be accorded similar treatment with respect to payment for land; and

(E) may issue deeds, subject to valid existing rights, to all others.

Any dispute over the boundaries, use, occupancy or value of any tract which is covered by this paragraph may be submitted by any party to the dispute to the Commission for decision. The decision of the Commission, without regard to subsection 6(j), shall be final.

(c) Upon completion of the survey of lands selected by any Village Corporation, as provided in subsection (a) hereof, and contemporaneous with the issuance of patents to Village Corporations as provided in subsection (b) hereof, the Secretary shall issue a patent or patents to all minerals in such village lands covered by the Federal mineral easing laws, subject to valid existing rights, to the Services Corporation. At the time of such conveyance, the Services Corporation shall succeed and become entitled to any and all interests of the United States, as lessor, contractor, or permitter, in any mineral leases, contracts or permits covering lands selected by any Village Corporation as provided in subsection (k) of this section.

(d) Upon completion of the survey of lands selected by the Services Corporation, as provided in subsection (a) hereof, the Secretary promptly shall issue a patent or patents to the Services Corporation to the land and all interests therein, subject to valid existing rights.

(e) Upon application filed with the Commission and certification thereof, the Secretary shall, for a period of seven years from the effective date of this Act, issue a patent, without payment therefor, to any adult Native or Native group, subject to all valid existing rights, to the surface estate of any public land located in Alaska, outside of areas selected pursuant to this Act, except land within the national park system, national wildlife refuge system, national forest system, or land withdrawn or reserved for national defense purposes, other than Naval Petroleum Reserve No. 4, which has been used by such adult Native or Native group for a period of more than three years immediately prior to the effective date of this Act as a campsite for the harvesting of fish, wildlife, berries, fuel, or other products of the land. Such patents shall be issued—

(1) for five-acre tracts for each subsistence use campsite separate from the campsite of any other applicant;

(2) for forty-acre tracts where the campsites of several applicants are in such proximity to each other as to make it not feasible to patent individual five-acre campsites; or

(3) for larger tracts, not to exceed sixty acres, where individuals can establish, under such rules and regulations as the Commission may prescribe, historic occupancy and use of the larger tracts.

Applications for patents under this subsection must be filed with the Commission within five years after the effective date of this Act. Pending the issuance of a patent for campsites under this subsection the Secretary is authorized to permit the use of such lands, upon which applications have been filed, as campsites. The Secretary is authorized to apply the rule of approximation with respect to acreage limitations set forth in this subsection.

(f) Upon application filed with the Commission and certification thereof, the Secretary shall, for a period of seven years after the effective date of this Act, issue a patent, without payment therefor, for the surface estate of up to two thousand five hundred and sixty acres to each bona fide reindeer husbandryman, family, or Native group who on the effective date of this Act was practicing reindeer management. Patents issued under this subsection may cover any public lands in Alaska outside the areas selected pursuant to this Act, subject to all valid existing rights, that on the effective date of this Act are leased, permitted, or used for reindeer management purposes, including summer and winter range facilities and intervening line camps. Lands granted pursuant to this subsection shall not include any lands selected pursuant to section 14 and shall not include lands within the national park system, national wildlife refuge system, national forest system or land withdrawn or reserved for national defense purposes, other than Naval Petroleum Reserve No. 4. The Secretary is authorized to apply the rule of approximation with respect to acreage limitations set forth in this subsection.

(g) Upon application filed with the Commission and certification thereof, the Secretary shall, for a period of seven years after the effective date of this Act, issue a patent without payment therefor, for up to, but not to exceed one hundred and sixty acres of land and interests therein, except the minerals covered by the Federal mineral leasing laws, and subject to all valid existing rights, from any public lands within the areas withdrawn for Natives under section 13, but not selected pursuant to section 14 of this Act to any Native occupying land within such one hundred and sixty acres on the effective date of this Act as a primary place of residence. The Secretary is authorized to apply the rule of approximation with respect to the acreage limitations set forth in this subsection.

(h) Upon application filed with the Commission and certification thereof, the Secretary shall, for a period of seven years after the effective date of this Act, issue a patent without payment therefor, of up to, but not to exceed, one hundred and sixty acres to the surface estate of any public land located in Alaska, subject to all valid existing rights, except land within the national park system, national wildlife refuge system, and national forest system, and land withdrawn or reserved for national defense purposes, other than Naval Petroleum Reserve No. 4, to any Native nineteen years of age or older occupying such lands as a primary place of residence on the effective date of this Act and whose residence is outside the areas withdrawn for the benefit of Native Villages by section 13 of this Act. The Secretary is authorized to apply the rule of approximation with respect to acreage limitations set forth in this subsection.

(i) Notwithstanding the provisions of subsections (e) and (f) hereof any adult Native or Native group may apply for and shall receive special use permits for lands within any national wildlife refuge for the purposes set out in subsections (d) and (e) hereof: *Provided further,* That notwithstanding the provisions of subsection (h) hereof any Native nineteen years of age or older whose primary place of residence or business is outside the areas withdrawn by section 13 of this Act, but within the national wildlife refuge system, shall be entitled to a patent of up to eighty acres of land. Such patent shall be issued pursuant to the procedures set forth in subsection (h) hereof.

(j) In carrying out the provisions of this section, patents shall be issued by the Secretary in accordance with the following priorities:

(1) Within the areas withdrawn pursuant to section 13 of this Act—

(A) lands selected by Native Village Corporations;

(B) lands for the Services Corporation pursuant to subsection 13(g)(2)(C);

(C) land for individual places of residence; and

(D) land for subsistence campsites and reindeer management areas.

(2) Outside the areas withdrawn pursuant to section 13 of this Act—

(A) land for individual places of residence;

(B) land for subsistence campsites; and

(C) lands for reindeer husbandry.

(k) Where, prior to patent of any land or minerals under this section, a lease, contract, or permit has been issued for the utilization of surface or mineral resources covered under such patent, the patent shall contain provisions making it subject to the lease, contract, or permit and the right of the lessee, contractee, or permittee to the complete enjoyment of all rights, privileges, and benefits granted him by such lease, contract, or permit. Upon issuance of the patent, the patentee shall succeed and become entitled to any and all interests of the United States as lessor, contractor, or permitter, in any such leases, contracts, or permits covering the estate patented. The administration of such lease, contract, or permit shall continue to be by the United States. In the event that the patent does not cover all of the land embraced within any such lease, contract, or permit, the patentee shall only be entitled to the proportionate amount of the revenues reserved under such lease, contract, or permit by the United States which results from multiplying the total of such revenues by a fraction in which the numerator is the acreage of such lease, contract, or permit which is included in the patent and the denominator is the total acreage contained in such lease, contract, or permit.

(l) The Secretary shall require as a condition to the granting of each permit to prospect, or to the granting of each lease to mine or drill for minerals covered by the Federal mineral leasing laws, on lands patent-

ed pursuant to subsections (e) through (i) of this section, and are not covered by such patent, that the permittee or lessee shall provide a bond, satisfactory to the Secretary, to indemnify the surface patentee for any damages which such permittee or lessee may cause in connection with the development of such permit or lease, and further the Secretary shall include provisions in such lease or permit which will protect the surface patentee against unreasonable interference in the use of his land.

ADMINISTRATION OF LANDS

SEC. 16. (a) Natives, Village Corporations and the Services Corporation may exchange lands and interests in lands with each other, or with the State or the United States and the Secretary, the Secretary of Agriculture, and the Secretary of Defense, under such rules and regulations as they respectively may prescribe, may exchange land and interests in lands under their jurisdiction and classified as suitable for exchange with Village Corporations, the Services Corporation, and Natives, for the purpose of effecting land consolidations or to facilitate the management or development of land. Exchanges of land and interests in lands hereunder shall be made on the basis of equal value, and the value of improvements on lands shall be given due consideration and allowance made therefor in any valuation: *Provided,* That either party to an exchange under this subsection may pay or accept cash in order to equalize the values of the properties exchanged.

(b) Pending the patenting to a Village Corporation pursuant to section 15 of public lands withdrawn pursuant to section 13, or the restoration of such lands to the status in which they had been placed pursuant to section 24, the Secretary may take such actions as shall be necessary to administer, manage, and protect such withdrawn public lands: *Provided,* That the Secretary shall not sell or otherwise permanently dispose of lands or interests therein, except as provided in this subsection: *And provided further,* That the Secretary shall not, without the consent of the Services Corporation, issue or enter into any lease, contract, or permit covering lands withdrawn pursuant to this Act which will be in effect more than eighteen months after the effective date of this Act. The Secretary may renew existing leases which would be in effect more than eighteen months after the effective date of this Act only if the basic lease provides for a right of renewal and then only on the terms provided in the basic lease. The Secretary, with the approval of the Commission, and in accordance with such rules and regulations as he shall prescribe, may grant an easement or right-of-way for a public purpose over, across, under, or through withdrawn public lands on condition that the grantee of such easement or right-of-way (1) shall provide a bond, satisfactory to the Secretary, in an amount sufficient to pay the fair market value of any interest the grantee acquires in lands which may be subsequently selected by a Village Corporation, issue or enter into any lease, contract, or permit resources of the land and the environment, including fish and wildlife, and to protect the surface owner from unreasonable interference in the enjoyment of his land. All payments or revenues attributable to the use or other disposition of withdrawn lands later selected by a Village Corporation, after deducting the cost of administration thereof, shall be paid to the Village Corporation, or to the Services Corporation, as appropriate: *Provided,* That if the selected land does not include all of the land covered by a particular lease, contract, or permit, the amount of the revenues therefrom to be paid to such Village Corporation, or to the Services Corporation, as appropriate, shall be the proportion which results from multiplying the revenues attributable to such lease, contract, or permit (after deducting the cost of administration thereof) by a fraction in which the numerator is the acreage of such lease, contract, or permit which is included in the selected land and the denominator is the total acreage contained in such lease, contract, or permit.

(c) After lands are patented pursuant to sections 15 and 23 of this Act, Village Corporations and the Services Corporation may hold, manage, lease, or dispose of such lands and interests therein in accordance with the laws of the State: *Provided,* That for a period of twelve fiscal years after the effective date of this Act, any sale (other than a sale or grant under section 15(b)(2)), mortgage, surface lease for a term (including renewals) of more than twenty years, grant of a permanent easement or right-of-way, or gift of such lands, or interests in lands by a Village Corporation shall require the approval of the Services Corporation in order to be valid: *Provided further,* That easements or rights-of-way for public purposes may be acquired within such lands by condemnation in accordance with the laws of the State without any necessity for approval of the Services Corporation.

MINERAL LEASING ACT

SEC. 17. Disposition of all minerals included under the Federal mineral leasing laws including but not limited to deposits of coal, phosphate, sodium, potassium, oil, oil shale, gas, or sulfur located in public lands in Alaska and of oil deposits of any other minerals located in such lands, which the Congress may hereafter authorize to be disposed of by sale or lease, after the effective date of this Act may, where there is competitive interest shown in a particular tract of land, be under such competitive bidding procedures, as the Secretary may prescribe by regulation. The provisions of the Mineral Leasing Act of February 25, 1920, as amended and supplemented (41 Stat. 437; 30 U.S.C. 181 and following), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 and following) shall apply to the extent that such provisions are not inconsistent with this Act. Where such competitive interest has not been displayed the provisions of the Mineral Leasing Act of February 25, 1920, as amended and supplemented (41 Stat. 437; 30 U.S.C. 181 and following), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 and following) shall apply.

REVENUE SHARING

SEC. 18. (a)(1) Disposition of all deposits of coal, phosphate, sodium, potassium, oil, shale, gas, or sulfur located in public lands in Alaska and of all deposits of any other minerals located in such lands which the Congress may hereafter authorize to be disposed of by sale or lease, after the effective date of this Act shall be made only pursuant to the terms of this Act and shall be subject to the provisions on revenue sharing as provided in this section. The provisions of the Mineral Leasing Act of February 25, 1920, as amended and supplemented (41 Stat. 437; 30 U.S.C. 181 et seq.) and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) shall apply to the extent that such provisions are not inconsistent with this Act.

(2) All revenues derived by the United States from rentals and bonuses upon disposition of such minerals during the period beginning January 1, 1969, and ending on the effective date of this Act shall be distributed as provided in the Alaska Statehood Act of July 1, 1958 (72 Stat. 339), except that, prior to calculating the shares of the State and the United States as set forth in such Act, 2 per centum of such proceeds shall be deducted and paid into the Fund. From the royalty derived by the United States from the disposition of such minerals during the same period, an amount equal to 2 per centum of the gross value of the minerals (as the gross value thereof is determined for royalty purposes under the lease involved) shall be deducted and paid into the Fund, and the respective shares of the State and the United States in such royalty shall be calculated on the remaining balance.

(3) All leases or other dispositions of such minerals made after the effective date of this Act shall provide that prior to calculating the respective shares of the State and the United States in such proceeds under the Statehood Act: (A) a royalty of 2 per centum upon the gross value of any minerals produced (as that gross value is determined for royalty purposes under such lease or other disposition) shall be paid into the Fund; and (B) 2 per centum of all revenues derived from rentals and bonuses shall be deducted and paid into the Fund.

(b) Should the United States ever dispose of deposits of minerals referred to in subsection (a)(1) of this section located within Naval Petroleum Reserve No. 4, such disposition shall be made only under such competitive bidding procedures as the Secretary shall prescribe by regulation. The provisions of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 181 et seq.), as amended and supplemented, shall apply to the extent that such provisions are not inconsistent with this Act. Any leases or other dispositions of such minerals shall be made in accordance with this subsection and shall provide: (1) that a royalty of 2 per centum upon the gross value of any minerals produced (as that gross value is determined for royalty purposes under such lease or other disposition) shall be paid into the Fund from the royalties derived by the United States; (2) that 2 per centum of all revenues derived from rentals and bonuses upon disposition of such minerals shall be deposited in the Fund; and (3) that the remaining proceeds from the disposition of such minerals shall be deposited as miscellaneous receipts to the Treasury of the United States.

(c) The royalties provided under this section shall not operate to exclude lands subject thereto from selection by the State under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), if such lands otherwise are available for selection. Every patent of public lands issued to the State under the Statehood Act after the effective date of this Act, however, shall expressly reserve for the benefit of the Natives: (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under any lease or other disposition by the State) of the minerals referred to in subsection (a) hereof produced on or removed from such lands from the royalties payable to the State; (2) a right to receive 2 per centum of all revenues derived by the State from rentals and bonuses upon disposition of such minerals. There are also reserved for the benefit of the Natives from and after January 1, 1969, an amount equal to a like royalty and other revenues from rentals, royalties and bonuses payable to the State under (i) leases of the United States which are or may be assumed by the State under section 6(h) of the Alaska Statehood Act, and (ii) under conditional leases and sales made pursuant to section 6(g) of the Alaska Statehood Act in the case of lands heretofore or hereafter selected by the State, the selection of which is or was tentatively approved by the Secretary, but as to which patents had not issued to the State by January 1, 1969: *Provided, however,* That the bonus revenues received by the State at the September 1969, sale of lands tentatively approved under the Statehood Act shall not be subject to the 2 per centum revenue sharing provisions of this section, nor shall rentals received pursuant to such sale up to the date of April 15, 1970. Any royalty, and rentals received pursuant to such sale after April 15, 1970, shall be subject to the revenue sharing provisions of this section.

(d) Revenues received by the United States

or the State as compensation for estimated drainage of oil and gas shall, for purposes of this section, be deemed to be revenues from the disposition of oil and gas and the appropriate payments shall be paid into the Fund on account thereof. All royalty and other revenues required to be paid under this section shall be paid into the Fund promptly after the expiration of the fiscal year in which they accrue by the Secretary of the Treasury or the State, as the case may be, and shall be distributed or withdrawn therefrom only in accordance with this Act. In the event the United States or the State elects to take royalties in kind, there shall be paid into the Fund on account thereof an amount equal to the royalties that would have been paid into the Fund under the provisions of this section had the royalty been taken in cash.

(e) The payments required pursuant to this section shall continue only until $500,000,000 has been paid into the Fund. Thereafter the provisions of this section shall not apply and the reservation required in patents under subsection (c) of this section shall be of no further force and effect.

(f) The provisions of this section requiring revenue sharing by the State shall be enforceable by the United States on behalf of the Natives but this shall not preclude the Services Corporation, or its successor, from pursuing any remedies available to it in the event of default by the State. In the event of default by the State in making any payments due under this section, and in addition to any other remedies provided by law, there shall be deducted annually and deposited in the Fund the amount of any underpayment, to be taken first from the share of mineral revenues from public lands in Alaska which would otherwise be paid to the State pursuant to Federal law and, if such share is insufficient, from any other funds otherwise payable to the State as grants-in-aid by the United States which the President of the United States, at his discretion, deems appropriate.

(g)(1) The provisions of this section requiring revenue sharing by the State and the United States are enacted pursuant to the authority reserved by the United States in section 4 of the Alaska Statehood Act to determine the disposition of lands used and claimed by Natives and as to which the State was, by the Alaska Statehood Act, required to and did disclaim all right and title. Therefore:

(A) in the event that the State initiates litigation or becomes a party to litigation to contest in any manner the operation of this section 18 all rights of land selection granted to the State by the Alaska Statehood Act shall be suspended as to any public lands which are determined by the Secretary as potentially valuable for mineral development, timber or other commercial purposes, and no selections shall be made, no tentative approvals shall be granted, and no patents shall be issued for such lands during the pendency of such litigation; and

(B) in the event that the State or any other party initiates litigation to contest in any manner the operation of this section and any of the provisions of this section are judicially determined to be inapplicable to the State, such suspension and prohibition on the granting of tentative approvals and issuance of patents shall continue for as long as may be necessary, but not in excess of two years, to allow the Services Corporation or its successor an opportunity to select, out of lands described in section 19(a), in addition to the selection rights provided for in that section, the mineral estate of one million acres of land in noncontiguous blocks of our townships, half of which must be south of the Brooks Range. The Secretary upon application therefor filed by the Services Corporation or its successor shall issue to the Services Corporation or its successor, without payment, a patent to the mineral estate in the lands selected, subject to all valid and existing rights. Where, prior to such patent, a lease, contract, or permit has been issued for the utilization of the mineral resources covered under such patent, the patent shall contain provisions making it subject to the lease, contract, or permit and the right of the lessee, contractee, or permittee to the complete enjoyment of all rights, privileges, and benefits granted him by such lease, contract, or permit. Upon issuance of such patent, the Services Corporation shall succeed and become entitled to any and all interests of the United States as lessor, contractor, or permitter, in any such leases, contracts, or permits covering the minerals patented. The administration of such lease, contract, or permit shall continue to be by the United States. In the event that the patent does not cover all of the land embraced within any such lease, contract, or permit, the Services Corporation shall only be entitled to the proportionate amount of the revenues reserved under such lease, contract, or permit by the United States which results from multiplying the total of such revenues by a fraction in which the numerator is the acreage of such lease, contract, or permit which is included in the patent and the denominator is the total acreage contained in such lease, contract, or permit.

(2) Any civil action commenced by the State or by any other parties to contest in any manner the purpose and the substantive operation of this section 18 shall be barred unless the complaint is filed within one year of the date of enactment of this Act. The purpose of this limitation on suits is to insure that, after the expiration of a reasonable period of time, the right, title and interest of the United States, the Natives and the State to share in revenues will vest with certainty and finality and may be relied upon by all other parties in their dealings with the State, the Natives and the United States.

(3) In the event that rights of land selection granted to the State by the Alaska Statehood Act should ever be suspended pursuant to the provisions of subsection (g)(1)(A) hereof, the State's right of land selection pursuant to section 6 of the Alaska Statehood Act, Act of 1958 (72 Stat. 341, 77 Stat. 223) shall be extended for a period of time equal to the period of time as the selection right was suspended pursuant to the provisions of subsection (g)(1)(A).

(h) The respective shares of the United States and the State with respect to payments to the Fund required by this section shall be determined pursuant to this subsection and in the following order:

(1) first, from sources identified under subsection (c) hereof;

(2) then, from sources identified under subsection (a) hereof; and

(3) then, subject to the provisions of subsection (b), from sources identified in subsection (b) hereof.

(i) The provisions of this section do not apply to mineral revenues received from the Outer Continental Shelf.

LAND SELECTION FOR ECONOMIC POTENTIAL

SEC. 19. (a) Upon application filed by the Services Corporation with the Commission and upon certification thereof, the Secretary shall issue a patent, without payment therefor, to the Services Corporation, subject to all valid and existing rights, to the appropriate interest in any public lands located in the State as provided in subsection (b) hereof. Any lands within the national park system, national wildlife refuge system, and national forest system, and lands withdrawn or reserved for national defense purposes including Naval Petroleum Reserve No. 4, shall be excluded from the selection rights granted to the Services Corporation by this section.

(b) The Services Corporation is granted the right to select, subject to subsection (a) hereof, lands in the amounts set out below and subject to the limitations of this section:

(1) the surface estate of one million acres of public land for timber and forest products potential, to be selected in noncontiguous tracts of two to four townships; and

(2) the surface estate of five hundred thousand acres of public land which the Services Corporation will select, administer, and grant to Natives and Native groups to avoid undue hardship; to provide protection for cemeteries, abandoned villages, and areas of historical and cultural significance to Natives; and for such other equitable purposes as the Services Corporation deems appropriate: *Provided*, That tracts selected pursuant to this paragraph shall, insofar as possible, conform to township survey designations and shall be no larger than eight sections nor smaller than one hundred and sixty acres.

Patents issued to the Services Corporation by the Secretary pursuant to this section shall cover only the interests in land designated in subsection (b) (1) and (2) hereof. The remaining estate shall be held by the United States and shall be subject to the applicable public land laws of the United States.

(c) Lands granted pursuant to this section are granted to provide the Services Corporation with a diversified land resource base, to avoid hardship, and to create opportunities for Natives to enter commercial enterprises not otherwise readily open to them. The Secretary and the State may submit comments upon the Services Corporation's applications for proposed land selections. The decision of the Commission in certifying applications shall, without regard to section 6(j), be final.

(d)(1) Lands selected and granted pursuant to subsection (b)(1) must be at least ten miles outside the boundaries of any city organized as a municipal corporation under State law. Lands granted pursuant to subsection (b)(1) shall be managed in accordance with sustained yield principles of forest management.

(2) "Noncontiguous" for the purposes of this section means that any tract selected under subsection (b)(1) hereof must be separated from any other tract selected by an area at least twice as large as the largest of the areas selected.

(3) All selections made pursuant to this section shall be surveyed by the Secretary and shall conform to township survey designations.

(e)(1) Lands granted pursuant to subsection (b)(1) hereof shall be selected within two years of the date of enactment of this Act. In the event that the Services Corporation, the State, and the Secretary are unable to agree upon a mutual plan for the selection of these lands, the Services Corporation shall select four townships, then the State may identify four townships to be reserved for State selection under the Statehood Act (72 Stat. 341, 77 Stat. 223). The Services Corporation then shall select four more townships and the State shall identify until the Services Corporation's selection rights are exhausted. State identification acts only as a withdrawal for purposes of subsection (b)(1) hereof and does not grant any rights nor does it interfere with any other selection rights granted by this Act. In the event of any overlap or conflict with the selection rights granted to Village Corporation, the village selection right shall have priority.

(2) Lands granted pursuant to subsection (b)(2) hereof shall be selected within ten years of the date of enactment of this Act. In the event of conflict, lands selected pursuant to subsection (b)(2) shall have priority over selections by the State pursuant to the Statehood Act (72 Stat. 341, 77 Stat. 223). At the end of ten years the right of selection shall terminate and any remaining right of the Services Corporation to select additional lands shall revert to the United States.

(f) (1) Upon application filed by the North Slope Native Corporation with the Commission and upon certification thereof by the Commission, the Secretary shall issue a patent, without payment therefor, to the North Slope Native Corporation, subject to all valid and existing rights, to the land and all interests therein of any public lands located in the State of Alaska as provided in subsection (2) hereof. The North Slope Native Corporation shall be entitled to retain 50 per centum of revenues derived from the sale, lease, permit, development, use or other disposition of the mineral estate of the land to which it acquires a patent under section 19(f)(1). The remaining 50 per centum of such net proceeds shall be paid to the Services Corporation for distribution in accordance with the formula set forth in section 9(d)(1) of this Act. Any lands within the National Wildlife Refuge system and lands withdrawn or otherwise reserved for national defense purposes other than Naval Petroleum Reserve No. 4, shall be excluded from the selection rights granted to the North Slope Native Corporation by this subsection (f).

(2) The North Slope Native Corporation is granted the right to select, subject to subsection (f)(1) hereof, five hundred thousand acres of land and all interests therein, subject to all valid and existing rights. Lands granted by this subsection shall be selected from the geographic region designated by the Commission pursuant to subsection 9(a)(1) and shall be within or contiguous to the areas withdrawn pursuant to section 13(b)(1) respecting any of the Native Villages named in section 13(c) that are located in such region. All selections made pursuant to this section shall be surveyed by the Secretary, shall conform to township survey designations, and shall be in tracts of two to four townships.

(3) Lands granted pursuant to this subsection shall be selected within two years of the date of enactment of this Act. In the event of any overlap or conflict the priority of land selections shall be as follows:

(A) The Village Corporations;

(B) The North Slope Native Corporation; and

(C) The State of Alaska.

(4) Prior to certifying applications under subsection (f)(1) hereof, the North Slope Native Corporation shall prepare and submit to the Commission a comprehensive land-use plan for the lands designated in the application.

REVOCATION OF INDIAN ALLOTMENTS IN ALASKA

SEC. 20. (a) No Native covered by the provisions of this Act may hereafter avail himself of an allotment under the provisions of any Indian allotment Act including the Act of February 8, 1887, as amended and supplemented (24 Stat. 389; 25 U.S.C. 334, 336), or the Act of June 25, 1910 (36 Stat. 363; 25 U.S.C. 337). Further, the Act of May 17, 1906, as amended (34 Stat. 197), is hereby repealed.

(b) Native persons who have deeds to lands granted by the United States pursuant to the Acts referred to in subsection (a) hereof or any other public land laws which have restrictions upon the sale, use, or disposal of such lands shall, upon application to the Secretary, be granted unrestricted deeds.

PROTECTION OF SUBSISTENCE RESOURCES

SEC. 21. (a) The Secretary is authorized and directed to classify, in accordance with appropriate ecological criteria, varying environmental circumstances and varying subsistence needs, public lands surrounding any or all of the Native Villages and groups for which lands are withdrawn under sections 13 through 15 and under section 23 as Subsistence Use Units.

(b) The Secretary in preparing such classifications shall hold public hearings concerning the proposed classifications units and shall consult with the State and other appropriate departments of the Federal Government and invite the comments of all parties concerned. Upon determining the lands and resources required for subsistence use in each area, the Secretary shall publish notice in the Federal Register of a proposed classification. Classification of an area as a Subsistence Use Unit shall not prevent disposal of such lands under the public land laws in conformity with subsection (a) hereof.

(c) After an area has been classified as a Subsistence Use Unit and final notice thereof has been published, the Secretary may, upon petition by residents of, or request by a local governing body within the unit, and upon the concurrence of the State, determine that the health, welfare, or livelihood of residents of the unit are threatened by the depletion of subsistence resources. Upon such a determination, the Secretary may close the area to entry by persons for the purpose of fishing, hunting, and/or trapping other than by residents of the unit for subsistence purposes.

(d) The maximum duration of such emergency closure shall be two years unless, after a public hearing, the Secretary determines the closure should be extended for an additional two-year term.

(e) Any person who knowingly enters upon lands within a subsistence-use classification unit closed under the provisions of this section, for the purpose of hunting, fishing, or trapping in violation of said closure, shall be guilty of a trespass against the United States and shall be subject to a fine of $1,000 or one year imprisonment or both. Complaints may be issued and arrests may be made under this subsection by Department of the Interior personnel designated by the Secretary to enforce this section.

REVOCATION OF RESERVATIONS; EXCEPTIONS

SEC. 22. (a) Notwithstanding any other provisions of law, and except where inconsistent with the provisions of this Act, the various reserves set aside by legislation or by Executive or Secretarial Order for Native use or for the administration of Native affairs, including reserves created under the Act of May 31, 1938 (52 Stat. 593), in Alaska and hereby revoked, subject to any valid existing rights.

(b) Notwithstanding any other provision of law, lands within the various reserves described in subsection (a) hereof are hereby withdrawn from selection by the State and all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, until the Native groups that are the beneficiaries of such reserves have selected lands to which they are entitled under section 14 and until the Secretary issues a patent pursuant to section 15. The requirements set forth in subsections 13 (d) through (f) shall not apply to any Native group settled as a village or community within the various reserves described in subsection (a) hereof, and lands shall be patented to the Village Corporation representing any Native group whose reserve was revoked pursuant to this section without regard to subsections 13 (d) through (f).

(c) Notwithstanding any other provision of law, the Tanina Indians, the beneficiaries of the Moquawkie Reservation (hereinafter referred to as the Tyonek Indians), shall vote, within one year of the date of enactment of this Act, under procedures established by the Secretary, whether their tribe:

(1) shall accept abolition of the existing reservation and a grant to an appropriate entity of which they are the members, stockholders or owners, of twenty-six thousand nine hundred and eighteen acres of such reservation lands, subject to the condition that the mineral estate underlying such lands may not be sold by the Tyonek Indians to anyone other than the United States or the State: *Provided*, That the Tyonek Indians may lease such lands; or

(2) shall accept abolition of the existing reservation and be entitled to full benefits under the terms of this Act.

In the event the Tyonek Indians decide to acquire title to the Moquawkie Reserve set aside by Executive order of February 27, 1915, in accordance with this subsection (1) hereof, the Secretary shall issue a patent to the appropriate entity referred to in subsection (1) hereof to all lands and interests in lands (including oil, gas, and other minerals) within such Reserve, subject to valid existing rights, and the Tyonek Indians shall not be eligible for benefits under this Act. Where, prior to such patent, a lease, contract, or permit has been issued for the utilization of surface or mineral resources covered by such patent, the patent shall contain provisions making it subject to the lease, contract, or permit and the right of the lessee, contractee, or permittee to the complete enjoyment of all rights, privileges, and benefits granted him by such lease, contract, or permit. Upon issuance of such patent, the appropriate entity referred to in subsection (1) hereof shall succeed and become entitled to any and all interests of the United States as lessor, contractor, or permitter, in any such leases, contracts, or permits covering the surface or minerals patented. The administration of such lease, contract, or permit shall continue to be by the United States.

(d) The Annette Islands Reserve established by the Act of March 3, 1891 (26 Stat. 1101), is hereby excluded from and shall not be affected by the terms of this section and the terms of this Act.

(e) Nothing in this Act shall repeal, modify, or otherwise affect the right of the Secretary to establish a townsite on Saint Paul Island or the right of Natives of the Pribilof Islands to acquire title to tracts therein pursuant to the Act of November 2, 1966 (80 Stat. 1094), and to participate in the benefits under this Act.

TLINGIT-HAIDA SETTLEMENT

SEC. 23. (a)(1)(A) There are hereby withdrawn, subject to valid existing rights, from selection by the State under the Alaska Statehood Act (72 Stat. 341, 77 Stat. 223 and from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, all public lands, including lands in the Tongass and Chugach National Forests, in each township, which encloses all or part of any Native Villages listed in subsection (b) hereof, and any Native Villages not listed, but which are located in southeast Alaska and which are approved by the Commission pursuant to this section, plus all public lands in each one-quarter township which is contiguous to or corners upon the townships in which such Native Villages are located, except lands withdrawn or otherwise reserved for national defense purposes, as shown on current plats of survey or protraction diagrams of the Bureau of Land Management, or protraction diagrams of the State where protraction diagrams of the Bureau of Land Management are not available.

(B) At the time any Native Village not listed in subsection (b) hereof is approved for benefits under this Act by the Commission pursuant to this section, there shall be withdrawn, subject to valid existing rights, from selection by the State under the Statehood Act and from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, all public lands, including lands in the Tongass and Chugach National Forests, in each township which encloses all or part of the Native Village, plus all lands in each one quarter township which is contiguous to or corners upon the township in which the Native Village is located, except lands excepted from withdrawal under subsection (a)(1)(A) hereof.

(2) Any and all claims of the Tlingit and

Haida Indians to the two and six-tenths million acres of land in southeast Alaska referred to in the Court of Claims case of "Tlingit and Haida Indians of Alaska against United States," jacket number 47900, are hereby extinguished.

(3) The benefits provided for in this Act and the lands granted pursuant to this section are in addition to the judgment award received by the Tlingit and Haida Indians of Alaska in the Court of Claims and constitute full and final compensation for the extinguishment of title made in subsection (a)(2) hereof, and are in lieu of the additional land selection rights granted Village Corporations outside of southeast Alaska by sections 13 to 15.

(b) The following Native Villages are qualified for withdrawals under the provisions of subsection (a) hereof:

Craig, Southeast.
Hoonah, Southeast.
Hydaburg, Southeast.
Kake, Southeast.
Kasaan, Southeast.
Klawock, Southeast.
Klukwan, Southeast.
Saxman, Southeast.
Tatitlek, Gulf of Alaska.
Yakutat, Southeast.

(c) Any of the villages listed in subsection (b) hereof shall not be eligible for land or benefits under this Act if the Commission determines within three years from the effective date of this Act, that—

(1) less than twenty-five Alaska Natives are residents of the village;

(2) the village is of a modern and urban character, that the majority of the residents are non-Native, and that the best interests of the Native residents would be served if they derived benefits through the Urban Corporation and other land provisions of this Act rather than as a Native Village; or

(3) the village was not in existence as of the date of enactment of this Act: Provided, That this provision shall not be used to exclude any Native Village otherwise eligible which has been required to move to a new location because of a natural disaster or the actions of any governmental agency.

(d) Native Villages located within southeast Alaska and not listed in subsection (b) hereof shall be eligible for land and benefits under this Act and added to the village roster if the Commission determines that—

(1) twenty-five or more Alaska Natives are residents of an established village; and

(2) the best interests of the Native residents would be served if they derived benefits under the Act as a Village Corporation; and

(3) the village would not be disqualified by the provisions of subsection (c) hereof.

(e) In making the determinations required pursuant to subsections (c) and (d) hereof, the Commission shall review all relevant evidence offered by the members of the concerned Native group or their representatives and shall review any recommendations of the State, the Secretary or the Secretary of Agriculture. The Commission's determination shall, without regard to subsection 6(j), be final.

(f) In addition to determining which villages are entitled to land and other benefits under the terms of this section and this Act, the Commission shall determine the total land acreage to which eligible Village Corporations shall be entitled to select pursuant to this section. In no event shall any Village Corporation be awarded a grant of more than twenty-three thousand and forty acres. In making determinations pursuant to this subsection the Commission shall consider the following factors:

(1) the Native population of the Village;

(2) the nature of the use, both historic and present, of the lands surrounding the Native Village including the carrying capacity of the surrounding lands and biological community in relationship to the village population and subsistence use patterns of the Native residents therein;

(3) the amount of land needed for prospective community expansion, the area to be granted to Municipal Corporations or the State, and the area to be granted for access, rights-of-way, and other public services and facilities;

(4) the nature and economic value of the lands surrounding the village (without regard to the mineral estate) for the purpose of insuring some degree of comparability in value as between Native Villages; and

(5) the comprehensive land use plan prepared by the Village Corporation with the assistance of the Services Corporation staff pursuant to subsection (8)(1) hereof.

In making the determinations required by this subsection the Commission shall consider the geographical relationship of individual villages to the land in question and should avoid determinations which result in land grants that are separated by large bodies of water unless one of the above factors make such a determination reasonably necessary. The Commission's determination under this subsection shall, without regard to section 6(j), be final.

(g) If the Secretary determines that a substantial dispute is involved or that the best interests of justice would be served he may direct that a public hearing be held in accordance with such rules as he shall prescribe prior to making any of the withdrawals he is required to make by this section. Any hearings pursuant to this subsection shall be held within one year of the date of enactment of this Act. The Commission shall consider, in any contested case, the hearing record prepared by the Secretary as well as his recommendations and the recommendations of the Secretary of Agriculture in making its determination. The actions of the Commission under this subsection shall, without regard to subsection 6(j), be final.

(h) Pending the disposition of any national forest lands withdrawn under this section, the Secretary of Agriculture is authorized to take such actions, subject to existing rights, as may be necessary to administer, manage and protect such lands for the benefit of the potential beneficiaries and, in so far as is consistent with this section, in accordance with the laws, rules, and regulations applicable to the national forests and to permit access or grant easements, rights-of-way, or other interests in lands for the purpose of administration, use, or development of contiguous or adjacent national forest lands not withdrawn.

(i) Upon application of any Native Village found eligible for land selections pursuant to this section and upon certification thereof by the Commission, and after survey of the area selected pursuant to subsection (m)(1) the Secretary shall issue a patent, without payment therefor, to the Village Corporation, or, if not yet incorporated, in trust to the Services Corporation for the benefit of the Native Village pending its incorporation as provided in section 11, for that amount of land to which the Native Village is found entitled by the Commission pursuant to the procedures set out in this section. Lands to be patented may be selected, subject to all valid existing rights, from any public land within areas withdrawn for each Native Village under the provisions of this section.

(j) In exercising selection rights pursuant to this section, Village Corporations shall select from among the public lands withdrawn pursuant to this section and all such selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water or by lands which are unavailable for selection, and shall be in whole sections and, wherever feasible, in units of not less than six hundred and forty acres. In the event the public lands withdrawn pursuant to this section are not sufficient in amount to satisfy the entitlement of any Native Village Corporation, as determined by the Commission, such Corporation may select noncontiguous tracts from the Tongass National Forest in order of their proximity to the center of the village until the Native Village Corporation's selection rights are exhausted.

(k) Within two months after a determination by the Commission that a Native Village is eligible for a grant of land pursuant to this section, the Secretary shall conduct an election for the village, under such rules and regulations as he may prescribe, to choose a five-member Village Land Selection Committee. The committee so elected is hereby authorized to exercise the land selection rights of the village pending organization of the Village Corporation. The persons entitled to vote in the election or serve on the Land Selection Committee shall be the members of each Native Village nineteen years of age or over, as shown on the temporary census roll prepared pursuant to section 7(a).

(l) All public lands withdrawn pursuant to this section, which have not been selected by a Village Corporation, shall be restored eighteen months after the effective date of this Act, or six months after the election required under subsection (k) hereof, whichever later occurs, to the status in which such lands have been placed pursuant to section 23 of this Act: *Provided*, That lands withdrawn around a village whose eligibility for land selection has not been finally determined by the Commission within eighteen months after the effective date of this Act shall remain withdrawn until six months after the Commission makes the determinations required pursuant to this section.

(m)(1) The Secretary shall promptly survey the townships withdrawn under this section and the areas selected for conveyance to Native Villages pursuant to subsection (i) to (l) of this section, but need monument only the exterior boundaries of such townships or areas. He also shall promptly survey within the townships withdrawn or areas selected all lands occupied as a primary place of residence, a primary place of business, subsistence campsites, and for other purposes as required under subsection (2)(A) hereof, and any other land to be patented under this section.

(m)(2)(A) Upon completion of the survey of lands selected by a Village Corporation, as provided in subsection (m)(1) hereof, the Secretary promptly shall issue a patent or patents to the Village Corporation to the land and all interests therein, except minerals covered by the Federal mineral leasing laws, subject to valid existing rights, and subject to the provisions of subsection (m)(2)(B) hereof, and the provisions of subsection (i) hereof: *Provided*, That any conveyance of national forest lands under the provisions of this section shall be subject to reservations in the United States of easements, rights-of-way, or other interests in land necessary for access to or for administration, use, or development of contiguous or adjacent national forest lands not conveyed. Such easements, rights-of-way, and interests shall be based upon existing and planned roads and trails as depicted on national forest transportation system plans and related resource plans available for public inspection at the office of the Regional Forester and at the office of the Forest Service in Washington, D.C.: *Provided further*, That in any conveyance of national forest lands under this section the Secretary shall consult with the Secretary of Agriculture and, where possible without working a hardship on a Native or Native Village, shall exclude areas now used or planned to be used for the following purposes:

(i) national forest administrative sites;

(ii) airfields;

(iii) recreation sites necessary to serve visitors to national forest lands not conveyed; and

(iv) public service or other sites necessary to facilitate administration of national forest resources.

The Secretary shall, where he deems appropriate, reserve interests in land recommended by the Secretary of Agriculture as necessary for continued access to such areas. Such excluded areas shall be administered by the Secretary of Agriculture in accordance with the laws, rules, and regulations applicable to the national forests.

(B) Upon receipt of a patent or patents to selected lands, Village Corporations or the Services Corporation on their behalf—

(i) shall issue deeds to the occupants, without payment of any consideration, to the surface estate for any tracts occupied by Natives on September 1, 1969, as a primary place of residence, as a primary place of business, or used for subsistence campsites, subject to valid existing rights;

(ii) shall issue deeds to the occupants, either without consideration or upon the payment of an amount not in excess of fair market value for such property, determined as of the date of initial occupancy, and without regard to any improvements thereon, to the surface estate for any tracts occupied by non-Natives on September 1, 1969, as a primary place of residence or a primary place of business, subject to valid existing rights: *Provided*, That all occupants of the same general character shall be accorded similar treatment with respect to any payment for land;

(iii) shall issue deeds, pursuant to subsection 11(g), without payment of any consideration, to any Municipal Corporation in the Native Village or to any Municipal Corporation established in the Native Village within five years of the date of the enactment of this Act, to the surface estate of the improved land on which the village is located and of as much additional land as is necessary for community expansion, for appropriate rights-of-way for public use, airport sites, and such other interests in land as are reasonably necessary for public use and for foreseeable community needs: *Provided*, That prior to the transfer of lands from a Village Corporation to a Municipal Corporation, individuals shall receive deeds to any lands used for residences and businesses: *And provided further*, That the amount of lands to be transferred to the Municipal Corporation shall be no less than one hundred and sixty acres;

(iv) shall issue deeds to the occupants, either without consideration or upon payment of an amount not in excess of fair market value for such property determined as of the date of initial occupancy and without regard to any improvements thereon, to the surface estate of any tracts occupied on September 1, 1969, by nonprofit organizations for the purposes for which such organizations were established, subject to valid existing rights: *Provided*, That all nonprofit organizations of the same general character shall be accorded similar treatment with respect to payment for land; and

(v) may issue deeds to all others subject to valid existing rights.

Any dispute over the boundaries, use, occupancy, or value of any tract under this subsection may be submitted by any party to the dispute to the Commission for decision. The decision of the Commission, without regard to subsection 6(j), shall be final.

(m)(3) Upon completion of the survey of lands selected by any Village Corporation, as provided in subsection (m)(1) hereof, and contemporaneous with the issuance of patents to Village Corporations as provided in subsection (m)(2)(A) hereof, the Secretary shall issue a patent or patents to all minerals in such village lands covered by the Federal mineral leasing laws, subject to valid existing rights, to the Services Corporation. At the time of such conveyance, the Services Corporation shall succeed and become entitled to any and all interests of the United States as lessor, contractor, or permitter in any mineral leases, contracts, or permits covering lands selected by any Village Corporation as provided in subsection (r) of this section.

(n) Upon application filed with the Commission and certification thereof, the Secretary shall, for a period of seven years from the effective date of this Act, issue special use permits, without payment therefor, to any Native or Native group, subject to all valid existing rights, to the surface estate of any public land located in the Chugach or Tongass National Forest, but which has been used by such Native or Native group for a period of more than three years prior to the effective date of this Act as a campsite for the harvesting of fish, wildlife, berries, fuel, or other products of the land. Such permits shall be issued—

(1) for five-acre tracts for each subsistence use campsite separate from the campsite of any other applicant;

(2) for forty-acre tracts where the campsites of several applicants are in such proximity to each other as to make it not feasible to patent individual five-acre campsites; or

(3) for larger tracts, not to exceed sixty acres, where individuals can establish, under such rules and regulations as the Commission may prescribe, historic occupancy and use of the larger tracts.

Applicants for permits under this subsection must be filed with the Commission within five years after the effective date of this Act. Pending the issuance of a permit for campsites under this subsection, the Secretary is authorized to permit the use of such lands, upon which applications have been filed, as campsites. After five years after the effective date of this Act permits may be issued pursuant to the laws and regulations on the administration of the national forests.

(o) Upon application filed with the Commission and certification thereof, the Secretary shall, for a period of seven years after the effective date of this Act, issue a patent of up to, but not to exceed eighty acres of land and interests therein, except the minerals covered by the Federal mineral leasing laws, and subject to all valid existing rights, from any public lands within the areas withdrawn for Natives under this section, but not selected pursuant to subsections (i) to (l) of this section without payment therefor, to any Native occupying land within such eighty acres on the effective date of this Act as a primary place of residence.

(p) Upon application filed with the Commission and certification thereof, the Secretary shall, for a period of seven years after the effective date of this Act, issue a patent of up to, but not to exceed, forty acres to the surface estate of any public land, in Southeast Alaska including the Chugach and the Tongass National Forest, subject to all valid existing rights, without payment therefor, to Natives nineteen years of age or older occupying such land whose primary place of residence, on January 1, 1970 and continuing to the date of enactment of this Act is outside the area withdrawn for the benefit of Native Villages by this section.

(q) In carrying out the provisions of this section, patents shall be issued by the Secretary in accordance with the following priorities:

(1) Within the areas withdrawn pursuant to this section—

(A) lands selected by Native Village Corporations;

(B) land for individual places of residence; and

(C) land for subsistence campsites.

(2) Outside the areas withdrawn pursuant to this section—

(A) land for individual places of residence; and

(B) land for subsistence campsites.

(r) Where, prior to patent of any land or minerals under this section, a lease, contract, or permit has been entered into or issued for the utilization of surface or mineral resources on land covered under such patent, the patent shall contain provisions making it subject to the lease, contract, or permit and the right of the lessee, contractee, or permittee to the complete enjoyment of all rights, privileges, and benefits granted him by such lease, contract, or permit. Upon issuance of the patent, the patentee shall succeed and become entitled to any and all income from the patented land and all interests of the United States as lessor, contractor, or permitter, in any such leases, contracts, or permits covering the estate patented. The administration of such lease, contract, or permit shall continue to be by the United States. In the event that the patent does not cover all of the land embraced within any such lease, contract, or permit, the patentee shall only be entitled to the proportionate amount of the revenues reserved under such lease, contract, or permit by the United States which results from multiplying the total of such revenues by a fraction in which the numerator is the acreage of such lease, contract, or permit which is included in the patent and the denominator is the total acreage contained in such lease, contract, or permit.

(s) The Secretary shall provide as a condition to the granting of each permit to prospect, or to the granting of each lease to mine or drill for minerals covered by the Federal mineral leasing laws, which minerals are situated in lands patented pursuant to subsections (o) and (p) of this section, and are not covered by such patent, that the permittee or lessee shall provide a bond, satisfactory to the Secretary, to indemnify the surface patentee for any damages which such permittee or lessee may cause in connection with the development of such permit or lease, and further the Secretary shall include provisions in such lease or permit which will protect the surface patentee against unreasonable interference in the enjoyment of his land.

(t) Notwithstanding the provision of existing national forest timber sale contracts extending for a period more than three years from the date of this Act and directly affected by conveyances authorized by this Act, the Secretary of Agriculture is authorized to modify any such contracts with consent of the contractor to adjust the areas to which it or they apply for the purpose of avoiding hardship to Natives, unnecessary conflicts, and of offsetting the impacts of conveyances or special use permits authorized by this Act on national forest lands which are subject to any such contracts. Wherever possible such contracts shall be modified to avoid any overlap or conflict with lands withdrawn and lands selected and patented pursuant to this section.

TRANSITIONAL OPERATION OF PUBLIC LAND LAWS

SEC. 24. (a)(1) Except as otherwise provided in this Act, all unreserved public lands in Alaska which have not been previously classified by the Secretary are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, for not to exceed five years. The Secretary of the Interior is hereby authorized, at his discretion, and after consulting with the State, to classify any lands withdrawn by this section and to open to mineral leasing, entry, selection, or location for disposal in accordance with applicable public land laws, such lands as he determines are chiefly valuable for the purposes provided for by such laws.

(2) Nothing in this section shall restrict the land selection rights of the State under the Statehood Act (72 Stat. 341), or restrict

the acquisition, granting, or use of leases, permits, or rights-of-way under existing law, except that rights-of-way under Revised Statutes section 2477 shall take effect only under such terms and conditions as the Secretary may establish.

(3) In making the classifications required by subsection (a)(1) hereof the Secretary shall conduct detailed studies and investigations of all unreserved public lands in Alaska, and of Naval Petroleum Reserve No. 4 and the Rampart Power Site Withdrawal, which are suitable for inclusion as recreation, wilderness or wildlife management areas within the National Park System and the National Wildlife Refuge System, and shall advise the Congress within three years of the date of passage of this Act of the location, size and values of such areas, and shall simultaneously with notification to the Congress withdraw these areas from any appropriation under the public land laws, including application of the mining and mineral leasing laws, until such time as the Congress acts upon the Secretary's recommendations, but not to exceed the five year period during which all unreserved public lands are hereby withdrawn from appropriation.

(b) Upon the application of any applicant qualified to make entry, selection or location, under the public land laws, on lands not classified for entry under subsection (a) hereof, the Secretary shall examine the lands described in the application and if he classifies them as suitable for the purpose described in the application and opens them to entry, said applicant shall be entitled to enter, select or locate, such lands.

ALASKA NATIVE FOUNDATION

SEC. 25. (a)(1) There shall be created an Alaska Native Foundation during the ninety-day period prior to the dissolution of the Services Corporation as provided in subsection 8(h) of this Act. The Foundation shall be a nonprofit membership corporation with the powers hereinafter granted.

(2) The Foundation shall not be an agency or establishment of the United States Government.

(b)(1) The board of directors of the Services Corporation on the date specified in subsection (a) hereof shall act as the incorporators of the Foundation.

(2) The incorporators shall prepare the original articles of incorporation and bylaws for the Foundation, subject to the approval of the Secretary of the Treasury, in a form consistent with the provisions of this section and in a form that shall qualify the Foundation for tax exemption under section 501(c)(3) of title 26, United States Code or any successor provisions thereto.

(3) The incorporators shall serve as the initial board of directors until permanent directors are appointed as provided in subsections (c) and (e). The incorporators shall file the articles of incorporation with the Secretary within thirty days, and the Foundation shall be deemed to be formally organized as of the date of such filing. The incorporators also shall transmit a copy of the articles of incorporation to the Commissioner of Commerce of the State.

(c)(1) The management of the Foundation shall be vested in a board of directors which, with the exception of the initial board, shall consist of the members of the Foundation as selected in accordance with subsection (e).

(2) The board of directors shall elect a chairman annually from among its own membership.

(d) The Foundation shall have a president, and such other officers as may be named and appointed by the board, at rates of compensation fixed by the board and serving at the pleasure of the board. The president and other officers of the Foundation may, but need not, be members of the Foundation.

(e)(1) There shall be seventeen members of the Foundation, fourteen of whom shall be initially elected by the voting members of the Services Corporation on the following basis:

(A) one member representing each of the twelve regions as determined by section 9 of this Act;

(B) one member representing the members of the Urban Alaska Native roll;

(C) one member representing the members of the Alaska Native National roll; and

(D) three members shall be appointed by the Governor of the State.

(2) Members of the Foundation shall be entitled to reasonable fees and shall serve until their death, resignation, retirement, or removal for cause. A member be removed only by a two-thirds vote of the members of the Foundation (without the participation of the affected member) upon a showing of physical disability or mental impairment preventing the reasonable performance of his duties, or upon a showing of a willful failure to perform his duties in a reasonable manner.

(3) Upon the death, resignation, retirement, or removal of a member, the remaining members shall elect a new member by a majority vote.

(f)(1) The purposes of the Foundation shall be to engage exclusively in charitable, educational, and scientific activities for the benefit of individuals of Native background.

(2) In furtherance of the purposes set forth in subparagraph (1), the Foundation may carry out such charitable, educational or scientific projects as may be consistent with its status as an organization exempt under section 501(c)(3) of title 26, United States Code, or any successor provisions thereto.

(g)(1) The Foundation shall have and may exercise all rights and powers vested in a nonprofit membership corporation under the laws of the State.

(2) The Services Corporation before its dissolution pursuant to section 8(h) of this Act, shall distribute to the Foundation and its incorporators sufficient funds to meet the necessary costs of the Foundation's organization and initial operation.

ATTORNEY FEES AND EXPENSES

SEC. 26. (a) The chief commissioner of the Court of Claims is authorized to receive, consider, and settle, in accordance with the provisions of this section, any unreimbursed claim submitted to him for attorneys' fees, and out-of-pocket expenses by any person in connection with services rendered, on or before the date of the enactment of this Act, on behalf of any Native, Native Village, statewide or Regional Native Associations or other Native tribe, band, or group (1) in the actual prosecution pursuant to any contract, of a claim pending before any court or the Indian Claims Commission which is dismissed pursuant to this Act, or (2) for legal representation with respect to the scope and preparation of this Act and previously proposed legislation to settle claims against the United States or the State based upon aboriginal right, title, use, or occupancy of lands by Natives, or with respect to litigation (other than litigation covered under clause (1) involving the validity of or otherwise affecting such claims.

(b) Any claim made pursuant to subsection (a) of this section shall be filed with the chief commissioner of the Court of Claims within six months following the date of the enactment of this Act, and shall be in such form and contain such information as the chief commissioner shall prescribe. The chief commissioner shall give reasonable notice to the interested parties and an opportunity for them to be heard and to present evidence before making a final determination upon any such claim. The amount of attorney fees payable pursuant to any claim filed in accordance with this section shall be determined by the chief commissioner on a quantum meruit basis. Out-of-pocket expenses shall be approved for payment pursuant to this section only if the chief commissioner has first determined that such expenses were unreimbursed and were necessary, reasonable, and actually incurred.

(c)(1) No more than $100,000 in the aggregate shall be available for the payment of claims for attorneys' fees (exclusive of approved out-of-pocket expenses) for such services (referred to in subsection (a)) rendered prior to January 1, 1964. In the event that the amount determined by the chief commissioner to be payable as attorneys' fees for such services rendered prior to such date exceeds in the aggregate $100,000, the chief commissioner shall authorize, in accordance with subsection (d), payment of each such claim for such fees on a pro rata basis so that the aggregate amount authorized therefor does not exceed $100,000.

(2) No more than $400,000 in the aggregate shall be available for the payment of claims for attorneys' fees (exclusive of approved out-of-pocket expenses) for such services (referred to in subsection (a)) rendered during the period commencing January 1, 1964, and ending on December 31, 1967. In the event that the amount determined by the chief commissioner to be payable as attorneys' fees for such services rendered prior to such date exceeds in the aggregate $400,000, the chief commissioner shall authorize, in accordance with subsection (d), payment of each such claim for such fees on a pro rata basis so that the aggregate amount authorized therefor does not exceed $400,000.

(3) No more than $1,000,000 in the aggregate shall be available for the payment of claims for attorneys' fees (exclusive of approved out-of-pocket expenses) for such services (referred to in subsection (a)) rendered during the period commencing January 1, 1968, and ending on the date of the enactment of this Act. In the event that the amount determined by the chief commissioner to be payable as attorneys' fees for such services rendered during such period exceeds in the aggregate $1,000,000, the chief commissioner shall authorize, in accordance with subsection (d), payment of each such claim for such fees on a pro rata basis so that the aggregate amount authorized therefor does not exceed $1,000,000.

(d) The chief commissioner of the Court of Claims shall certify to the Secretary of the Treasury, with respect to each such claim, the name and address of the claimant and the amount determined by the chief commissioner, pursuant to subsection (c), to be payable to such claimant under this section for attorneys' fees and out-of-pocket expenses. The Secretary of the Treasury, upon receipt of such certification, shall pay to each such person named therein the amounts so certified. Any amounts so certified as attorneys' fees shall be payable from moneys in the Fund set aside pursuant to section 5(a)(1) of this Act. Such amounts so certified as out-of-pocket expenses shall be payable from other moneys in such Fund.

(e) No remuneration on account of any such services referred to in subsection (a) of this section and for which a claim is made pursuant to this section shall be received by any person for such services in addition to the amount paid in accordance with this section, and any contract or other agreement to the contrary shall be void. Whoever receives, on account of such services, any remuneration in addition to the amount paid in accordance with this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

TAXATION

SEC. 27. (a) The compensation paid to Natives pursuant to section 5(a) of this Act, and any interest earned with respect thereto while such funds are deposited in the Fund

or are invested by the Secretary pursuant to section 5, shall not be subject to any form of Federal or State taxation either (1) at the time of receipt, or (2) upon distribution to any Native corporation or individual Native, whether directly by a per capita payment or indirectly through such corporation or corporations. For purposes of this subsection, the first dividend payments or other cash distributions made by any Native corporation shall be deemed to be distributions out of its share of funds derived from section 5(a), including interest, until such share has been fully distributed.

(b) The compensation paid to the Natives pursuant to section 5(b) of this Act, and any interest earned with respect thereto while such funds are deposited in the Fund, shall not be subject to any form of Federal or State taxation either (1) at the time of receipt, or (2) upon distribution to any Native corporation or individual Native, whether directly or by a per capita payment or indirectly through such corporation or corporations, for a period of twelve fiscal years commencing with the fiscal year during which this Act becomes effective. For purposes of this subsection, the first dividend payment or other cash distributions made by any Native corporation, after the distribution of compensation paid pursuant to section 5(a) in accordance with subsection (a) hereof, shall be deemed to be distributions out of its share of funds derived from section 5(b), including interest. After the expiration of the foregoing twelve fiscal years period, the compensation paid to the Natives pursuant to section 5(b) and any interest with respect thereto while such funds are deposited in the Fund, shall not be subject to Federal or State income taxation at the time of receipt, but shall be subject to taxation upon distribution to any Native or Native corporation on the same basis as like income is taxed when received by a non-Native individual or corporation.

(c) The receipt of shares of stock in the Investment Corporation or its successor by or on behalf of any Native pursuant to section 10 (g) or (l) or pursuant to section 8(h) by a successor to the Services Corporation shall not be subject to any form of Federal, State or local taxation. The basis for computing gain or loss on subsequent sale or other disposition of any shares in the successor to the Investment Corporation issued pursuant to section 10(l) or in any successor to the Services Corporation issued pursuant to section 8(h) shall be the fair market value of such shares at the time of receipt.

(d) The receipt of money or other property pursuant to section 8(h) or 10(l) by the successor to the Investment Corporation or pursuant to section 8(h) by a successor to the Services Corporation shall not be subject to any form of Federal, State or local taxation. No money or property so received shall be treated as a contribution to capital for purposes of section 362(c) of the Internal Revenue Code, title 26, United States Code. The basis for computing gain or loss on subsequent sale or other disposition of any property so received by the successor to the Investment Corporation, for purposes of any Federal, State or local tax, shall be the fair market value of such property at the time of receipt.

(e) The receipt of land or any interest therein pursuant to sections 13, 14, 15, 16, 19 or 23 or of cash in order to equalize the values of properties exchanged pursuant to section 16(a), shall not be subject to any form of Federal, State or local taxation. The basis for computing gain or loss on subsequent sale or other disposition of such land or interest in land for purposes of any Federal, State or local tax imposed on or measured by income shall be the fair market value of such land or interest in land at the time of receipt.

(f) Real property interests conveyed, pursuant to this Act, to a Native individual, group, village, corporation, or any other Native organization, shall be exempt from State real property taxes for a period of twelve fiscal years after the effective date of this Act: *Provided,* That municipal taxes, real property taxes, or assessments may be imposed upon individually owned real property within its jurisdiction by any Native village incorporated as a governmental unit under the laws of the State: *And provided further,* That easements, rights-of-way, leaseholds, and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits, and other revenues or proceeds, derived from such real property interests shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

(g) Real property interests conveyed, pursuant to this Act, to a Native individual, group, village, corporation, or any other Native organization, shall, so long as the fee therein remains not subject to State or local taxes on real estate, continue to be regarded as public lands for the purpose of computing the Federal share of any highway project pursuant to title 23 of the United States Code, as amended and supplemented, and so long as there are also no substantial revenues from such lands, continue to receive forest fire protection services from the United States at no cost.

(h) The Foundation established pursuant to section 24 shall be treated as a private foundation for purposes of applying the taxes and restrictions on self-dealing provided for in section 4941 of the Internal Revenue Code, title 26, United States Code, and on expenditures for political purposes described in section 4945(d) (1) and (2) of the Internal Revenue Code, title 26, United States Code, or corresponding provisions of subsequent law, but otherwise shall not be treated as a private foundation.

REVIEW BY CONGRESS

SEC. 28. On or before March 1 of each year during the thirteen years following the effective date of this Act, the Commission, until its termination, and the Secretary, respectively, shall submit reports to Congress concerning the operation and implementation of this Act during the previous calendar year. Within ninety days after the end of each five-year period following enactment of this Act, the Commission and the Secretary also shall submit to Congress, through the President, a joint report on the status of the Natives and their organizations, a summary of actions taken under this Act, and their respective recommendations as may be appropriate for extension, amendment, or clarification of any provisions of this Act. This joint report and the Commission's annual report shall include as an appendix all statements, memorandums, reports, and other written comments presented to the Commission for forwarding to Congress by any Native village, corporation, or association.

APPROPRIATIONS

SEC. 29. (a) There is authorized to be appropriated to the Alaska Native Commission such sums as are necessary to carry out the functions and responsibilities it is required to perform under the provisions of this Act.

(b) There is authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to prepare the temporary roll, to survey lands to be granted pursuant to this Act, to classify lands and to carry out other functions and responsibilities required to be performed under the provisions of this Act.

(c) The President of the United States is requested to advance from the contingency fund established for his office such sums as the Director of the Bureau of the Budget determines to be necessary to defray the initial organizational and administrative expenses of the corporations to be established pursuant to this Act, pending the availability of moneys in the Fund. Such advances shall be reimbursed to the President's contingency fund from the Fund when sufficient moneys become available therein.

PUBLICATIONS

SEC. 30. The Secretary of the Interior and the Commission are authorized to issue and publish in the Federal Register, pursuant to the Administrative Procedures Act (5 U.S.C. 500 and following) such regulations as may be necessary to carry out the purposes of this title.

SAVING CLAUSE

SEC. 31. Except as specifically provided for in this Act, nothing in this Act shall be construed as repealing any other provision of Federal law applicable to Alaska. To the extent that there is a conflict between any provision of this Act and any other Federal laws applicable to Alaska, the provisions of this Act shall govern.

Mr. GRAVEL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ALASKA CLAIMS BILL

Mr. KENNEDY. Mr. President, last December, as the Alaska claims bill was going into markup in executive session of the Interior Committee, I addressed this body on what I regarded at that time as the central feature in any fair settlement for the Alaska Natives: The amount of land to be confirmed in Native ownership. I think that I have reiterated in this debate what I felt should be guiding principles in Congress' efforts to settle the Alaska land problem. Basically, the Natives do not seek charity, they do not ask to be given lands or money. They merely ask to retain a portion of the 350 million acres of land to which they believe they have a valid claim, and they ask just compensation for that portion of the land which is taken from them. I hope that my past statements explain the reasons why I voted no on this bill today.

To the State of Alaska the land is a commodity, to be bought and sold, to be used and developed. To the oil companies the land represents potential profits for executives and shareholders, a resource to be exploited. But to the Native the land is life. Arctic Eskimos hunt whale, walrus and seal in the coastal waters and caribou on the tundra. The Athabascans hunt moose, beaver, muskrat, rabbit, and black bear in the forests, and gather berries in the summer. Often a thousand acres are required to support one Native.

But the white man's civilization is coming rapidly to Alaska. On the North Slope roads are being built, machinery being moved in, new communities springing up. Soon a gigantic pipeline will traverse the State, blocking herd migration and presenting a threat of great proportions to ecology of the State. The Natives will bear the greatest burden in the opening of Alaska to resource development, but so far they have not been sharing in the benefits.

Mr. President, I want to acknowledge the devotion and effort which the able Senator from Washington, the chairman of the Interior and Insular Affairs Com-

mittee has given to the passage of this legislation today. He is particularly effective and resourceful, and I know that those talents have been necessary in bringing this legislation to where it is today. I congratulate and commend him and his colleagues for their arduous and difficult work. The effort goes far, I believe, toward providing the just and fair settlement to which Congress has committed itself.

It may be, as has been said today, that the bill represents the absolute maximum compensation which can be enacted into law. I know that this is the judgment of the distinguished chairman, and of many, if not most, of his colleagues on the committee, as well as the two Senators from Alaska. Apparently they were right in that judgment, because the Senate has not been willing to go beyond their recommendation, and I accept the Senate's decision.

But I felt that we should have recognized a greater right in the Alaska Natives, that we should have declared that the compensation offered was not adequate. I, therefore, decided to register my disagreement with the final outcome of our deliberations by voting "no."

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House receded from its amendments to the bill (S. 1456) to amend section 8c(6)(1) of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 and subsequent legislation, so as to permit marketing orders applicable to apples to provide for paid advertising.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the amendments of the House to the bill (S. 2601) to reorganize the courts of the District of Columbia, and for other purposes.

The message further announced that the House had agreed to the amendment of the Senate to the bill (H.R. 11766) to amend title II of the Marine Resources and Engineering Development Act of 1966.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 16595) to authorize appropriations for activities of the National Science Foundation, and for other purposes.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 16915) making appropriations for the legislative branch for the fiscal year ending June 30, 1971, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. ANDREWS of Alabama, Mr. KIRWIN, Mr. YATES, Mr. CASEY, Mr. EVANS of Colorado, Mr. MAHON, Mr. BOW, Mr. LANGEN, Mr. REIFEL, and Mr. DEL CLAWSON were appointed managers on the part of the House at the conference.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

S. 980. An act to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes;

H.R. 12758. An act to authorize the Secretary of the Interior to establish a volunteers in the park program, and for other purposes; and

H.R. 16595. An act to authorize appropriations for activities of the National Science Foundation, and for other purposes.

LEGISLATIVE PROGRAM

Mr. GRIFFIN. I thank the distinguished Senator from Nebraska for yielding, and I take this occasion to inquire of the distinguished majority leader——

The PRESIDING OFFICER. The Senator will suspend until order is restored. There is a lot of talk going on between Senators. Senators will please refrain from conversation.

Mr. GRIFFIN. I think all Members will be interested, because I want to inquire of the distinguished majority leader whether he can advise us concerning the legislative schedule for the rest of the day and the rest of the week, if possible.

CANYONLANDS NATIONAL PARK, UTAH

Mr. MANSFIELD. Mr. President, in response to the questions raised by the distinguished minority leader, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 924, S. 26, that it be laid before the Senate and made the pending business, and when disposed of, to be followed by Calendar No. 925, S. 27.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 26) to revise the boundaries of the Canyonlands National Park in the State of Utah.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Interior and Insular Affairs with amendments, on page 1, line 11, after the word "National", strike out "Park'," and insert "Park, Utah,' "; on page 2, at the beginning of line 1, strike out "LNPSW–1001A–CAN," and insert "164–91004"; in the same line, after the word "dated", strike out "August 1967," and insert "June 1970,"; in line 3, after the word "and", strike out "fifty-three thousand three hundred and fifty", and insert "thirty-seven thousand two hundred and fifty-eight"; in line 8, after the word "the", strike out "1964 Act", and insert "Act of September 12, 1964 (78 Stat. 934)"; in line 14, after the word "sentence;"; insert "and"; after line 14, insert:

(3) change the period after the third sentence to a colon and add the words *"Provided further,* That Dead Horse Point State Park may be acquired only by donation and upon the condition that it be administered as a part of Canyonlands National Park."; and

And at the beginning of line 20, strike out "(4)" and insert "(3)"; so as to make the bill read:

S. 26

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act of September 12, 1964 (78 Stat. 934), is revised to read:

"That in order to preserve an area in the State of Utah possessing superlative scenic, scientific, and archeologic features for the inspiration, benefit, and use of the public, there is hereby established the Canyonlands National Park which, subject to valid existing rights, shall comprise the area generally depicted on the drawing entitled 'Boundary Map, Canyonlands National Park, Utah' numbered 164–91004 and dated June 1970, which shows the boundaries of the park having a total of approximately three hundred and thirty-seven thousand two hundred and fifty-eight acres. The map is on file and available for public inspection in the offices of the National Park Service, Department of the Interior."

SEC. 2. Section 2 of the Act of September 12, 1964 (78 Stat. 934) is amended as follows:

(1) delete the words "described in section 1 hereof or" which appear after the word "area" in the first sentence;

(2) insert the words "or any amendment thereto" after the word "Act" in the third sentence; and

(3) insert the words "or any amendment thereto" after the word "Act" in the fifth sentence.

SEC. 3. Section 3 of the 1964 Act is amended as follows: insert the words "or any amendment thereto" after the word "Act".

Mr. MANSFIELD. Mr. President, these bills will be debated after the discussion of the Failing Newspaper Act. It is hoped that we will be able to get to the disposition of these two Utah proposals this afternoon. If that is the case, we will come in at 11 a.m. tomorrow, at which time the distinguished Senator from West Virginia (Mr. RANDOLPH) will have an hour.

ORDERS FOR RECOGNITION OF SENATOR GOODELL AND SENATOR NELSON TOMORROW

Mr. MANSFIELD. I ask unanimous consent that the Senator from New York (Mr. GOODELL) and the Senator from Wisconsin (Mr. NELSON) be recognized tomorrow for not to exceed 20 minutes, following the speech by the Senator from West Virginia (Mr. RANDOLPH).

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that following the conclusion of the remarks of Senator RANDOLPH, Senator GOODELL, and Senator NELSON tomorrow, there be a period for the transaction of routine morning business, with a time limitation of 3 minutes on statements therein.

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

Mr. MANSFIELD. At the conclusion of the morning business, it is anticipated

that the conference report on the District of Columbia crime bill will be laid before the Senate for consideration. It is a privileged matter. I understand that it may take some time to discuss, however.

Following the disposition of the conference report on the District of Columbia crime bill, it is anticipated that the Senate will proceed to the consideration of Calendar No. 1020, H.R. 17123, an act to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, and so forth, the so-called military procurement bill. That will take some time.

ORDER FOR ADJOURNMENT FROM TOMORROW TO 11 A.M. FRIDAY, JULY 17, 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 11 a.m. Friday next.

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

Mr. MANSFIELD. That concludes the report.

DONATIONS TO PRIVATE EDUCATIONAL INSTITUTIONS

Mr. ALLEN. Mr. President, the Department of Justice has filed an excellent brief and argument in the U.S. District Court, for the District of Columbia, in defense of the legality and logic of the deductible status of individual donations to private educational institutions. The Honorable Richard M. Roberts, Deputy Assistant Attorney General, at my request, has kindly provided me with a copy of the department's brief of law and argument in support of its position.

Mr. President, the brief presents cogent and compelling reasons why—in terms of constitutional law, equity, and logic—the tax-exempt status of donations to private schools should be continued. The arguments are so persuasive that I am astounded that the administration has seemingly reversed its position and now supports an opposite point of view as a matter of policy.

Mr. President, because of the limited availability to the public of copies of the brief and in view of widespread interest of lawyers, legislators, and laymen in the subject, and because of the important constitutional issues involved in the case, I ask unanimous consent that the text of the brief be printed in the RECORD.

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

[In the United States District Court for the District of Columbia, No. 1355–69]

WILLIAM H. GREEN, ET AL., PLAINTIFFS v. DAVID M. KENNEDY, SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, AND RANDOLPH W. THROWER, COMMISSIONER OF INTERNAL REVENUE, DEFENDANTS

(Brief for the defendants in opposition to plaintiffs' motion for summary judgment and in support of defendants' cross-motion for summary judgment)

This is a class action in which the plaintiffs seek a prohibitory and mandatory injunction against the Secretary of the Treasury and the Commissioner of Internal Revenue enjoining them from exempting certain private schools in Mississippi from federal taxation.

QUESTIONS PRESENTED

1. Whether the plaintiffs have standing to maintain this action.

2. Whether a declaratory judgment regarding federal taxes may be rendered in view of 28 U.S.C. 2201.

3. Whether the type of activity alleged in this action is within the scope of Title IV of the Civil Rights Act of 1964.

4. Whether federal tax exemptions to the particular private educational institutions involved herein deprive these plaintiffs of their due process rights conferred by the Fifth Amendment to the Constitution of the United States.

5. Whether the plaintiffs' motion for summary judgment was prematurely filed in view of the pending interlocutory appeal made to the Supreme Court of the United States by certain persons who have attempted to intervene in this proceeding.

6. Whether there are genuine factual questions existing on the record as to material facts which prohibit the rendering of summary judgment in favor of the plaintiffs.

STATUTES INVOLVED

The relevant statutory provisions are set forth at the Appendix, *infra*.

STATEMENT

Plaintiffs have brought the instant injunction action asking this Court to order the defendants (1) to withdraw rulings recognizing that certain particular private schools are exempt educational institutions under section 501(c)(3) and other provisions of the Code; (2) to withdraw all rulings recognizing any private segregated school—wherever located—as exempt under such provisions; (3) to issue no similar rulings in the future; (4) to subject to tax the income of such schools; and (5) to disallow as a charitable deduction all charitable contributions made to any such schools. Plaintiffs are Negro school children attending public schools in the State of Mississippi, their parents and taxpayers from the State of Mississippi. They claim that Sections 170 and 501 of the Internal Revenue Code of 1954 (Appendix, *infra*) are unconstitutional in that these provisions have the effect of establishing and maintaining segregated private schools through tax exemptions granted these schools as non-profit educational institutions. Plaintiffs further contend that income tax deductions available to persons contributing to these schools are likewise unconstitutional.

The defendants filed an answer in this case in which they raised certain jurisdictional defenses, including standing and the fact that a declaratory judgment is prohibited by the Federal Declaratory Judgment Act. The plaintiffs thereafter filed a motion for a preliminary injunction and this Court granted a preliminary injunction in its order of January 12, 1970. A motion to intervene was filed by certain parties and a order granting partial intervention was entered by this Court on January 21, 1970. That order allowed the intervention only of residents (adults and children) of Mississippi as a class representing groups which would discriminate on the basis of race and color. The other persons who attempted to intervene and who sought to do so representing a class which would discriminate on the basis of sex, religion, race, color, national origin and mental and physical disabilities and who were from without Mississippi were not allowed to intervene and have taken a direct appeal from the order of this Court to the Supreme Court of the United States. That matter is still pending before the Court.

The plaintiffs have undertaken extensive discovery in this case some of which has been objected to by the defendants. Plaintiffs have now filed a motion for summary judgment supported by various exhibits together with a statement of material facts to which they allege there is no genuine issue of fact. Defendants have submitted a cross motion for summary judgment on their behalf requesting that this action be dismissed with prejudice as a matter of law. However if the Court does not agree with the defendants legal arguments, the defendants nevertheless contend that there is a genuine issue as to material facts upon which the plaintiffs' motion for summary judgment is predicated which precludes the entry of summary judgment for the plaintiffs.

SUMMARY OF ARGUMENT

Plaintiffs lack the requisite standing to bring this action. There is no taxpayers' standing since no direct pecuniary loss particular to the plaintiffs herein can occur. In addition, the Fifth Amendment of the Constitution does not confer standing absent federal action and participation in a scheme to deny plaintiffs their constitutional rights.

The broad relief requested by plaintiffs is in the form of a declaratory judgment regarding the validity of provisions of the Internal Revenue Code of 1954. Such relief is expressly prohibited by the Declaratory Judgment Act, 28 U.S.C. § 2201.

The activity alleged in this action is not prohibited by the Civil Rights Act of 1964. The legislative history of that statute clearly establishes that the law was not intended to cover the administration of the Internal Revenue Code, and, more specifically, the effects of tax exemptions and deductions.

Defendants submit that plaintiffs have not stated a claim upon which relief can be granted and that as a matter of law defendants' motion for summary judgment should be granted; however, if this Court determines that a justificable claim has been alleged, nevertheless plaintiffs' motion for summary judgment should be denied as there exist genuine issues as to material facts. The federal tax exemptions are not equivalent to a direct subsidy by the federal government to these schools. The recognition of tax exempt status is an act of "benevolent neutrality" to benefit the general classification of educational institutions. Tax exemptions by their nature do not constitute support, maintenance or sponsorship of the recipients. As such, this federal governmental activity is constitutionally permissible since the exemption results in only minimal contact with these private schools. Assuming, *arguendo*, that the schools in issue discriminate on the basis of race, the degree of federal involvement is insignificant; no due process rights of plaintiffs are violated by the presence of tax exempt status. The dedution of contributions is even further removed from the maintenance of the schools. The deductions may benefit the contributors. but their effect upon the schools is *de minimis* for due process purposes.

The submission of the motion is premature under the circumstances of this case. A pending appeal by intervenors to the Supreme Court may result in a significant alteration of the material fact question in this litigation. A decision on the merits prior to a final resolution of the intervenors appeal would unduly complicate this proceeding and possibly prejudice the rights of the intervenor-appellants.

Plaintiffs' motion for summary judgment fails to meet the stringent requirements of Rule 56 of the Federal Rules of Civil Procedure which demand that there be no genuine issues as to material facts before a court is empowered to summarily render judgment on the legal merits of the case. The constitutional issues presented to this three judge court necessitate that a fully developed factual record be presented. The record pertaining to the significance of the federal tax exemption and deduction of contributions to these private schools is susceptible to various inferences and the factual

materials are not supportive of plaintiffs' statements of alleged undisputed material facts. The motion should be denied, without prejudice to utilize further discovery proceedings to clarify material facts. The motion could be reinstated at a later time. Otherwise a decision on the merits must await a trial of facts before this Court.

Argument I: The plaintiffs lack standing to maintain the action

It is federal law that a plaintiff in a federal court must demonstrate he has standing to maintain his action. The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not merely upon the issues he wishes to have adjudicated. *Flast* v. *Cohen*, 392 U.S. 83, 99 (1968).[1] In order to have standing, a plaintiff must allege "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of the issues upon which the Court so largely depends for illumination of difficult constitutional questions." *Baker* v. *Carr*, 369 U.S. 186, 204 (1962).

One of the leading cases on the issue of standing is *Frothingham* v. *Mellon*, 262 U.S. 447 (1923). In that case Mrs. Frothingham brought the action as a federal taxpayer in order to challenge the constitutionality of the Maternity Act of 1921. She alleged that by passing the Act, Congress had acted beyond the scope of its powers and in an area reserved to the states by the Tenth Amendment. In holding that Mrs. Frothingham lacked the requisite standing, the Court stated (page 488):

We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. *That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act.* Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than a negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. *The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.* (Emphasis supplied.)

The Supreme Court has followed the doctrine set forth in *Frothingham* in subsequent cases. In *Tileston* v. *Ullman*, 318 U.S. 44 (1943), the Court held that a doctor who sought to challenge a Connecticut statute which prohibited the use of drugs and/or instruments to prevent conception lacked standing since he asserted no "direct injury" to himself as is required by the test of standing. The insistence of the Court that a plaintiff must be able to show that he is personally injured or is in immediate danger of suffering direct injury is clearly demonstrated in *Poe* v. *Ullman*, 367 U.S. 497 (1961) in which two women sought to challenge the same statute complained of in *Tileston*. The Court held that they lacked standing even though they could demonstrate that their lives might be endangered if they were to become pregnant because they could not show they suffered from a "realistic fear of prosecution" in that there had only been one prosecution for a violation of the statute since 1879.

It is this setting in which the standing of these plaintiffs must be considered by this Court.

A. The Plaintiffs Lack Standing As Taxpayers

Although this Court held in its opinion of January 12, 1970, that it was unnecessary to reach the question of whether the plaintiffs have standing in their capacity as taxpayers, the plaintiffs nevertheless assert in their brief in support of their motion for summary judgment that they do have standing as taxpayers. We feel it necessary to make a brief reply to that contention.

The plaintiffs assert that the injury suffered by Negro taxpayers and their children which result from the existence of a segregated facility subsidized by the challenged practices cannot be measured; but they argue that since the decision of *Brown* v. *Board of Education*, 347 U.S. 483, was decided, it was been acknowledged to be present. Moreover, they attempt to show that there is an increase in the taxpayers' federal tax burden by the defendants' failure to collect federal tax revenues that would be otherwise collectible but for the allowance of deductions challenged in this case.[2] (Plaintiffs' Memorandum, page 8.) In addition, plaintiffs contend that it is beyond serious question that their class is financially injured by the higher tax rates necessitated by "illegal exemptions and deductions". (Plaintiffs' Memorandum, page 9.)

The Supreme Court has held that in order to assert a taxpayer's claim, the taxpayer must be able to show that he has suffered some direct *financial* injury. In *Doremus* v. *Board of Education*, 342 U.S. 429, 433 (1952) the Supreme Court stated:

The complaint is similarly niggardly of facts to support a taxpayer's grievance. * * * *There is no allegation that this activity is supported by any separate tax or paid for from any particular appropriation or that it adds any sum whatever to the cost of conducting the school.* No information is given as to what kind of taxes are paid by appellants and there is no averment that the Bible reading increases any tax they pay *or that as taxpayers they are, will, or possibly can be out of pocket because of it.* (Emphasis supplied.)

While the Court did not find standing for a taxpayer to challenge Bible reading in *Doremus*, it did find that a taxpayer had standing in an earlier case to challenge public appropriations which were used to reimburse parents for money spent for the bussing of children to parochial as well as public schools. *Everson* v. *Board of Education*, 330 U.S. 1 (1947). The difference in the cases was that in *Everson*, the taxpayer complained that his money was extracted from him and spent to bus children attending religious schools. The injury he asserted was a direct pecuniary injury and he argued that he was out-of-pocket because of the challenged statute. The facts in *Everson* are substantially the same as those cited in *Flast* v. *Cohen*, *supra*. In *Flast*, the federal taxpayer sought to challenge federal funds appropriated under the Elementary and Secondary Education Act of 1965 on the grounds that they were being used to finance instructions in public as well as religious schools. Those taxpayers argued that the expenditures were in contravention of the Establishment and Free Exercise clauses of the First Amendment. The Court in *Flast* held that the taxpayers had standing and in so stating reiterated the test of standing discussed in *Doremus* by stating (page 106):

The taxpayer's allegation in such cases would be that his tax money is being extracted and spent in violation of specific constitutional protections against such abuses of legislative power. Such an injury is appropriate for judicial redress and the taxpayer has established the necessary nexus between his status and the nature of the allegedly unconstitutional action to support his claim of standing to secure judicial review. (Emphasis supplied.)

The test of standing in *Flast* then is that in order for a federal taxpayer to have standing he must be able to clearly establish the nexus between the payment of *his* taxes and the misuse of *his* tax money. If he can accomplish this, he can demonstrate a direct pecuniary injury within the meaning of the test. The *Flast* test[3] is no different than the test found in either *Everson* or *Doremus*. His action must be a "good faith pocketbook action" and his grievance must be a "dollar and cents injury."

Turning our attention to this case, it is clear that these plaintiffs as taxpayers do not have the requisite standing. They are not contending that it is *their* tax money that is being misused, rather they are complaining that some other person or institution is *not* being taxed. Even if those institutions were taxed, these taxpayers cannot demonstrate that it would affect their tax burden in any way since there is no correlation between the statutes which exempt the schools from taxation and those statutes which impose the tax upon the plaintiffs. Moreover, this is not a case in which the taxpayers are claiming that money being extracted from them is being given to the institutions which allegedly segregate on the basis of race and color. Having failed to meet this test, it is obvious that their contention that they are aggrieved taxpayers is merely a "feigned issue of taxation." What these plaintiffs seek here is to air their generalized grievances about the conduct of the Government in according exemptions to the schools in question. They disagree with the Congress of the United States over the wisdom of including a section in the Internal Revenue Code which would recognize exemptions to schools without further qualifications. It is clear that their quarrel is with the legislative branch of Government and that they are not entitled to judicial relief based upon standing as taxpayers.

B. The Plaintiffs Lack Standing To Assert A Violation of Their Rights Under The Fifth Amendment To The Constitution

The plaintiffs assert, and this Court held, that they have standing to maintain this action based upon the alleged violation of the Fifth Amendment to the Constitution.

As seen in the preceding discussion, it is essential that a plaintiff be able to show that he has suffered a direct injury or is in immediate danger of suffering such an injury. Inherent in this doctrine is the concept that the injury must be by reason of or causally related to the challenged statutory provisions or administrative action, *Frothingham* v. *Mellon*, *supra*, page 488.

The injuries of which these plaintiffs complain is the reduction of state support to public schools and the inferior education which is inherent in segregated school systems. Those alleged injuries can only result from the policies of the subject private schools and the actions of the State of Mississippi in funding the public school system. The alleged injuries are not caused by, as a consequence of, or sufficiently connected to, the statutory provisions attacked in this case to afford standing to the plaintiffs. There is no evidence that the practices of these schools changed as a result of the recognition of their tax exempt status.

Since the alleged injury is necessarily a consequence of the practice of the schools in refusing to admit Negro students rather than of the challenged statutory provisions, it is obvious that the plaintiffs have failed to establish a nexus between the recognition of the exemptions and the establishment or operation of the schools.

The plaintiffs in this case attempt to equate the Fourteenth Amendment concept of state action involved in direct grants such as the state tuition grants discussed in *Coffey* v. *State Educational Finance Commission*, 296 F. Supp. 1389 (S.D. Miss. 1969), to the recognition of exemptions by the Internal Revenue Service under section 501(c)(3). They claim that the exemption constitutes federal government action with regard to the schools in violation of the Fifth Amendment. The two

Footnotes at end of article.

situations are clearly distinguishable. The Court in *Coffey* found that by giving tuition grants, the state was involved in a deliberate scheme to perpetuate segregated schools in Mississippi or at least to afford an alternative to white students who did not desire to attend desegregated public schools. In such a situation, it is clear that the state was not a neutral party. In the instant case, the Government is neutral and the recognition of the exemptions does not amount to a sponsorship by the Government of segregated schools. The exemptions are not extended to the schools in question because they are segregated; rather the exemptions are recognized simply because they are schools without any further inquiry into their social philosophy in spite of the fact that they are segregated. The primary purpose of exemptions is to foster education throughout the country without regard to the question of whether a particular school discriminates on the basis of race, sex, national origin or religion. Thus, the Government is no more involved with respect to these schools which are allegedly segregated than the City of New York was in recognizing exemptions on real property owned by churches. *Walz* v. *Tax Commission*, 38 U.S. Law Week 4347 (Sup. Ct., May 4, 1970).

The situation here differs little from that involved in *Doremus* v. *Board of Education* where a parent attempted to challenge the requirement of Bible reading in a public school on the grounds that he was a taxpayer. The Court in that case first found that he suffered no out-of-pocket injury because the Bible was read in classrooms. (See Argument I, page 10, *supra*.) The fact that there was perhaps a very slight connection between the reading of the Bible and the time expended by an instructor during which the Bible was read was so insignificant and so unrelated with respect to cause and effect that there was no standing. We submit that the same is true in the instant case. Assuming *arguendo*, that the schools in question are segregated and do prohibit the admission of Negro students, the plaintiffs have been unable to show that the mere recognition of exemptions in any way promotes or sponsors that course of action by the schools. Indeed as we will point out later in this brief, the testimony taken from representatives of the schools indicates that the fact that contributions may be deductible has had little or no impact upon whether such contributions are made to the schools.

In the words of Chief Justice Burger in the *Walz* case, *supra*, at 4350, all the Government is doing in regard to educational institutions is exercising a form of "benevolent neutrality". On the one hand, the Government could tax the schools in question and such taxation would be a form of Government involvement. On the other hand, the Government can refuse to tax the schools or, as the Court put it, the Government can refuse to require that the schools support the Government. Of the two, the lesser involvement, as the Court found in *Walz*, is probably the granting by Congress of tax exemptions to schools generally. We feel that if this Court should hold that the exemptions involved do violate the Fifth Amendment and that the plaintiffs have standing to challenge that violation, it can only be based upon the premise that the Government should take some affirmative action against the schools in question presumably by taxing these schools while not taxing other educational institutions.

Since these plaintiffs cannot show a causal connection and cannot show that they suffer a direct injury or that they are in immediate danger of suffering a direct injury because of the granting of the exemptions, we submit they do not have standing to maintain this action.

Footnotes at end of article.

II: This action is prohibited by the Declaratory Judgment Act (28 U.S.C. 2201)

In the instant suit the plaintiffs are seeking an adjudication as to the tax exempt status of certain schools which are not parties to this action as well as an adjudication as to the deductibility of contributions to those schools by various unnamed individuals who likewise are not parties to this suit. It would thus appear to be perfectly plain that the Declaratory Judgment Act, Appendix, *infra*, does not apply because the statutory requirement of seeking such a declaration *as to their own legal rights or relations* has not been met. In addition, this statute does not apply because all the substantive matters plaintiffs seek to put in issue herein relate exclusively to federal taxes as to which the statute expressly withholds jurisdiction. It is well settled that the statutory proscription against the exercise of any declaratory judgment jurisdiction applies even in controversies involving constitutional issues. See *Wingreen* v. *Brock*, 412 F. 2d 1048 (C.A. 5, 1969); *Jolles Foundation* v. *Moysey*, 250 F. 2d 166 (2d Cir. 1957).

III: Title VI of the Civil Rights Act of 1964 is not applicable to the instant matter

It would appear that the plaintiffs have abandoned their request for relief under the Civil Rights Act of 1964; specifically under the provisions contained in Section 601 of Title VI (42 U.S.C. 2000d).[4]

The gist of their earlier argument was that tax preferences constitute a form of "federal financial assistance" to the subject private schools and that the Negro school children bringing this action are persons aggrieved under the subject statute so as to warrant a finding of standing on their part to challenge the tax preferences under Title VI.

The Government maintains that Title VI of the Civil Rights Act of 1964 is intended to encompass only programs or activities which are funded by the actual expenditure of Federal funds by means of grants, loans or through contracts; and that tax exemptions neither relate to any such Federal assistance programs nor are they grants within the intent of Section 602. Consistent with this interpretation, defendants assert that the Civil Rights Act of 1964 is totally inapplicable to the circumstances of this case.

Title VI of the Civil Rights Act of 1964 provides a positive, across-the-board congressional mandate to federal departments and agencies which are empowered to extend financial assistance *under any program by way of grant, loan or contract*, to terminate or refuse to grant monies to recipients if any individual is discriminated against or refused the benefits of such a federally assisted program on the grounds of race, color or national origin. Section 601 of Title VI (42 U.S.C. 2000d) provides the basic prohibitory language:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefit of, or be subject to discrimination under any program or activity receiving federal financial assistance.

Federal financial assistance is defined in Section 602 (42 U.S.C. 2000d–1), which states in part:

Each federal department and agency which is impowered to extend federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guarantee, is authorized and directed to effectuate the provisions of Section 601 of this title with respect to such programs or activities by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objective of the statute authorizing the financial assistance in connection with which the action is taken. . . . (Emphasis added.)

An exhaustive examination of the legislative history of the Act leads to the conclusion that Title VI is intended to encompass only programs or activities which are funded by the actual expenditure of federal funds by means of grants, loans or through contracts and that tax preferences neither relate to any such federal assistance programs nor are they grants within the intent of Section 602. The prime concern of the proponents of the bill which was ultimately enacted as Title VI of the Civil Rights Act of 1964 was to insure that money raised through taxation of all the people regardless of race, color, or national origin, would be expended without discrimination on the grounds of race, color or national origin.[5] Section 601 of Title VI was to be the tool to effectuate this policy and it therefore provided that federal grants could be withheld or cut off from any specific program operated on a discriminatory basis.[6]

While no direct reference to tax exemptions was made in the hearings or debates, it is apparent from the legislative history that only grant bills and federal assistance programs were intended to be covered by Title VI. Deputy Attorney General Nicholas Katzenbach prepared at the request of Chairman Emanuel Cellers, an extensive, though not exhaustive, list of programs and activities which involve federal financial assistance within the scope of Title VI. This list, coupled with references made on the floor of the Senate to programs covered, provides an insight into the nature and extent of the various federal programs which were within the intended scope of Title VI.[7] It is apparent that by placing emphasis on specific federally funded programs, and excluding any reference to tax exemptions, Congress did not contemplate or intend that tax exemptions be considered grants to federally assisted programs within the ambit of Section 602. To hold, as plaintiffs request, that the recognition of tax exempt status constitutes "federal financial assistance" would be to extend the statute beyond the intent of Congress.

Even assuming that an economic benefit would accrue to the subject schools as a result of the Commissioner's recognition of the claimed exemptions, such recognition would not constitute a grant, any more so than the economic benefits which flow from the adjustment of loss carrybacks, depletion allowances and various other claims established pursuant to the Internal Revenue laws. We submit that there are numerous economic and financial benefits which may be availed of through a proper utilization of the tax structure by qualifying taxpayers. However, it does not follow that such benefits are grants within the intent of Section 602. If that were the case, each such benefit would be a potential vehicle for action under the Civil Rights Act of 1964, and, while Title VI is extremely broad, not even its opponent in Congress around argued that it might be so all encompassing.[8]

IV: Federal tax exemptions and deductions of contributions to these private educational institutions do not violate the fifth amendment rights of the plaintiffs

A. Federal tax exemptions to educational institutions constitute legitimate neutral government activity

The Internal Revenue Code contains provisions granting tax exempt status to privately owned and operated educational institutions[9] and also provides that contributions to these organizations are, within limitations, deductible from the contributors' adjusted gross income.[10] Plaintiffs challenge the constitutionality of these provisions, and this necessarily requires a consideration of the legislative purpose behind these statutory provisions.

Tax exemptions for charitable and educational purposes have been a part of fed-

eral tax law since its initial codification. Congress imposed no restrictions, conditions or qualifications upon recognition of institutions engaged in activities of a general educational nature,[11] but rather adopted a policy of benevolent treatment of such institutions without discriminating on the basis of their philosophical tenets or religious teachings. In this manner the Federal Government, while implementing the taxing provisions, has maintained a position of neutrality in an area which otherwise might be susceptible to excessive and non-permissible governmental influence. In issuing private ruling letters recognizing these exemptions, the Internal Revenue Service has followed the statutory directive requiring that the tax exemption be recognized if the applying organization merely states and can demonstrate that it does not operate for profit and is in fact an educational institution.[12] Aside from plaintiffs allegations of discrimination, there is no dispute that the schools involved in this proceeding are organizations of the type which are eligible for recognition as tax exempt educational institutions.

The university of the educational exemption produces results which have recently been recognized as being inherently beneficial. Justice Brennan's concurring opinion in *Walz, supra,* which considered the beneficial secular purposes of a state tax exemption granted real property used for religious purposes, is equally applicable to educational institutions. The opinion declared at 38 Law Week 4354:

Second, government grants exemptions to religious organizations because they uniquely contribute to the pluralism of American society by their religious activities. Government may properly include religious institutions among the variety of private, nonprofit groups which receive tax exemptions, for each group contributes to the diversity of association, viewpoint and enterprise essential to a vigorous, pluralistic society.

Defendants, as enforcers of the federal tax laws, are required to give effect to all statutorily prescribed exemptions, exclusions and deductions imposed by Congress in respect to the determination of tax liabilities. The Commissioner's function in the exemption area is to determine factually and legally whether an organization or a particular contribution is one within the broadly described class of organizations or contributions to which the exemption and deduction provisions apply.[13] Consequently, neither the Commissioner nor his duly appointed delegates evaluate the merits or standards of excellence of those applicants who fall within the broad statutory guidelines.

B. Tax Exemptions In The Instant Case Cannot Constitute Impermissible Federal Involvement With The Institutions Recognized As Being Tax Exempt

In raising constitutional questions relative to federal tax exemptions to schools and to deductions for contributions to schools, plaintiffs focus attention upon the essential attributes of a tax exemption. The constitutional significance of the tax exemptions to these private schools, alleged to be segregated, depends in the first instance upon the nature of the tax exemption itself.

This Court in its opinion granting plaintiff's preliminary injunctive relief equated the outright State tuition grants involved in the *Coffey* litigation to the beneficial consequences of federal tax exemptions to the same schools. This Court found the differences between the two to be "only a difference of degree". *Green* v. *Kennedy,* 70–1 U.S.T.C., par. 9176 (D. C., January 12, 1970) at p. 82, 728. This determination is in conflict with the Supreme Court's decision in the *Walz* case rendered May 4, 1970. *Walz* held that state property tax exemptions granted to religious organizations did not violate the Free Exercise or Establishment Clauses of the federal Constitution. In *Walz* the Chief Justice's opinion for the Court declared that the granting of tax exemptions affords an "indirect economic benefit" which he distinguished from an outright money subsidy which would constitute "a relationship pregnant with involvement". *Walz, supra,* 38 Law Week at 4350. Further, Chief Justice Burger determined that the grant of a tax exemption was not sponsorship [of churches] since the government does not transfer part of its revenue to the churches; the exemption was said to create "only a minimal and remote involvement." Justice Brennan spoke directly to the issue of whether a tax exemption is the equivalent of a government subsidy. His separate concurring opinion declares at 38 Law Week 4354–55:

Tax exemptions and general subsidies, however, are qualitatively different. Though both provide economic assistance, they do so in fundamentally different ways. A subsidy involves the direct transfer of public monies to the subsidized enterprise and uses resources exacted from taxpayers as a whole. An exemption, on the other hand, involves no such transfer. It assists the exempted enterprise only positively, by relieving a privately funded venture of the burden of paying taxes.

The essential differences between outright grants and tax exemptions were previously noted in *Poindexter* v. *Louisiana Financial Assistance Comm'n.,* 275 F. Supp. 833 (E.D. La 1967), *aff'd per curiam,* 389 U.S. 571 (1968) wherein Judge Wisdom, after holding unconstitutional "any aid to segregated schools that is the product of the State's affirmative, purposeful policy of fostering segregated schools" remarked parenthetically at 275 F. Supp. at 854:

We distinguish, therefore state aid from tax benefits, free schoolbooks, and other products of the State's traditional policy of benevolence toward charitable and educational institutions.

The fundamental differences between an outright subsidy and a tax exemption highlights the significantly different constitutional frame of reference of the present case as against considerations in the *Coffey* litigation. The *Coffey* decision involved that "impermissible degree of entanglement" resulting from a direct money subsidy.

This Court must examine the facts of the instant case and analyze the judicial precedents as cited by the plaintiffs within the framework of the Supreme Court's definitional treatment of tax exemptions in *Walz.* In every case in which actions by the Federal Government or a State Government have been held discriminatory and violative of the Fifth or Fourteenth Amendment, the government body in question has either acted with a specific discriminatory intent or has entered into a specific contractual relationship with or made a direct grant to a third party which in turn has acted with a specific discriminatory intent. Cf. *Bolling* v. *Sharpe,* 347 U.S. 497 (1954); *Coffey* v. *State Educational Finance Commission, supra; Burton* v. *Wilmington Parking Authority,* 365 U.S. 715 (1961); *Simkins* v. *Moses H. Cone Memorial Hospital,* 323 F. 2d 959 (C.A. 4, 1963). The salient fact which distinguishes the instant case from the judicial precedents cited by the plaintiffs, is that the instant case involves the administration of a tax exemption statute which the Supreme Court in *Walz* held to be essentially different from the administration of a grant-in-aid or subsidy program such as was present in *Simkins.*

In *Walz* the Supreme Court recognized that a taxing authority necessarily becomes involved to a greater or lesser degree with every person and institution within the jurisdiction of the taxing authority. Further, the Court in *Walz* held that administering a tax exemption statute entailed a lesser degree of involvement between a taxing authority and a private institution or person than did the imposition of a tax. Necessarily, therefore, there is some involvement between the Federal Government and the tax exempt schools involved in the instant matter. However, under the rationale of the *Walz* decision this inescapable involvement is of the least possible degree.

Therefore, it must be concluded that the recognition of the tax exempt status of the schools in question cannot constitute any constitutionally significant federal involvement in the affairs of the schools, and even if these schools are following a policy of racial discrimination, there is no enjoinable involvement by the Federal Government.

C. Allowance of Deductions for Contributions by Individuals to the Schools Involved in the Instant Case Cannot Constitute Impermissible Federal Involvement in any Discriminatory Scheme

It goes without saying that for discriminatory acts to be a violation of the Fourteenth or Fifth Amendments there must be some state or federal involvement in the discriminatory action. As shown above there is no significant constitutional involvement by the United States in the recognition of tax exemptions to the schools in question. However, it may be argued that individual contributors to the schools in question are acting in concert with the schools in a discriminatory plan of action and that by allowing the contributors to claim deductions from their gross income for tax purposes, the United States does become constitutionally involved in the alleged discriminatory scheme.[14] As stated before, all judicial precedents involving discriminatory acts which were violations of the Fourteenth or Fifth Amendments by a state or the United States involved acts of the state or United States done with a specific discriminatory intent, or consisted of cases wherein the state or United States made a specific monetary grant to or entered into a specific contractual relationship with a third person who acted with a specific discriminatory intent. Certainly the allowance of a tax deduction generally to the public at large for contributions to any school does not involve the United States in any specific contractual relationship to anyone. Moreover, such an allowance does not constitute any direct aid or grant to anyone; rather it is a negative type of act consisting of the exempting from taxation of the part of a person's gross income which was contributed to a school. Thus, the allowance of such a deduction is analogous to the general exemption from taxation which the Supreme Court in *Walz, supra,* found not to be constitutionally significant. Further, it is patent that there is necessarily a relationship and involvement between the United States and every federal taxpayer. However, it cannot be held that the United States becomes constitutionally involved in the private discriminatory schemes of any individual taxpayer because it does not ferret out and disallow as a tax deduction payments made by an individual with a discriminatory motive but otherwise allowable as a tax deduction.[15] It is submitted that the allowance of deductions for contributions and business expenses without otherwise questioning the taxpayer's subjective motives presents minimal federal involvement in the individual taxpayer's affairs, and thus cannot involve the United States in any discriminatory scheme in violation of the Fifth Amendment.

In conclusion it must be stated that if the tax exemption itself is but an indirect benefit to the shcools: *a fortiori* the allowance of tax deducations, emanating from contributions to the schools by individuals and corpora-

Footnotes at end of article.

tions, is necessarily an even more remote and indirect benefit.[16]

V: Plaintiffs' request for summary judgment is premature in view of the present posture of this litigation

Any action by this Court at this time on plaintiffs' motion for summary judgment would clearly be premature and not in the best interests of justice. There is presently pending before the Supreme Court of the United States a direct appeal from an order of this Court dated January 21, 1970, which: (1) limited the allowed class intervention to a conclusory characterization; (2) denied intervention prayed as of right by certain movants; and (3) granted a preliminary injunction without affording appellants a hearing thereon. (In the Supreme Court of the United States, October Term, 1969, No. 1358).

This Court's order of partial intervention permitted intervenor-appellant Dan Coit and his two minor children to intervene to represents a class limited to ". . . parents and children who support or attend private, nonprofit, tax-exempt schools in Mississippi having an enrollment consisting only of members of the white race and established as an alternative for white students seeking to avoid segregated public schools. . ." (Order Granting Partial Intervention, January 21, 1970.) By their appeal, the Coits seek to broaden the class represented to include schools which limit enrollment not only on the basis of race but on other grounds such as sex, nationality, religion, etc. In addition, the Coits claim that this Court's definition of the class they represent is conclusary in nature and therefore improper.

Individuals representing segregated private schools in Virginia and Louisiana and parents and children in Virginia, Louisiana and Alabama were denied intervention by this Court on the grounds that ". . . the trial on the merits in this litigation should encompass only issues related to the State of Mississippi . . ." (Order, *supra*) Joining in the direct appeal to the Supreme Court, these appellants claim that they should be allowed to intervene as of right under Rule 24(a) of the Federal Rules of Civil Procedure since, as a practical matter, a ruling adverse to the defendants' interest would materially affect their interest as parents, children and officials of private segregated' schools in states other than Mississippi. All appellants in the pending direct appeal challenge the entry of the preliminary injunction herein on the grounds that this Court abused its discretion in not allowing appellants a hearing on their interests before issuing the injunction.

Although the defendants herein maintain that the appeal is without merit, it is possible that appellants may receive favorable treatment by the Supreme Court which would present considerable practical problems should this Court at this time make a determination as to material facts and conduct a final hearing on the merits.[17] First, if the class represented by Mr. Coit and his children is expanded to include schools other than those which discriminate on the basis of race or which have been established to avoid desegregation orders, then facts relating to these other schools would become material. Since the record is void as to such facts, summary judgment would not be in order. Second, a ruling by the Supreme Court that the "non-Mississippi" intervenors should be allowed in the suit would similarly broaden the relevant issues of fact. In this regard, the appellants have requested that the Supreme Court define the geographic and substantive scope of the constitutional issues to be considered. Third, should the Supreme Court hold that the appellants were entitled to a hearing before the preliminary injunction was granted, this would be a clear indication that they may have conflicting rights which have not been heard and which may be bottomed on contested facts.

Finally, it is submitted that justice will be better served by holding in abeyance any action on plaintiffs' motion for summary judgment at least until the Supreme Court resolves the issues on appeal.

VI: The existence of genuine issues of material facts prevents the granting of plaintiffs' motion for summary judgment

Rule 56(c) of the Federal Rules of Civil Procedure, Appendix *infra*, requires that the proponent of a motion for summary judgment show that there is no genuine issue as to any material fact as a condition precedent to rendering a decision on the merits of the litigation. Summary judgment may be granted in cases involving important constitutional issues; but, as the plaintiffs have noted, judgment is rendered only "where the record is adequate for the constitutional question presented and there is no genuine issue of material fact." (Plaintiffs' Memorandum, p. 11.) The courts have placed stringent prerequisites upon granting the extreme remedy of summary judgment. All favorable inferences which can be drawn from the evidence are to be viewed in a manner to benefit the opponent of the motion. *Semaan* v. *Mumford*, 335 F. 2d 704 (C.A. D.C., 1964); *Jacobson* v. *Maryland Casualty Co.*, 336 F. 2d 72 (C.A. 4, 1964). It is a fundamental maxim that on a motion for summary judgment the court cannot try issues of fact. When depositions raise issues as to material facts, summary judgment is improper. *First National Bank of Washington* v. *Langley-Howard, Inc.*, 391 F. 2d 207 (C.A. 3, 1968). Moreover, the court may not probe the credibility of dependents in the consideration of such a motion, since this is a factual issue itself. *Cram* v. *Sun Ins. Office Ltd.*, 375 F. 670 (C.A. 4, 1967). The court may not assess the probative value of any evidence deemed admissible. In short, the court on such a motion is precluded from trying issues of fact and can only determine whether there are issues to be tried.

In this case plaintiffs have invoked their right to a three judge panel to resolve alleged substantial constitutional issues. In order for this Court to truncate this litigation and render summary judgment, the moving parties must demonstrate that discovery proceedings have clearly established the material facts upon which a constitutional decision is to be based. It is plaintiffs' duty to present the material facts in an undisputed posture, before this Court can render a decision on the merits of the questions of law. The gravity of the legal issues demands that a full development of facts regarding the *effect* of federal tax exemptions and the allowance of deductions for contributions to these private schools be presented to this Court before the summary judgment remedy can be utilized.

Plaintiffs' record in this case relies heavily upon testimony, stipulations, and the decision rendered in the case of *Coffey, supra*. That case does provide information as to the three Mississippi private schools involved in this litigation; Cruger-Tchula Academy, Central Holmes Academy, and East Holmes Academy. However, *Coffey* concerned a challenge on constitutional grounds of tuition grants to these private schools by the State of Mississippi. The *Coffey* findings submitted by plaintiffs are, by the nature of that litigation, devoid of any evidence or findings which pertain to the impact of federal tax exemptions upon these private schools. The evidence required to support a finding that state grants to these private schools are unconstitutional does not *ipso facto* support a like result in a case involving federal tax exemptions. In this case, plaintiffs have failed to present a record containing factual information as to how and to what extent the federal tax exemptions and deductions of contributions provide tangible benefits to these schools. In *Walz, supra*, the Supreme Court carefully delineated between an outright grant, or subsidy, and a tax exemption. The former possesses characteristics of direct support and sponsorship which are lacking in a tax exemption. A tax exemption was termed a function of the "benevolent neutrality" of the taxing authority. *Walz, supra*, at 4350. In light of the distinctions drawn by the Supreme Court between a grant and a tax exemption, plaintiffs' burden in this case extends far beyond the mere adoption of the *Coffey* findings. On the authority of *Walz*, the difference between a grant and a tax exemption can no longer be dismissed as one of degree. See *Green* v. *Kennedy, supra*, at p. 82, 728.

It is imperative that *facts* be established on the record, uncontroverted and beyond dispute, which demonstrate the effect or impact of the tax exemption. Although the depositions taken during the course of this action provided factual information relevant to the effect of the federal tax exemptions upon these schools, the testimony from these depositions, and discussed below, contradicts the facts declared by plaintiffs to be beyond dispute. Indeed, this Court's earlier opinion granting interlocutory relief has acknowledged that the support given to the schools themselves by virtue of granting the exemption is not of constitutional significance. *Green* v. *Kennedy, supra* at 82, 728. This conclusion is in accord with the rationale of *Walz* declaring that the tax exemption to churches from real property taxation affords only "an indirect economic benefit" and is a function of the "benevolent neutrality" of the taxing authority. *Walz, supra*, at 4350.

A careful dissection of the depositions taken by plaintiffs in this action exposes their vulnerability. The depositions of officials of Cruger-Tchula Academy and Central Holmes Academy do not establish that initial capital financing for building school facilities was actually *accomplished* through contributions. Admittedly, the officials indicated that the organizers "hoped" to provide initial capital financing "out of donations." (Cruger-Tchula Academy deposition August 14, 1969, at p. 64). There is no evidence that this bare expectation resulted in a substantial percentage of donations as measured against total capital costs. Instead, the Cruger-Tchula deposition reveals that major financing was accomplished through bank loans from local financial institutions. (*Id.* at 65, 107). A similar pattern emerges from the testimony of officials of the Central Holmes Academy, who testified that two local bank loans were obtained in connection with the construction of a new building for the school in 1967. Central Holmes Academy deposition 44–45 (August 14, 1969). The inference is clear that these schools were able to successfully secure financing from sources other than contributions for initial capital expenditures. These depositions were cited in this Court's earlier opinion in support of the contention that capital financing was "based on contributions". *Green* v. *Kennedy, supra*, at 82, 728. Upon closer examination for the purposes of the present motion, this Court must acknowledge that the deposition testimony fails to establish that contributions were in point of fact significant in capital financing. Beyond the depositions, there is no evidence that campaigns for contributions for capital financing actually produced any particular percentage of building costs, much less substantial portions.

At the time initial capital financing was undertaken for these schools, none had been recognized as being exempt from federal taxation by a ruling letter from the Internal Revenue Service. The schools had been established in 1965. (Compl. par. 8) Central Holmes Academy did not receive a ruling letter until October 11, 1968, and Cruger-

Footnotes at end of article.

Tchula's letter was not sent until August 2, 1967. (Attachment A of Plaintiffs' Statement of Genuine Issues submitted pursuant to Rule 9(h).) Consequently, initial capital financing efforts were consummated prior to any federal action on tax exemption for these schools. The depositions of the officials of these two schools provide no relationship or nexus between contributions for capital financing and the actual deduction of these contributions by the contributors for federal income tax purposes. The record submitted is simply inadequate for a legal consideration of the constitutional questions posed in this regard by the plaintiffs. Absent any definite showing of actual impact of contributions for capital financing, this Court is without power to determine whether the allowance of deduction of contributions in this case constitutes an unconstitutional activity.

The record is also deficient as to the quantum of support or assistance that contributions have on the year-to-year operation of these private schools. Deposition testimony uniformly reveals that the operation of these schools is based almost entirely upon pupil tuition payments. (Central Holmes Academy deposition August 14, 1969, p. 44; Cruger-Tchula Academy deposition August 14, 1969, p. 107; Carroll Academy deposition September 15, 1969, p. 147). The deposition of officials of Calhoun Academy, September 23, 1969, at p. 77 contains the following testimony on this point by the Treasurer of the school:

Q. I would just like to know what the idea was on how the school was going to be financed?

A. From tuition that the children's parents pay and a lot of sweat and blood in the hours we put out in building and doing without things.

In its earlier opinion this Court "focused on the view of the school officials that the granting of the federal tax exemption would be a 'significant factor' that would 'aid the school in obtaining finances.'" *Green* v. *Kennedy, supra,* at 82, 728, citing Central Holmes Academy deposition, August 14, 1969, at p. 43–44. However, the views expressed in that deposition, as in other depositions in this record, belie any assertion that tax exemption is a "significant factor." The Central Holmes Academy colloquy on this point appearing at the p. 43–44 reference was as follows:

Q Was this the view also expressed and was it also believed by officers of the school and those who participated in the efforts of filing this application that the granting of exemption would also aid the school in obtaining financing?

A It would in a way. Yes sir.

Q In what way would that be?

A In the matter of getting contributions.

Q Was this considered to be an important factor in the ability of the school to get voluntary contributions?

A No, sir.

Q But a significant factor?

A No, sir.

Q Not a significant factor?

A No sir. Contributions play a very small part in our schools' operation.

The depositions show these private schools to be rather self-sufficient, particularly after the direct subsidies of state tuition grants were abolished. Local businessmen are on the Board of Directors, and current budgets are not dependent upon achieving a specific level of contributions. Contributions often take the form of an individual's labors expended on behalf of the school (Calhoun Academy deposition September 23, 1969, at p. 77; Cruger-Tchula deposition August 14, 1969, p. 108). Voluntary labor on behalf of the school is not a tax deductible item, (Treasury Regulation on Income Tax (1954 Code), Sec. 1.170–2(a)(2) (1956)) and this example provides a further indication that contributions are not primarily motivated by their deductibility feature for federal income tax returns. Although this deduction may motivate certain individuals, no facts have been presented to establish that this feature is an incentive to significant numbers of contributors. The deposition of Carroll Academy officials, Exhibit 7, page 42a, contains the statement that "numerous people" are waiting to contribute money until tax exempt status is granted to the school (Deposition, September 15, 1969, Exhibit 7, at p. 42a) This statement is clarified at page 146 wherein its author, principal of the school, testified that to his knowledge only three people were awaiting an exemption ruling and that "at least two of them" would make their contributions even if tax exempt status were denied.

The record does include testimony regarding solicitation campaigns for scholarship funds. No testimony indicates that without scholarship programs attendance would decline so as to endanger the continued operation of the schools. The organized campaign of Central Holmes Academy for a scholarship fund, which included solicitation letters noting the tax deductibility of contributions, produced less contributions than anticipated. (Central Holmes Academy deposition, August 14, 1969, at p. 99–100) Recurring statements in the depositions indicate that most contributions are in small amounts and are made by individuals who would probably take standard deductions on federal tax returns, thereby receiving no tax benefit whatsoever from their contribution. (Cruger-Tchula deposition, August 14, 1969, at p. 44)

This motion for summary judgment is bottomed upon deposition testimony which contradicts those facts which are an essential predicate for the granting of any summary judgment for the plaintiffs.

CONCLUSION

On the basis of the foregoing arguments, defendants request that this Court grant their cross-motion and dismiss this case as a matter of law with prejudice. Alternatively, defendants request that plaintiff's motion for summary judgment be denied since there exists genuine issues as to material facts.

Respectfully submitted,

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APPENDIX

Title 28, United States Code:

SEC. 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Internal Revenue Code of 1954:

SEC. 170. Charitable, etc., contributions and gifts

(a) Allowance of Deduction—

(1) General rule.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribtuion shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

* * * * *

(c) Charitable Contribution Defined.—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

* * * * *

(2) A corporation, trust, or community chest, fund, or foundation—

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purpose or for the prevention of cruelty to children or animals;

* * * * *

SEC. 501. Exemption from tax on corporations, certain trusts, etc.

* * * * *

(c) List of Exempt Organizations.—The following organizations are referred to in subsection (a):

* * * * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

* * * * *

Title VI, Civil Rights Act of 1964, § 601, 78 Stat. 252, 42 U.S.C. § 2000d:

SEC. 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin

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

SEC. 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part

Footnotes at end of article.

thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Federal Rules of Civil Procedure, Rule 56:

* * * * *

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

* * * * *

Constitution of the United States, Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor 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; nor shall private property be taken for public use, without just compensation.

FOOTNOTES

[1] In a ruling on standing, it is appropriate and necessary to look at the substantive issues to determine whether there is a logical nexus between the status asserted and the claim sought to be adjudicated. *Flast* v. *Cohen,* 392 U.S. 83, 102 (1968).

[2] This contention is anachronistic in the present era of deficit spending and Keynesian economics which disregard any *pro tanto* relationship between federal receipts and expenditures.

[3] The holding in Flast is limited to a case where a taxpayer alleges a violation of the Establishment Clause of the First Amendment. *Flast, supra,* at *102.*

[4] Compare Complaint and Memorandum in Support of Plaintiffs' Motion For Preliminary Injunction with Memorandum in Support of Plaintiffs' Motion for Summary Judgment on file herein.

[5] Remarks of Congressman Cellers, 110 Cong. Rec., Part 2, p. 1623; remarks of Senator Javits, 110 Cong. Rec., Part 6, p. 7102; remarks of Senator Humphrey, 110 Cong. Rec., Part 5, p. 6543; remarks of Senator Keating, 110 Cong. Rec., Part 10, p. 13378; remarks of Congressman Lindsay, 110 Cong. Rec., Part 2, p. 2491.

[6] Title VI seems to have had its genesis in the so-called Powell Amendment. This amendment was a rider attached to individual appropriation bills and prohibited the expenditure of funds on a particular program if that program was administered in a discriminatory manner. See 110 Cong. Rec., Part 2, pp. 2465, 2468, and Part 5, p. 6544. Referring to the Powell Amendments and the purpose of Title VI, Senator Pastore stated:

Title VI would avoid the recurrence of acrimonious debate in the Congress as to discrimination in discussing individual Federal aid programs.

Time and time again such proposed legislation has come before this body. Amendments have been sponsored to make clear in a particular program that separate but equal provisions would not do.

* * * * *

It is to avoid such situation that Title VI would constitute as permanent policy of the U.S. Government the principle that discrimination will not be tolerated. This would eliminate all the confusion and discussion that arise every time a grant bill comes before the Senate. 110 Cong. Rec., Part 6, p. 7061.

[7] House Hearings before the Committee of the Judiciary, 88th Cong., 1st Session, Part IV, pp. 2771–2780. For further reference to programs covered by Title VI, see remarks of Senator Humphrey, 110 Cong. Rec., Part 5, p. 6543; remarks of Senator McClellan, 110 Cong. Rec., Part 10, pp. 13378–13415; remarks of Senator Reins, 110 Cong. Rec., Part 2, p. 2465; Senator Rogers stated with regard to the purpose of Title VI: ". . . We have over 100 *programs* in the Federal Government *where monies are allocated.* We provide a method whereby the agency or Federal department who has this money for distribution shall draw rules and regulations. . . ." (Emphasis supplied.) 110 Cong. Rec., Part 2, p. 2492.

[8] See Senator McClellan's remarks, 110 Cong. Rec., Part 10, pp. 13378, et seq.

[9] Section 501(c)(3) Internal Revenue Code of 1954, Appendix, *infra.*

[10] Section 170 Internal Revenue Code of 1954, Appendix, *infra*; Section 642(c); Section 2055; Section 2106. See also Section 2522 providing deductions for gift tax purposes.

[11] 44 Cong. Rec. 4148–4151, 4154–4157.

[12] Treasury Regulations on Income Tax (1954 Code) Section 1.501(c)(3)–1(d)(3) gives an example of an organization meeting the test of exemption:

"Example (1). An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational facilities are regularly carried on."

[13] When an organization holding a ruling that it is exempt departs from the requirements of the statute in respect to the purposes and activities on which its exemption is based, the organization as a matter of law ceases to qualify, under the applicable provisions of the Code, as of the occurrence of the disqualifying acts. *Automobile Club of Michigan* v. *Commissioner,* 353 U.S. 180 (1957). See also Rev. Proc. 67–3, C.B. 67–1, 560.

[14] Of course there has been no showing that the United States has specifically allowed any such claimed tax deductions by any named person who made a significant contribution to the schools in question.

[15] A recent study contains findings which indicate that the deductibility feature of gifts to charitable institutions does not act as a significant incentive to contribute, particularly for middle and low income level contributors. Taussig, *Economic Aspects of the Personal Income Tax Treatment of Charitable Contributions,* Vol. 20, No. 1, National Tax Journal, March 1967.

[16] See Part VI, *infra,* for an extensive discussion of the *de minimus* effect of contributions and the allowance of deductions on the basis of the factual record submitted in this case.

[17] We are advised by the Solicitor General that the United States will file its motion in the Supreme Court early in the week of May 18, 1970.

CANYONLANDS NATIONAL PARK, UTAH

The Senate resumed the consideration of the bill (S. 26) to revise the boundaries of the Canyonlands National Park in the State of Utah.

Mr. MANSFIELD. Mr. President, the distinguished Senator from Nevada (Mr. BIBLE), the manager of the bill, has a brief announcement to make for the benefit of the Senate in relation to the bills that will be considered later.

Mr. BIBLE. I thank the majority leader.

I think it might be of help to the Members to indicate that we will have two bills before us. The first is the Canyonlands National Park bill and the second is the bill with reference to the Glen Canyon National Recreation Area. Both Senators from Utah are vitally interested in these bills.

From my conversations with the Senators from Utah, we can anticipate one rollcall vote on the first bill, and we will ask for a rollcall vote on the first bill. It will be on an amendment to be offered by the distinguished senior Senator from Utah. I announce that for the information of the Senate.

I see no reason why we should not complete the action on both bills within an hour or an hour and a half.

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

Mr. BIBLE. I yield.

Mr. BENNETT. The bills are essentially identical, except for the difference in the area they cover. There will be considerable discussion on the first bill. I would think that we would dispose of the second bill without any record vote, in perhaps 5 or 10 minutes.

Mr. BIBLE. I would hope that the discussion would terminate about 5:30 or 6 p.m.

Mr. BENNETT. I am sure it will be over before that.

LEAVE OF ABSENCE

Mr. ALLOTT. Mr. President, I ask unanimous consent that I may have leave of the Senate to be absent the remainder of today, tomorrow, and Friday, on official business.

The PRESIDING OFFICER. Without objection, leave is granted

NEWSPAPER PRESERVATION ACT

Mr. HRUSKA. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1520.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1520) to exempt from the antitrust laws certain combinations and arrangements necessary for the survival of failing news-

papers which was to strike out all after the enacting clause, and insert:

SECTION 1. This Act may be cited as the "Newspaper Preservation Act".

DECLARATION OF POLICY

SEC. 2. In the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

(1) The term "antitrust law" means the Federal Trade Commission Act and each statute defined by section 4 thereof (15 U.S.C. 44) as "Antitrust Acts" and all amendments to such Act and such statutes and any other Acts in pari materia.

(2) The term "joint newspaper operating arrangement' means any contract, agreement, joint venture (whether or not incorporated), or other arrangement entered into by two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any one or more of the following: printing; time, method, and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution: *Provided*, That there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined.

(3) The term "newspaper owner" means any person who owns or controls directly, or indirectly through separate or subsidiary corporations, one or more newspaper publications.

(4) The term "newspaper publication" means a publication produced on newsprint paper which is published in one or more issues weekly (including as one publication any daily newspaper and any Sunday newspaper published by the same owner in the same city, community, or metropolitan area), and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.

(5) The term "failing newspaper" means a newspaper publication which, regardless of its ownership or affiliations, is in probable danger of financial failure.

(6) The term "person" means any individual, and any partnership, corporation, association, or other legal entity existing under or authorized by the law of the United States, any State or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

ANTITRUST EXEMPTION

SEC. 4. (a) It shall not be unlawful under any antitrust law for any person to perform, enforce, renew, or amend any joint newspaper operating arrangement entered into prior to the effective date of this Act, if at the time at which such arrangement was first entered into, regardless of ownership or affiliations, not more than one of the newspaper publications involved in the performance of such arrangement was likely to remain or become a financially sound publication: *Provided*, That the terms of a renewal or amendment to a joint operating arrangement must be filed with the Department of Justice and that the amendment does not add a newspaper publication or newspaper publications to such arrangement.

(b) It shall be unlawful for any person to enter into, perform, or enforce a joint operating arrangement, not already in effect, except with the prior written consent of the Attorney General of the United States. Prior to granting such approval, the Attorney General shall determine that not more than one of the newspaper publications involved in the arrangement is a publication other than a failing newspaper, and that approval of such arrangement would effectuate the policy and purpose of this Act.

(c) Nothing contained in this Act shall be construed to exempt from any antitrust law any predatory pricing, any predatory practice, or any other conduct in the otherwise lawful operations of a joint newspaper operating arrangement which would be unlawful under any antitrust law if engaged in by a single entity. Except as provided in this Act, no joint newspaper operating arrangement or any party thereto shall be exempt from any antitrust law.

PREVIOUS TRANSACTIONS

SEC. 5. (a) Notwithstanding any final judgment rendered in any action brought by the United States under which a joint operating arrangement has been held to be unlawful under any antitrust law, any party to such final judgment may reinstitute said joint newspaper operating arrangement to the extent permissible under section 4(a) hereof.

(b) The provisions of section 4 shall apply to the determination of any civil or criminal action pending in any district court of the United States on the date of enactment of this Act in which it is alleged that any such joint operating agreement is unlawful under any antitrust law.

SEPARABILITY PROVISION

SEC. 6. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Act, and the applicability of such provision to any other person or circumstance, shall not be affected thereby.

Mr. HRUSKA. Mr. President, it is my intention to make a motion, at the conclusion of very brief remarks, that the Senate concur in the amendments of the other body to S. 1520.

This proceeding is being undertaken after consultation with the leadership on both sides, after consultation with members of the Committee on the Judiciary, and with the concurrence and at the request of the chairman of the Judiciary Committee.

S. 1520 is a bill which was considered by this body in January. On January 30, approval of the bill was achieved by a vote of 64 to 13, after two amendments were adopted. The other body, just last week, modified the two amendments somewhat and effected other amendments which did not go to the substance of the bill. The bill in that form was approved by the other body by a vote of 292 to 87.

The amendment is designed to achieve five objectives.

They are:

First. To declare a public policy applicable to certain joint newspaper operating arrangements in the interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States.

Second. To grant a limited exemption from the antitrust laws for joint newspaper operating arrangements that have been entered into prior to the effective date of this act in 22 cities, communities, or metropolitan areas of the United States.

Third. To provide a limited exemption from the antitrust laws for joint newspaper operating arrangements entered into in the future with the prior written consent of the Attorney General of the United States after the Attorney General has made certain determinations defined in the act.

Fourth. To permit the joint newspaper operating arrangement in Tucson, Ariz., to be reinstituted notwithstanding the opinion of the Supreme Court in *Citizen Publishing Company* v. *United States*, 394 U.S. 131 (1969).

Fifth. To declare that the limited antitrust exemption provided in the act shall apply to the determination of any civil or criminal antitrust action pending in any district court of the United States on the date of enactment wherein it is alleged that a joint newspaper arrangement is unlawful under any antitrust law.

Mr. President, I move that the Senate concur in the amendments of the other body.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The question is on agreeing to the motion of the Senator from Nebraska.

Mr. HART. Mr. President, the House has passed an amended version of the Newspaper Preservation Act. The House amendments tighten the standards a court must use in deciding whether a newspaper is "failing" and, therefore, eligible for the antitrust exemption. In that respect, the House amendment is an improvement. In my judgment, the Senate should accept the House amendment without a conference.

My own feelings about the bill are no secret. I am opposed to exempting newspapers from the antitrust laws because an exemption will inhibit rather than preserve competition. If what we seek is mass media diversity, the answer is more vigorous enforcement of existing antitrust law by the Department of Justice. The eight volumes of testimony before the Antitrust Subcommittee amply document the need for more—not less—antitrust activity in the newspaper industry. The newspaper industry, as we understand it now, is newspapers, television, and radio—a chain link.

For these reasons, while I support the motion of the Senator from Nebraska (Mr. HRUSKA) that we act without going to conference once again, I will vote against the legislation.

Mr. HRUSKA. Mr. President, there were several amendments made by the other body at one time, so that the motion is to accept the amendments in their entirety and to consider the bill here in that fashion.

Mr. BENNETT. Mr. President. will the Senator from Nebraska yield?

Mr. HRUSKA. I yield to the Senator from Utah.

Mr. BENNETT. Mr. President, since I represent a State which has only five daily newspapers, two of which are involved seriously in the problem that this

legislation is intended to cure, I have been deeply involved and concerned with the legislation through all its steps in the Senate.

I want to express my satisfaction at the decision of the Senate, and now the House, and to state my support for the proposition that this language should be accepted without the necessity of going forward in conference.

The bill as it came from the House, while it may have been tightened, is an excellent solution to the problem, and I certainly approve of it.

Mr. FANNIN. Mr. President, will the Senator from Nebraska yield?

Mr. HRUSKA. I yield to the Senator from Arizona.

Mr. FANNIN. Mr. President, I support the acceptance of the House amendments to S. 1520. This measure is to grant limited antitrust exemptions to past agreements which meet the tests contained in S. 1520, as amended, and to make this method of insuring newspaper stability available to newspapers in danger of financial collapse.

Mr. President, this issue before us started in Tucson, Ariz., when Department of Justice sued the publishers of two daily newspapers in Tucson on January 4, 1965. Time does not permit a recitation of the full history, but it suffices to say that 22 cities in the United States, which have similar joint operating agreements, would be seriously affected if S. 1520, as amended, by the House, is not enacted into law.

The Senate on January 30 of this year passed S. 1520 by a vote of 64 to 13 and it was sent to the House which last week passed it—with several amendments—by a vote of 292 to 87.

These amendments have been examined by Senate cosponsors of the bill and I am reliably informed that the House version is acceptable.

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

Mr. HRUSKA. I am happy to yield to the Senator from Hawaii.

Mr. FONG. Mr. President, the Senate has the opportunity today to complete legislative action on the Newspaper Preservation Act and send this important bill forward to the President. I urge every Senator to join me in voting for the House version of the act and thereby bring to a successful conclusion 5 years of diligent work by people interested in maintaining a free press in a democratic society.

I have long supported the concept of permitting joint newspaper operating arrangements where such plans are necessary to keep newspapers alive. Such a situation exists now in 22 cities throughout the Nation, including my own State capital of Honolulu. Since these arrangements came under attack for failure to conform to antitrust standards, there has been a real danger that a number of independent and competing editorial voices would be silenced. Only by passage of the bill now before us will that danger be averted and healthy diversity of press opinion preserved in these cities. In addition, the Newspaper Preservation Act will provide means to approve similar arrangements in other cities if they become necessary in future to guarantee the same goals of free, vigorous and diversified editorial competition in an era of skyrocketing newspaper production costs.

The two fine newspapers in Honolulu, the Advertiser and Star-Bulletin, illustrate the advantages of the joint operating arrangements that we are asked to preserve today. Eight years ago the Honolulu dailies entered into a combined operating agreement. They have continued to maintain separate news and editorial staffs, different editorial policies and distinctive publishing personalities. I have never heard a complaint from the people these newspapers serve that any worthwhile advantage of competition has been lost—and I include in that statement the advertisers who have benefited by the existence of two healthy publications in which to place their ads.

I have no doubt that Honolulu would have become a one-newspaper city if this operating agreement had not been made, and that it would shortly become a single-newspaper city if the agreement were now outlawed. I am equally sure that many, if not all, of the other 21 cities with financially ailing newspapers would have been reduced to one editorial voice without combining their commercial operations.

Such a result could not be considered desirable by anyone sensitive to the needs of a modern democracy for more, rather than less, exposure to the challenge of a free press.

Hawaii's newspaper operators, fully supported by unions representing their employees, have taken a leadership role in bringing to the attention of the Congress the plight in which some newspapers found themselves. From the time the Newspaper Preservation Act came before the Senate Judiciary Committee's Antitrust Subcommittee, of which I am a member, I have actively supported this legislation. I am happy that today, through the efforts of legislators in both bodies, we have arrived at the moment when we can bring this matter to successful conclusion.

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

Mr. HRUSKA. I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the Senator from Nebraska for yielding to me.

I wish to take this opportunity to commend him, the committee, and the Senator from Michigan, for doing a difficult thing; namely, to accommodate widely diverse views and coming to grips with a problem that has plagued much of the Nation, especially its metropolitan centers.

The State of Tennessee is one State where virtually every metropolitan area is served by a newspaper that would be affected by the antitrust provisions of present law, if this act were not adopted.

I heartily support the motion which the Senator from Nebraska has just made, in offering the House-passed version as amended, and would point out that it was passed and adopted by the other body by a vote of 292 to 87.

I trust that the Senate will concur in the motion of the Senator from Nebraska.

Mr. MOSS. Mr. President, will the Senator from Nebraska yield?

Mr. HRUSKA. I yield.

Mr. MOSS. Mr. President, I want to express my support of the motion of the Senator from Nebraska that the Senate now adopt the House version of the Newspaper Preservation Act.

During all the time it was before this body, and through all the long hearings and discussions held, I supported the bill. I think that the House version is, perhaps, better still than the one we had in the Senate. Therefore, I think we should concur so that the bill may go straight to the White House for action by the President and I hope that it will be signed and will resolve a difficult problem that has existed in many cities, including the capital city of my own State.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The question is on agreeing to the motion of the Senator from Nebraska to concur in the House amendment in the nature of a substitute.

The motion was agreed to.

Mr. HRUSKA. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. BAKER. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to reconsider was laid on the table.

CERTAIN LANDS HELD IN TRUST FOR THE WASHOE TRIBE OF INDIANS

Mr. McGOVERN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 759.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 759) to declare that the United States holds in trust for the Washoe Tribe of Indians certain lands in Alpine County, Calif., which was to strike out all after the enacting clause, and insert:

That all of the right, title, and interest of the United States in the following described public domain land located in Alpine County, California, are hereby declared to be held by the United States in trust for the Washoe Tribe of Nevada and California:

Southeast quarter southeast quarter of section 20 and the northeast quarter northeast quarter of section 29, all in township 11 north, range 20 east, Mount Diablo base and meridian, Alpine County, California, containing 80 acres.

SEC. 2. The amount expended by the United States to acquire the land granted by this Act, as determined by the Secretary of the Interior, shall be deducted from any appropriation that is made to satisfy a judgment by the Indian Claims Commission in docket numbered 288 in which the Washoe Tribe of Nevada and California is entitled to share, and the amount deducted shall be deposited in the miscellaneous receipts of the Treasury.

Mr. McGOVERN. Mr. President, the purpose of this legislation, which was passed by the Senate on May 15, 1970, is to grant to the Washoe Tribe of Indians of Nevada and California a trust title to 80 acres of public domain in Alpine County, Calif., to carry out a program to assist certain Washoe Indians.

The House of Representatives has adopted an amendment to provide that the amount expended by the United States to acquire the land granted by the bill will be deducted from any appropriation to pay a judgment recovered by the tribe in Indian Claims Commission Docket No. 288. The tribe has already been awarded $5,053,000, subject to setoffs that have been briefed and argued before the Commission, and it is too late for the Commission to consider an additional setoff. The value of the land will, therefore, be handled by a deduction from the appropriation made to pay the judgment, rather than as a setoff when determining the net amount of the judgment.

Under the circumstances, there appears to be no other way in which a setoff could be made, and I am advised that this House provision is satisfactory to the sponsor of the bill, the senior Senator from Nevada (Mr. BIBLE), as well as to the members of the Senate Committee on Interior and Insular Affairs.

Therefore, Mr. President, I move that the Senate concur in the amendment of the House to S. 759.

The motion was agreed to.

PREPARATION OF ROLL OF CERTAIN INDIANS

Mr. McGOVERN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 885.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 885) to authorize the preparation of a roll of persons whose lineal ancestors were members of the Confederated Tribes of Weas, Piankashaws, Peorias, and Kaskaskias, merged under the Treaty of May 30, 1854 (10 Stat. 1082), and to provide for the disposition of funds appropriated to pay a judgment in Indian Claims Commission Dockets Numbered 314, amended, 314–E and 65, and for other purposes which were, on page 3, line 11, strike out "funds." and inserts "funds in equal shares to those persons whose names appear on the roll prepared pursuant to section 1 of this Act."

On page 3, line 23, strike out "persons." and insert "person."

On page 4, after line 20, insert:

SEC. 6. All claims for per capita share whether by a living enrollee or by the heirs or legatees of a deceased enrollee, shall be filed with the Area Director of the Bureau of Indian Affairs, Muskogee, Oklahoma, not later than three years from the date of approval of this Act. Thereafter, all claims and the right to file the same shall be forever barred and the unclaimed shares, along with unexpended tribal and judgment funds appropriated for tribal roll preparation and distribution, shall revert to the Peoria Tribe.

On page 5, line 1, strike out "SEC. 6." and insert "SEC. 7."

Mr. McGOVERN. Mr. President, on May 18, 1970, the Senate passed S. 885, which provides for the distribution of more than $2 million to these bands of Indians. Under the provisions of the bill, all of the funds would be paid out to the individual Indians entitled to the money.

The House has amended the bill to provide that any per capita share that is not claimed within 3 years from the date the bill is enacted, and any unused funds that were reserved for the preparation of the tribal roll, will escheat to the Peoria Tribe. In addition, the House has incorporated two technical amendments to correct drafting errors.

Mr. President, subsequent to the action by the House on this measure, members of the respective committee staffs discussed the language adopted by the House regarding the escheat provision. In view of the fact that there are several claims asserted by these Indians which are still pending before the Indian Claims Commission and which would be distributed under the authority included in the bill, it has been determined that the House language is deficient. In order to meet the contingencies that will arise by reason of these future claims, it has been suggested that the House bill be further amended.

Mr. President, I move that the Senate agree to the House amendments to the bill with a Senate amendment which constitutes a new section 6. I ask that the Senate amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

At the appropriate place, insert a new section 6 as follows:

"SEC. 6. Any per capita share, whether payable to a living enrollee or to the heirs or legatees of a deceased enrollee, which the Secretary of the Interior is unable to deliver within two years after the date the check is issued, and all unexpended tribal and judgment funds set aside for tribal roll preparation and distribution, shall revert to the Peoria Tribe, and all claims for such per capita shall thereafter be barred forever."

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Dakota.

The motion was agreed to.

CREATION OF A COMMISSION TO STUDY THE BANKRUPTCY LAWS OF THE UNITED STATES

Mr. BURDICK. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on Senate Joint Resolution 88.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the joint resolution (S.J. Res. 88) to create a commission to study the bankruptcy laws of the United States which were, on page 2, line 16, after "administration," insert "the applicability of advanced management techniques to achieve economies in the administration of the Act,".

On page 2, line 20, after "President" insert ", the Chief Justice of the United States,".

On page 3, line 6, strike out "designed" and insert "designated".

On page 3, line 7, strike out all after "President" down through and including "law" in line 8.

On page 3, line 9, after "two" insert "Members of the Senate, one from each of the two major political parties,".

On page 3, line 10, after "two" insert "Members of the House of Representatives, one from each of the two major political parties,".

On page 3, line 12, strike out "active full-time referees in bankruptcy".

On page 6, line 3, after "appropriated" insert "out of the Salaries and Expenses Fund created pursuant to section 40c(4) of the Bankruptcy Act (11 U.S.C. 68c (4))".

On page 6, line 4, after "sums" insert ", but not more than $600,000,".

Mr. BURDICK. Mr. President, as the author of Senate Joint Resolution 88, to create a Commission to study our bankruptcy laws, I am deeply gratified that the Senate will shortly consider final congressional action on the measure.

By this action, Congress has expressed recognition that the present laws comprising our bankruptcy system may be obsolete, highly uneconomical, and incapable of adequately conforming to the requirements of our modern economy.

The House has amended the resolution in some respects; I feel most of the House amendments are improvements. Limiting the authorization of funds to $600,000 for the 2-year life of the Commission, and providing that these funds come from the filing fees and charges collected from the assets of bankrupt estates were highly constructive changes.

The House eliminated the requirement that two of the appointees should be "active practitioners in the field of bankruptcy law" and two should be "active full-time referees in bankruptcy." While I would have preferred that the final version of the bill contain these restrictions, especially those pertaining to the appointment of referees, I am satisfied that the legislative history of the measure adequately details the desirability of making such appointments.

I move that the Senate concur in the amendments to Senate Joint Resolution 88.

The motion was agreed to.

REVISION OF BOUNDARIES OF THE CANYONLANDS NATIONAL PARK IN THE STATE OF UTAH

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

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The pending business is S. 26, a bill to revise the boundaries of the Canyonlands National Park in the State of Utah.

Mr. BIBLE. Mr. President, I move that the committee amendments be agreed to en bloc and that the committee bill as amended be considered as original text for the purpose of amendment.

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

Mr. BIBLE. Mr. President, the bill before us would extend the boundaries of Canyonlands National Park in southeastern Utah, bringing into the park a number of desirable areas that were omitted when the park was established in 1964.

The present park contains approximately 257,640 acres. S. 26 would add four additional tracts which are public lands for the most part, totaling some 79,618 acres, for a combined area for the expanded park of 337,258 acres.

Three of these parcels adjoin Canyonlands and one is located a few miles to the

west of the present national park. The largest of the tracts is the Maze. It embraces a rugged labyrinth of canyons and eroded geological formations, some of which it is probable that no living man has ever seen.

The other three tracts are: First, approximately 10,032 acres which adjoin the southeast corner of Canyonlands, and includes part of the famed Lavender Canyon, second, 23,025 acres along the north boundary of Canyonlands, comprising the balance of the highly scenic Taylor Canyon, and third, 3,178 acres known as Horseshoe Canyon, which is located 7 miles west of the northwest corner of Canyonlands and which contain some of the finest galleries of prehistoric pictographs in the entire country.

About 25,000 people are now visiting Canyonlands annually, and they are spreading out into the remote areas both inside and ouside of the park boundary. The properties within the park are protected by the National Park Service, but those outside are continually subject to vandalism. By incorporating them within the park, there is some assurance that these artifacts will be kept in their natural state for the enjoyment of all. The addition of these tracts has been recommended by the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments.

I have had the privilege of serving in the capacity of chairman of the Parks and Recreation Subcommittee of the Committee on Interior and Insular Affairs for 12, 13, or 14 years. I handled the original Canyonlands bill. And I can say, I think, without any fear of contradiction, that the Canyonlands contain some of the most beautiful scenic country to be found anywhere in this great Nation.

The pending bill is, I think, a necessary addition to this great national attraction. I know that as time has gone on the number of visits have increased to these parks with which Utah is so richly blessed.

At the time S. 26 was introduced, the Utah Division of Parks and Recreation indicated it would be willing to donate Dead Horse State Park to the National Park Service for inclusion within Canyonlands National Park. After the hearings had been concluded, our committee received a telegram from this division stating that it had no desire to release Dead Horse Point at this time, so the tract has been eliminated from this bill as reported.

This is a State park. I personally think that somewhere along the way it would be of advantage to Utah to donate this section so that it would round out Canyonlands National Park. The State of Utah does not feel that way at this time. Obviously, they control the park.

Also deleted from the introduced version are three sections on the southwest corner, totaling 1,920 acres, which contain impregnated limestone. It is proposed that these be added to the Glen Canyon Recreation Area, where multiple land use is permissable.

There has been great interest in establishing some of the more remote areas of Canyonlands National Park as wilderness areas. In reporting this bill, the Interior Committee recommends that the Secretary of the Interior report to Congress within 2 years on the areas of the park which are suitable for wilderness designation.

Mr. President, there have been some reservations in southern Utah about taking additional acreage into Canyonlands National Park until there was wider development by the National Park Service of the area already encompassed in the park boundaries.

I believe the bill we bring before the Senate today has worked out most of these problems, but not all of them.

I urge passage of this bill on the assumption that development of the entire park area will be accelerated, and that the tourist potential of an enlarged Canyonlands will be fully realized. The bill must be passed to protect the new areas, and to assure that all of the desirable attributes of a great national park are attained.

Mr. President, I am delighted at this time to yield to my friend, the distinguished, Senator from Utah (Mr. Moss), the author of the original legislation.

I have gone over all of this area with him on two or three occasions. I think it is worthy of national park stature by every criteria imaginable.

Mr. MOSS. Mr. President, I thank the distinguished Senator from Nevada for yielding to me. I commend him as chairman of the Parks and Recreation Subcommittee of the Committee on Interior and Insular Affairs for moving along the bill that has been before our subcommittee during all of this session of the Congress and that was also before the subcommittee in the previous session of Congress.

Mr. President, the bill that is before us, as has been explained, would extend the boundaries of Canyonlands National Park in southeastern Utah, bringing into the park a number of superlative areas that were omitted when the park was established in 1964.

The present park contains approximately 257,640 acres. S. 26 would add four additional tracts which are public lands for the most part, totaling approximately 79,618 acres, for a total area for the expanded park of 337,258 acres.

Three of these parcels adjoin Canyonlands and one is located a few miles to the west of the present national park. The largest of the tracts is the Maze, which lies directly to the west of the park and north of the Glen Canyon National Recreational Area. It embraces a rugged labyrinth of canyons and eroded geological formations, some of which it is probable that no living man has ever seen.

The other three tracts are: First, approximately 10,032 acres which adjoin the southeast corner of Canyonlands, and includes part of the famed Lavender Canyon, second, 23,025 acres along the north boundary of Canyonlands, which includes the balance of the highly scenic Taylor Canyon, and some areas needed primarily for administrative purposes, and third, 3,178 acres known as Horseshoe Canyon, which is located 7 miles west of the northwest corner of Canyonlands and which contains some of the finest galleries of prehistoric pictographs in the country, and in the whole Western Hemisphere.

We knew when the original Canyonlands bill was passed that the day would come when we would want to add these additional areas, and that day is unquestionably here now. About 25,000 people are now visiting Canyonlands annually, and they are spreading out into the remote areas both inside and outside of the park boundary. The areas within the park are protected by the National Park Service, but those outside could be defaced by thoughtless treatment. By incorporating them within the park we assure that they will be kept in their natural state for the enjoyment of all. The addition of these tracts has been recommended by the Advisory Board on National Parks, Historic Sites, Buildings and Monuments, the National Park Service, and the Secretary of the Interior.

When I first introduced this bill the Utah Division of Parks and Recreation had indicated it would be willing to donate Dead Horse State Park to the National Park Service for inclusion within Canyonlands National Park. After the hearings had been concluded, the Interior and Insular Affairs Committee received a telegram from this division indicating that it had no desire to release Dead Horse Point at this time, so the tract has been eliminated from this bill as reported.

Also deleted from the introduced version are three sections on the southwest corner, totaling 1,920 acres, which contain impregnated limestone which has tars and sand and oil in it. It is proposed that these be added to Glen Canyon Recreation Area, where multiple land use is permissible. It would then be available for the production of petroleum when that is feasible and economic.

There has been great interest in establishing some of the more remote areas of Canyonlands National Park as wilderness areas. In reporting this bill, the Interior Committee recommends that the Secretary of the Interior report to Congress within 2 years on the areas of the park which are suitable for wilderness designation.

I should point out that the Maze would be one of those areas which may be designated as a wilderness area and never be invaded by roads, but only by trails on which people would walk or possibly travel on horse.

Mr. President, there have been some reservations in southern Utah about taking additional acreage into Canyonlands National Park until there was wider development by the National Park Service of the area already encompassed in the park boundaries.

I call attention to page 3 of the report of the Committee on Interior and Insular Affairs and I quote one paragraph:

> The committee endorses the State program of providing corridors of adequate scenic highways leading to recreational and park reservations. It is an obligation of the Federal Government to cooperate with the States in assuring accessibility for the average American to enjoy our great scenic heritage, such

as exists in this wild and beautiful section of Utah.

This indicates the policy of Congress and gives direction to the Secretary of Interior and the National Park Service that access to the park is to be made and it should be made available to the average American so that he will have an opportunity to view the scenic wonders.

I urge passage of this bill on the assumption that development of the entire park area will be accelerated, and that the tourist potential of enlarged Canyonlands will be fully realized. The bill must be passed to protect the new areas, and to assure that all of the desirable attributes of a great national park are attained, but there must also be a much wider program of development by the National Park Service than has been evidenced in the past few years, if Canyonlands is to contribute to its fullest extent to the recreational enjoyment of the American public.

Therefore, I believe we should act speedily to pass the bill that is before us to expand the boundaries of Canyonlands so there will be time for the House of Representatives to act also in this session of Congress and complete this legislation this year.

Mr. BENNETT. Mr. President, before the Senator yields the floor, will he yield to me for some questions?

Mr. MOSS. I yield.

Mr. BENNETT. I am sure my colleague knows the purpose of my amendment, which is to provide for the construction of roads which would pass through both the Canyonlands and the Glen Canyon Recreation Area.

I would like to ask the Senator whether he believes that roads approximately following the road suggested by the Utah State Road Commission should be built.

Mr. MOSS. Yes. I have been shown a map by the State roads commission on which indications were made of areas where they felt roads should pass through the Utah area, part in the parks and part on the public domain land. I agree it would be desirable to have roads. I discussed this with the State road commission representatives before hearings were held on the bill. At that time I saw the map and I encouraged the representatives of the State roads commission to come and testify before the subcommittee so that their desires could be made known; and I assured them I would see that the matter was properly presented in the subcommittee and before the full committee, which was done. As a result of that, this section of the report that I have just read, was written to indicate that the committee endorses the principle of building roads and making access to the parks available to the average citizen rather than as was testified by some who testified, that it all be left as wilderness and not accessible.

I think the committee came down squarely on the side of accessibility, wrote it into the report, and I reported back to the State roads commission that we had accomplished what I expected, and that we had procedures whereby we could make sure the Park Service was carrying out the purposes of Congress, if they were dilatory in getting roads in there.

Mr. BENNETT. Since part of the roads would be inside the park and recreation area and part outside the park and recreation area, does the Senator believe it would be better to have one agency—and of course, the State is the only one agency covering all areas—build the road, or would it be better to have the State build the roads outside the park and to depend on the Park Service to build the roads inside the park?

Mr. MOSS. I think that is the only practical way to proceed. In the bill before us we are dealing with Canyonlands and what has been added to Canyonlands to put that in the national parks. Therefore, if we granted corridors, we would be granting corridors only in that boundary limit that we are dealing with.

We think we should urge the Park Commission, as we have discussed in the report, and also directed them to cooperate with the State.

I shall read again from page 3 of the committee report:

> It is an obligation of the Federal Government to cooperate with the States in assuring accessibility for the average American to enjoy our great scenic heritage, such as exists in this wild and beautiful section of Utah.

If the State does build roads across the public domain up to the recreation areas, then the National Park Service, in cooperation with them, as is its obligation, should build the road within the park itself.

When I heard of the Senator's proposal to add the amendment, I called the Director of State Roads Commission in Utah and I asked him what the cost would be for building the roads where they have drawn these lines within the park and the recreation areas if it were the obligation of the State to do that. His reply was, "Over $41 million."

I do not think that should be the obligation of the State of Utah. I think the obligation to build the roads within the park is the obligation of the National Park Service as part of the Department of the Interior.

Outside of that, the State may have an obligation, if there is a secondary road, to give public assistance; but basically outside the park boundaries. However, inside, it is totally the obligation of the Federal Government.

Mr. BENNETT. As I understand it, the Senator believes the language in the report is sufficiently strong and imposes a sufficiently heavy obligation on the Federal Government that the Park Service must build roads in that area, and if they do not, with the power of oversight which the Senator's committee has, it can force them to build roads.

Mr. MOSS. I think that is correct. Perhaps "persuaded" would be better than "force."

In the original planning of the Canyonlands we had a similar experience. It was determined a road would go into Squaw Flat, from there on west to the confluence of the river and south to the Needle.

At some subsequent time after the park was created the National Park Service changed its plans and started talking about taking a road around the south to come into the Needles and up to the confluence.

At that time Bates Wilson, who represents the Park Service in Utah, came to me, spread out the map, and talked to me about that situation. I protested. I said that I knew the parks, and that I had been there. I said there should be a road into the center of the park that could be traversed in an ordinary two-wheel vehicle that did not require 4-wheel drive to go over a hill. We had considerable discussion, and it took 6 months, but eventually the Park Service came around to agreeing with that idea and they have now completed the survey. I think they have the authorization to build that road from Squaw Flat through the confluence and down to the Needle.

So I say that simply as an illustration of what the committee can do to persuade carrying out the purposes of said committee. We state rather clearly in the report that the committee believes it is the obligation of the Federal Government to cooperate with the States to make parks available for the average American citizen, and that would mean roads through the park in the areas generally described in the map to which I have referred.

Mr. BENNETT. Then, I take it the Senator will not support my amendment?

Mr. MOSS. No; I do not think the amendment is needed, and, in fact, I think it is objectionable in some respects.

First of all, the amendment places the extra burden on the State that I mentioned. The State would assume the burden of putting $41 million of the funds of the State into building the roads and then maintaining the roads. Second, it is contrary to the policy of the National Park Service. In cases where a State road exists and then a park or monument is superimposed there, the road remains a State highway and the State does have the obligation for maintaining the road, but in no case that I was able to find—and I made inquiry at the Department—has the National Park Service ever authorized a State to build a new road in a park or monument. That has always been the obligation of the Park Service itself.

If we charge the National Park Service with operating a national park in accordance with the law that exists, it must have the power of decision as to where the road will go, as to whether or not it will impair the scenic beauty of the park, and otherwise have the responsibility for maintenance, turnoffs, campgrounds, and that sort of obligation, rather than delegate it to a State to maintain and control.

So the amendment is objectionable from that point of view. I think we might face a veto of the bill if we had that sort of amendment in it. The Park Service has indicated that it would change the situation, that it would perhaps impair its recommendation of approval of the bill if it were so amended.

Mr. BENNETT. Mr. President, I would like at this point to get the floor in my own right.

The PRESIDING OFFICER. The senior Senator from Utah.

AMENDMENT NO. 778

Mr. BENNETT. Mr. President, I call up my amendment No. 778 and ask to have it stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. BENNETT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Amendment No. 778 is as follows:

On page 2, immediately after line 24, add the following:

"SEC. 4. (a) The State of Utah, acting through its State road commission, is authorized to construct and maintain a highway to secondary standards as defined by the American Association of State Highway Officials within the corridors to be surveyed and commencing from Utah Highway 95 near Hite through the Glen Canyon Recreation Area and through approximately seven miles of Canyonlands National Park to a junction with Utah Highway 279 near Moab.

"(b) The Secretary of the Interior is authorized to construct and maintain markers and other interpretive devices typical of national park areas providing such markers or devices do not violate current highway safety standards. The Secretary is further authorized to connect with such routes those park roads and trails which he determines desirable. Any such road so constructed within such corridors by the Utah State Road Commission shall be permanently kept open for general public travel.

"(c) The State of Utah shall have full authority to regulate traffic and enforce the highway laws relating to highway use in the State of Utah with respect to any road constructed pursuant to this section. The right-of-way shall vest with the United States subject to the perpetual use of same as a public highway so long as needed for such purpose, as determined by the Utah State Road Commission."

Mr. BENNETT. Mr. President, I am happy today to support S. 26, revising the boundaries of the Canyonlands National Park in Utah, and S. 27, to establish the Glen Canyon National Recreation Area in Utah and Arizona.

In a sense, the two bills are related, because the two areas are contiguous. For my purposes, in offering these amendments they are related because the road that I think should be built passes through both of them as well as to land outside either. The arguments that I shall make for my amendment on S. 26 apply with equal significance to the amendment that I shall offer to S. 27, but since the two are so closely related, I shall make my major pitch with respect to the bill before us, and after the Senate has decided how it will vote on that bill, then it will be understood that everything I have said about S. 26 applies to S. 27.

Mr. President, I think it is unfortunate that the committee did not take care of this road problem when it had the bill before us. It ignored the testimony of the Utah State Road Commission, ignored the problem that can only be solved by the building of such a road, and, therefore, it is necessary for me to offer these amendments.

Just to describe the amendments, as I said, they are really one amendment, taken together. They would allow the State of Utah, through its road commission, to construct and maintain two sections of road, one from near the Arizona border at approximately Glen Canyon City to Bullfrog Basin and the second from Utah Highway 95 near Hite to a junction with Utah Highway 279 near Moab. Part of the proposed route goes through State land, part through land under supervision of the Bureau of Land Management, part through the recreation area, and part through the national park, but it is one continuous road.

Mr. President, I would like to bring to the attention of the Senate the background leading up to my introduction of these road amendments. On the weekend of June 12 to 14, while in Utah, I received a rather urgent invitation from the Utah State Road Commission to meet with the full commission to discuss S. 26 and S. 27, both of which had just been reported favorably by the Senate Interior Committee.

I should point out again for the record that I went before the Interior Committee and testified in favor of both bills—however, at that time I made clear that I hoped the committee would make certain general changes and assurances to protect the State's minerals, road, grazing, hunting, and similar rights.

At my meeting with the State road commission, I was informed of the major highway problem, which I have described and which passage of the bills would create.

The commission officially urged me to do what I could to see that the State's road program could be solved either by a floor amendment or acceptance of the language by the committee.

Subsequently, in conversations with the Governor and State highway officials, I was told that the sponsor of the bill, Senator Moss, has said that this road problem has been handled with language in the report, and my colleague has repeated that here again.

Mr. President, for the RECORD, I would like to read that report language:

The Committee endorses the State program of providing corridors of adequate scenic highways leading to the recreational and park reservations. It is an obligation of the Federal Government to cooperate with the States in assuring accessibility for the average American to enjoy our great scenic heritage, such as exists in this wild and beautiful section of Utah.

I have had a great deal of experience writing language in reports in many, many committees and on many, many pieces of legislation. I regret to say that the success ratio in persuading the agencies downtown following and adhering to language in reports is not too high. In fact it is almost zero. One agency head told me once when I referred to language in a report:

If it was that important, why didn't Congress write it into the law?

I also should mention that those of us who have been around Congress for a while are well aware of the fact too often many agenices downtown barely follow language in the laws we pass, let alone following often vague and relatively meaningless language in a report. In fact, I have a clear memory of one agency which told me they did not like an amendment I got into a piece of legislation, and they were, therefore, going to ignore it.

Later when I returned to Washington and began digging into this problem in order to discover for myself whether perhaps the language in the report might do the job I, of course, found that my worst fears were justified.

First, I phoned the National Park Service and read the language in the report about road corridors to Director Hartzog and inquired if this language were binding on the Park Service. A subsequent reply from the Chief of the Division of Legislation, Mr. Mike Lambe, revealed that the language would not bind the Park Service to grant rights-of-way through the park or recreational area lands as my amendments would do.

The intent of the language in the report, according to Mr. Lambe, was to require the Park Service to cooperate with the State to provide access to—and I repeat, Mr. President—access to, rather than through the areas.

I was told that the report was not specific enough to require the Park Service to grant the right-of-way. It did not come out and say that the Park Service will provide rights-of-way for the through highways proposed by the State; so, it was argued, it left the decision to the Park Service.

I was told that in order to accomplish what the State road commission and the Governor want accomplished would be either to get my amendment approved or to obtain a commitment from the Secretary of the Interior that he would allow this right-of-way.

This then led me to the Secretary of Interior, where I inquired of him officially if the language in the report would require the Park Service to permit the State to construct and maintain highways through Glen Canyon National Recreation Area or Canyonlands.

On July 2, 1970, I received an official reply from Mr. Mitchell Melich, the Department Solicitor, and I ask unanimous consent that this letter be printed in its entirety in the RECORD.

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

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., July 2, 1970.

HON. WALLACE F. BENNETT,
U.S. Senate,
Washington, D.C.

DEAR WALLACE: Secretary Hickel has asked me to reply to your letter of June 29 in which you requested our views on whether the following language in the Committee report on S. 27 (S. Rept. No. 91-924) would require the National Park Service to permit the State of Utah to construct and maintain highways through Glen Canyon National Recreation area: "The Committee endorses the State program of providing corridors of adequate scenic highways leading to recreational and park reservations. It is an obligation of the Federal Government to cooperate with the States in assuring accessibility for the average American to enjoy our great scenic heritage, such as exists in this wild and beautiful section of Utah."

Initially, it should be pointed out that there is no general authority available to this Department authorizing the grant of rights-of-way for highway purposes through areas of the National Park System. In my opinion, the language quoted above, unsupported by an appropriate provision in the bill itself, would not require or authorize the National Park Service to grant a highway to the State as contemplated by the Committee. In order to implement the Committee's desire on this subject amendatory language would be required to authorize the granting of a right-of-way to the State through the proposed areas. Although the Department has taken the position in the past that roads of this nature may be authorized under special use permit, the United States District Court for the Northern District of California ruled to the contrary in the case of *Sierra Club* v. *Hickel*, which dealt with an access road through Sequoia National Park to the proposed Mineral King development. Even though this case is on appeal, I feel we should follow the district court opinion until it is reversed.

I trust this answers your question. Should you wish to discuss this matter further, please feel free to call me.

Sincerely yours,

MITCHELL MELICH,
Solicitor.

Mr. BENNETT. For the information of the Senate, I would like to read the pertinent parts of Solicitor Melich's response:

Initially, it should be pointed out that there is no general authority available to this Department authorizing the grant of rights-of-way for highway purposes through areas of the National Park System. In my opinion, the language quoted above—

That is, the language in the report—

unsupported by an appropriate provision in the bill itself, would not require or authorize the National Park Service to grant a highway to the State as contemplated by the Committee. In order to implement the Committee's desire on this subject, amendatory language would be required to authorize the granting of a right-of-way to the State through the proposed areas. Although the Department has taken the position in the past that roads of this nature may be authorized under special use permit, the United States District Court for the Northern District of California ruled to the contrary in the case of *Sierra Club* v. *Hickel*, which dealt with an access road through Sequoia National Park to the proposed Mineral King development. Even though this case is on appeal, I feel we should follow the district court opinion until it is reversed.

With this general background, I then introduced these amendments on behalf of the State road commission to protect the State of Utah and its citizens. Indeed the language was written with the full cooperation, knowledge and at the suggestion of the Utah State Road Commission.

I would like now to turn for a minute or two to a discussion of the need for the roads.

The lack of access to our many scenic wonders in Utah has prevented development and utilization of much of my State. It is all very well for the Congress and the Interior Department to approve with great fanfare and enthusiasm massive parks and monuments, but I often wonder what happens to that fanfare and enthusiasm when it comes to putting forward meaningful development programs such as for roads and trails and other conveniences for the tourists who come and see these areas.

Mr. President, I think it is time for the Congress and the Interior Department to begin considering the common, average American tourist with average means who takes off work a day, a week, or a month, puts his family in a station wagon and wanders here and there to see our parks and monuments. This, of course, differs from the backpacking, rugged, outdoor-type hiker and mountain climber who likes to go off on his own, walking and hiking up and down canyons and mountains and also differs from the rich super executive who can afford an expensive safari-like trip into this kind of country.

The road I propose is for the common, everyday tourists and for the bulk of the citizens in my State, and those from other States who may visit us.

The need for the amendment is perfectly obvious and extremely important for Utah. Without this road a traveler who wanted to go from Wahweap, which is a harbor on the Arizona side of Lake Powell, up to Bullfrog Basin, which is a harbor on the Utah side, would have to detour a total 382 miles by going up Highway 89 across Utah Highway 24 and down to Bullfrog Basin. He would have an alternate route which also should be mentioned. This would take him through Arizona down to Tuba City, up to U.S. Highway 163 and over to Utah Highway 95. That way it would be a 366-mile detour.

The amendment would also provide a great benefit to the citizens of Salt Lake City, or those who start from Salt Lake City. It would cut off 50 miles of travel both to Hole-in-the-Rock and to the Padre Bay Marina. From Salt Lake City to Hole-in-the-Rock would be a 320-mile ride instead of a 370-mile ride, and from Salt Lake City to Padre Bay Marina would be 355 miles instead of 410.

In addition, I should point out that besides the citizens of Arizona and Utah who visit Lake Powell, the largest number of visitors come from California.

For no other reason than I have just stated these amendments must be approved for the benefit of our State and its economic development.

There are other reasons as well, and I would like to cite them here. As most experienced travelers will tell you, the common everyday tourist is loath to wander off onto a road for 50 to 100 miles, taking a chance he might or might not see something and then have to backtrack on the same road. Were I a betting man, I would wager that not 10 percent of the traveling public would take a 40-mile backtrack spur route on the chance he might see something. Today's traveler wants the so-called circle route. He wants to keep moving, to have the feeling he is getting somewhere new and different. In other words he does not want to double back.

I have done some research on how much doubling back there would be required without my amendments, and I think the figures would be of interest to the Senate.

First, in order to get to Hole-in-the-Rock Marina when it is built, we would have a spur route from Escalante 65 miles long, down and 65 miles back or 130 miles round trip.

From Hanksville on Utah Highway 24 down to Bullfrog Basin, it would be a 72-mile spur—down and back, each way.

From Blanding, over Utah Highway 95, to Hall's Crossing, it would be 83 miles—down and back.

From Utah Highway 24 down to Grand View to take a look into the Canyons from the West, it would be a 40-mile spur—down and back.

From Church Rock down to near the confluence of the Green and the Colorado Rivers, it would be a 40-mile spur—40 miles down and 40 miles back.

At the Canyonlands area, if there is no connection at the south end of the park, you would end up with a spur from Natural Bridges to the lower end of Canyonlands that would be 90 miles each way—down and back.

Mr. President, people just do not travel on spur roads on the chance they might see something, especially when you consider from where most of these spurs I have mentioned begin. Anyone who has been down into southern Utah can tell you that you can start at the flattest, most deserted spot on earth and go but 40 miles to see deep and breathtaking chasms that are magnificent.

The point is that these spurs begin at desolate spots and there is nothing really to give the visitor any assurance that the entire area will not be the same.

Specifically, Mr. President, two roads are involved here. The portion affecting Glen Canyon National Recreation Area extends from Glen Canyon City 105 miles to Bullfrog Basin, and from State Highway 95 near Hite 60 more miles to near the northwestern boundary of Canyonlands National Park. Part of this section of the road is within the boundaries of the Glen Canyon Recreation Area and part on Federal land under jurisdiction of the BLM.

For the record, and to fill the gap between these two sections, I should point out that in the middle, the route follows existing roads from Bullfrog Basin to U–95 at Trachyte Junction and southerly through north Washington to the point near Hite where we would pick up again with the second section covered in the amendment.

The portion affecting Canyonlands National Park commences on the west boundary near the northwest corner and extends approximately 7 miles within the park boundary, exiting at Dead Horse Point State Park and proceeding toward State Highway 279, leading to Moab.

Mr. President, I do not want to appear vague and overuse the word "approximate" in my definitions of this road; however, this is made necessary by the fact that there is no way at this time to be precise as to the exact metes and bounds of the area that would be needed for the road. Before any road would be built, there would have to be a major survey, an on-the-ground inspection by highway experts and others, all aimed at selecting the best and most feasible route possible. This way, we can avoid any damage to the countryside and to the scenery by having the flexibility and authority to go around or to

bypass any particularly important or attractive spot.

The Utah State Highway Commission has assured me that it would build the road in such a way as to do the least damage to the environment or to the ecology. The State highway commission has told me:

We will build this road with full and complete consideration of all environmental factors.

With this in mind, the State highway department has told me that it will comply completely and fully with section 4(F) of the Department of Transportation Act charging the Secretary of the Department of Transportation to make a special effort to preserve and enhance the natural beauty of the countryside in the development of all road programs.

I have been in contact with the Transportation Department on this matter, and I have informed them that the State plans to work closely with them, if the road is authorized, in adhering to the 4(F) provisions of the DOT Act and that the State plans to get DOT involved in the design phases of this project.

As I read section 4(F), I certainly do not find anything in it that automatically eliminates and thwarts responsible road projects. I am certain we can gain the cooperation of the Secretary of the Interior, of the Secretary of Transportation, and of the Utah highway people in making sure that we shall comply with the provisions of the law that reads:

(if) such program includes all possible planning to minimize harm to such park, recreational area . . . etc. . . . resulting from such use.

Indeed, Mr. President, I have just received a letter from Transportation Secretary John Volpe touching on this topic, in connection with my amendments; and I ask unanimous consent to have the letter printed in the RECORD at this point. It sets out the conditions under which the Department of Transportation would become involved.

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

THE SECRETARY OF TRANSPORTATION,
Washington, D.C.

Senator WALLACE F. BENNETT,
United States Senate,
Washington, D.C.

DEAR WALLACE: This is in further response to your letter of June 25, 1970, which was acknowledged by Mr. Legate on June 30, regarding amendments which you have offered in behalf of the State of Utah Road Commission to S. 26 and S. 27. Your letter requested advice as to the best way to handle Section 4(f) questions related to your amendments.

As you know, Section 4(f) states essentially that the Secretary shall not approve any project which requires the use of publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge unless "(1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use."

As we understand the amendments which you have offered, each one would authorize the construction and maintenance of a highway by the State of Utah within the boundaries of a National Park. In such circumstances, if federal aid is provided for the construction of these roads, Section 4(f) would apply. If authorized, at the appropriate point in the planning of these projects, the Secretary would be required to consider—upon the advice of the State and the Federal Highway Administration—whether there are any feasible and prudent alternatives and whether all planning has been accomplished to minimize harm to the National Park from the road construction and use.

I hope the above information is helpful to you.

With best regards.

Sincerely,

JOHN.

Mr. BENNETT. I also would like to read to the Senate the pertinent paragraph of the Secretary's response to my request for the best way to handle the 4(f) question:

In such circumstances, if Federal aid is provided for the construction of these roads, section 4(f) would apply. If authorized, at the appropriate point in the planning of these projects, the Secretary would be required to consider—upon the advice of the State and the Federal Highway Administration—whether there are any feasible and prudent alternatives and whether all planning has been accomplished to minimize harm to the national park from the road construction and use.

As I have said, the State, the Interior Department, and the Transportation Department have all assured me that they will cooperate fully to select the better route, if the road is authorized, and I am certain neither the amendments nor the roads will do violence to any of the provisions of 4(f) nor to the countryside, for that matter.

I would now like to turn for a moment or two to the precedent for the construction of a State highway through a national park. Back in 1962, the Bureau of Public Roads built a 5.7-mile project from the east boundary of Capitol Reef National Monument to the city of Fruita within the park. This was built with Federal National Park Service funds. In 1956, the State built a project—also 5.7 miles—from Fruita westerly. This was constructed under State supervision and by the State on a State-Federal matching fund basis. I should report that the cooperation between the Park Service and the State has been very good at Capitol Reef, and I would not expect any problems at all from these experts in working out any problems that might arise at Canyonlands or Glen Canyon.

Speaking of the funding for the project during a recent publicity release in Utah—and my colleague has repeated it here today—it was said that my amendments would cost the State of Utah $41 million and, apparently, therefore, they should be rejected.

First, let me say that whether one thinks the language in the report will bring these roads into reality or whether the Bennett amendments will create them, the cost of building the road still is going to be identical.

Second, if my amendments are adopted, the State of Utah would build this road under its Federal-State formula. I understand that it also is in the proposed program of the Four-Corners Regional Commission, which has jurisdiction over this part of the State of Utah and is a part of the Commerce Department. In this connection, I have today received a memorandum from Mr. L. Ralph Mecham, who is the Federal cochairman of the Four Corners Regional Commission, which says that the commission has requested—hold on to your hats—$808,924 to be spent over a 10-year period for a road program inside the area under its jurisdiction, the program to build approximately 5,700 miles of high priority roads in the States of Utah, Arizona, Colorado, and, New Mexico.

If this program is authorized and appropriated, I am told that approximately 100 percent of the funding for the roads proposed in my amendment would come from these commission funds. Therefore, it may be true that it is going to cost the taxpayers $41 million, but this is true whether it comes from the Federal pocket or the State pocket or from a combination of the two. But it is not going to cost any more or less than any other road in the State traversing similar topography.

It is difficult to say exactly which department is going to provide how many dollars, but a fair estimate would be 25 percent State and 75 percent Federal under current matching fund provisions and policies.

Mr. President, the support by officials and the citizens of Utah for these roads represented by my amendments is widespread and available on the record for all to see.

As I have said, the State highway commission, representing all regions of the State of Utah, wants the roads. The Governor of Utah wants the roads. The only difference between my position and his is that I am certain an amendment is required—I think the material I have put in the RECORD today would demonstrate that—and he feels that he should depend on Senator Moss' statement that the language of the report is sufficient. The San Juan County Commission favors the roads. A recent hearing in Kanab, on June 30, brought enthusiastic public backing to the proposed roads. The Utah Travel Council has endorsed the road projects.

I am doing the bidding of the people of Utah and offering these amendments on their behalf.

Mr. President, my colleague talked about the roads in Canyonlands National Park, and I think we should go back and take a look at that situation, because I believe it bears out what I am trying to say.

An amendment of mine to the Canyonlands bill which became law in September 1964, reads as follows:

Section f. (a) In order to provide suitable access to the Canyonlands National Park and facilities and services required in the operation and administration of the park, the Secretary may select the location or locations of an entrance road or roads to such park and to points of interest therein from United States Route 160 and State Routes 24 and 95, including necessary entrance and related

administrative headquarters sites upon lands located outside the park, and he may select a suitable location or locations outside the park for connections between entrance roads and between roads lying within the Canyonlands National Park.

That was on September 12, 1964.

Mr. President, that is a perfect example of what I mean when I say "Some Departments barely follow language in laws, let along language in reports." I offered that amendment and a modified form of it was finally passed by the Congress. It was offered to assure the people of Utah access to and within the major areas in Canyonlands. The final law says: "The Secretary may select and so forth." It does not say: "Will."

What has that word "may" produced at Canyonlands? Not much. For instance inside the park we have about 10 miles of primitive roads and from about 3 to 5 miles of reasonable roads. To me that is a pretty sorry total when we consider the park contains about 257,640 acres and the proposed expansion in the bill before us will raise that to 337,258 acres.

To carry this one step further, I would like to tell the tale of the Chesler Park Road. This road was designed to go from Squaw Flats to serve two vantage points, one near the confluence of the Green and Colorado Rivers and also to branch south to Chesler Park. However, for the past 3 or 4 years a major controversy has raged over this section of road ranging from whether the road should be built or not. Up to a year ago the Park Service probably was leaning heavily to a negative reply. Now, because of the great pressure and because of the requirement for the road some concessions—although unofficial—have been made that there may be a way to build it and some planning is under way for a route to serve these points. The newest outlook calls for construction of a road to the vicinity of Chesler Park—falling short by about a mile, making the tourist walk the last mile to the park. I understand that the ordinary tourist could make it with not too much trouble, but I make the point again just to indicate the thinking and the antiroad, antidevelopment mentallity that prevails in the Parks Service these days.

I think here today, Mr. President, I have shown very clearly the reasons for the roads. I have shown why it would take amendments to see them built.

I just make the point that the people who are administering the park in that part of the country are not pro-road but antiroad. I am very much afraid that if this bill does not contain permission for the State of Utah to build that necessary road, not only will it not be built in the foreseeable future but the State of Utah will lose potential income from tourists, which was given by a former Secretary of the Interior as the reason why this vast acreage should be set aside for park purposes.

Mr. President, when the bill was under consideration, the Bureau of Economic and Business Research of the University of Utah estimated that by now we should have an average annual number of visitors to the park of something on the order of 338,000.

In 1965, there were 19,000. In 1969, there were 26,000, only about 6 percent of the number of visitors, it was expected could be attracted, came to the park.

The answer, of course, in my opinion, is roads. They cannot get in. If they can ge in, then they have 10 miles of unimproved, dirt road, and then 3 or 4 miles of black road. The word gets around, so they do not try it. If a tourist wants to get into the Canyonlands, he has to make an arrangement with a man who owns a jeep, who will rent it and sell his services as a guide at a price that the ordinary tourist cannot afford.

Now, Mr. President, for these reasons, I hope that the Senate will accept my amendment. I realize that we are breaking new ground. I also realize that we are asking to give the State the right to construct a road through park and recreation areas.

The reason why I ask for that exception is that I know if we wait for the Park Service to construct those roads, based on its own record inside the Canyonlands, which is one of the areas we are discussing today, I shall not live long enough to be able to drive from Wahweep to Bullfrog Basin. I am getting a little too old to drive 330 miles on a detour road to get there.

Mr. President, I invite my colleague, the author of the two bills, to join me in urging the Senate to approve my amendments, so that we can provide free and effective access for all to this great country that is southern Utah.

Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. BIBLE. Mr. President, I have listened attentively to the Senator from Utah speaking to his amendment. I realize, as always, his great interest in developing and advancing the cause of his great State of Utah, which contains some of the finest parks of our entire United States, some of them with great visitations, some of them with less visitations at present but which will grow as time goes on.

I am amazed that the problem seems to be a road problem.

Both of us agree that there should be roads. The Park Service agrees that there should be roads. The Secretary of the Interior agrees that there should be roads. The Governor of Utah says there should be roads. The highway commission agrees that there should be roads. I say that there should be roads.

It all depends on who is handling the road problem.

That is the issue in the pending amendment.

I rise to oppose the amendment, not because I am opposed to roads, because I am not, but I am opposed to placing authority for the building of roads in a national park or recreation area in the Highway Commission of the State of Utah.

The responsibility for the building of roads within the Canyonlands National Park should be left and vested in the National Park Service. We have not ignored the problem. I think that the language in the report which was read earlier by the Senator from Utah (Mr. Moss) is completely self-explanatory on that point. I think it provides for a strong mandate. The senior Senator from Utah (Mr. BENNETT) argues that unless it is written out in black and white in the law, the National Park Service would ignore it. I do not agree with that conclusion.

It so happens, in addition, that I handle both the subjects of parks legislation and authorizations. I handle them as chairman of the Appropriations Subcommittee of Senate Interior Committee. We regularly have brought before us various proposals for the building of parks. I called for the Interior appropriations bill, which we just passed by a unanimous vote of the Senate, and we go to conference on it next week. There is some $17,660,000 provided for the National Park Service for parkway road construction.

In this one, just reading a paragraph on page 21 of the report accompanying the appropriation bill for this year, there is this language which I think is illustrative of what I am trying to say:

The increase recommended by the committee provides $350,000 for roads and trails in Lake Mead National Recreation Area, $1,200,000 for the base cost on the first segment of Big Horn Canyon National Recreation Highway, and $110,000 for planning roads and trails in North Cascades National Park.

I would say to my friend the distinguished senior Senator from Utah (Mr. BENNETT) that I have been privileged to handle parks for 13 or 14 years, ever since I have been a Member of the Senate. And I have also, since the retirement of our beloved former senior Senator from Arizona, Carl Hayden, formerly the chairman of the Appropriations Subcommittee, handled the appropriations.

Year after year we provide money within the budgetary restrictions and fiscal limitations under which we operate year after year, for the building of roads within recreation areas.

I have firsthand experience in that the first recreation land in the United States is at Lake Mead in my own State. There, we have had no difficulty whatever in working cooperatively with the State highway commission and in developing adequate roadways both within and outside the park.

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

Mr. BIBLE. I yield.

Mr. BENNETT. Mr. President, would the Senator repeat again the total amount of money contained in the bill?

Mr. BIBLE. $17,666,000 as it came out of the Senate recently.

Mr. BENNETT. Was any money provided in there for any of the Utah parks?

Mr. BIBLE. I do not know, except for add-ons from the Senate.

Mr. BENNETT. There probably were some.

Mr. BIBLE. I am sure there would be some. There usually is.

Mr. BENNETT. Mr. President, does the Senator realize with reference to the price of this road system we are talking about, $41 million, that if we are going to wait for Utah's share of the parks road money, we will be 50 years in getting enough money together to build this program.

I wish it were possible to build this road outside the park. But there is a difference in the terrain we are talking about between the land around Glen Canyon Recreation Area and Canyonlands National Park and around Lake Mead.

Mr. BIBLE. I realize that. I have been in every area there.

Mr. BENNETT. And the State Road Commission people tell me that if they attempt to build a road outside the park area and come up on the west of it, it will probably cost a great deal more money and will raise a very serious problem because the areas outside the park to the west may be designated as a wilderness area in which no roads may be built which is, of course, not true in a park area.

This is a very serious problem for my State to get the people down there. If we are just going to take these vast areas and put them into national parks and then not make it possible for people not only to just get to one point in the park but also to get through from one to another, I think it is tragic and so do the people of Utah.

Mr. BIBLE. Mr. President, I think we agree. There is a need for roads in the great State of Utah and in my great State and in other great States.

I have been responsive to that. I am trying to put jurisdictional responsibility where I honestly believe it belongs.

Based on my experience, I think that the report language is a sufficient mandate, which permits proper funding, as we go along. And it is difficult to secure this money whether under the Highway Service Act or under the Park Service Act.

All I am saying is that we have attempted first to create these parks and we have attempted to develop them realistically in accordance with the state of our treasury which is not in the best of shape. However, we have worked very faithfully, and I think, have done a very good job.

Mr. BENNETT. Mr. President, can the Senator tell me about any roads that have been built in parks as the result of the language in the report?

Mr. BIBLE. I think there have been a few. The Senator from Utah cites a couple of examples. I think Capital Reef does have a road.

Mr. BENNETT. They have roads.

Mr. BIBLE. I think that these roads were built prior to the creation of the park.

Mr. BENNETT. Mr. President, was that as the result of language in the report on the bill?

Mr. BIBLE. It was not, to the best of my recollection. At Lake Mead, with which I have the greatest familiarity, there is not any language there that requires the building of roads. The authority is in the Park Service Act itself. And they built the roads as they could develop them and as the funds were available. I think they met the responsibility extremely well.

There is a strong mandate in the report. In my own personal judgment, that is sufficient to get the job done and to do what the senior Senator from Utah and the junior Senator from Utah want to do. I think that we are headed in the same direction but are doing it a little differently.

Mr. BENNETT. Mr. President, I point out that the solicitor has told us that as a result of that lawsuit in California, the department no longer feels that it can move to make access connections with State roads.

Mr. BIBLE. I am not familiar with the Sequoia National Park to which the Senator refers. I think that it is a little different problem.

I have a letter from Acting Secretary of Interior Fred Russell—I do not know whether it has been made part of the record or not—which was addressed to me under date of July 2, 1970. He makes appreciable comment on the Senator's proposed amendment. I am sure that a copy was given to him.

In that case he says that he thinks in the transportation section, section 4(f), with which the Senator is familiar and has just commented on, there is sufficient authority under the general law to do what the Senator is suggesting and that the Park Service should not surrender that responsibility or that jurisdiction to a State highway commission.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the letter addressed to me under date of July 2, 1970, by Acting Secretary of the Interior Fred J. Russell.

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

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 2, 1970.

Hon. ALAN BIBLE,
Chairman, Subcommittee on Parks and Recreation, Committee on Interior and Insular Affairs, U.S. Senate.

DEAR SENATOR BIBLE: At the recent hearing before your subcommittee on legislation to establish the Glen Canyon National Recreation Area, certain witnesses advocated inserting language in the bill that would reserve "highway corridors" through the area. Pursuant to committee staff request, the following paragraph articulates the Department's opinion on such language:

We do not oppose a road through the recreation area if there is no feasible and prudent alternative and if it is designed with minimum impact on the natural values of the area. We do, however, oppose language that would limit the Secretary's discretion to permit or not to permit the use of national recreation area lands for a road, in the absence of definite surveys. Moreover, section 4(f) of the Department of Transportation Act prohibits the use of park land for highway purposes unless there is no feasible or prudent alternative. As you know, this committee was most active in writing this protection into the Department of Transportation Act in 1966. Definitive studies, including alternatives, have not been made on this road location; therefore, to fix a location or corridor at this time would bypass the provisions of section 4(f), and unduly limit the Secretary's authority to administer and protect recreation and natural values in the area.

We appreciate the opportunity to present the above comments to your subcommittee.

Sincerely yours,

FRED J. RUSSELL,
Acting Secretary of the Interior.

Mr. BIBLE. Mr. President, I have no further comments to make. Simply repeating, I do not think that we have ignored the problem. I think that we were conscious of it.

I heard much of the testimony when they were in Washington. I did not read it all. I have read the exchange of letters between the two distinguished Senators from Utah. It looks to me that we are all driving in the same direction.

The senior Senator from Utah has one approach. The committee has another. I think that the committee approach is preferable.

I would make only one additional comment concerning the cost. It would cost more money in the future probably than it has in the past. But the Park Service road costs are to the advantage of a State.

This may be what the junior Senator from Utah (Mr. Moss) had in mind. Building roads within the park itself, if it is made a Park Service responsibility, is not the State taxpayer's responsibility. That would be the obligation of the Federal Government or 100 percent of the taxpayers. Whereas, if there is a secondary road, constructed by the State road commission, in a national park, it becomes the obligation of the individual State; that is, on a Federal-State participating basis.

In Utah, I presume it is on an 85-percent basis. That is about what it is in our State. I would assume that it is very nearly that in the State of Utah.

I do not know if there is any particular percentage in arguing this matter further. This was submitted to the committee. The committee felt keenly that the solution they made in the language, as noted in the report, is the best practice. They also concluded that it was sufficient to build the roads in this area.

Mr. MOSS. Mr. President, I shall take only 2 minutes.

I have listened carefully to my colleague's statement with respect to his amendment. I agree with the objective he has in mind. During the 12 years I have been a member of the Committee on Interior and Insular Affairs I have been as vocal as anyone else and, perhaps more vocal than anyone else, in saying that our parks, monuments, and recreation areas should be available to the average American citizen. I have insisted that we should have adequate roads in these areas.

The matter now before us came to my attention before the hearings were held. As a matter of fact, representatives of the State road commission came and testified at my invitation in order to enlighten the committee with respect to what they felt should be done by way of roads. They accepted the invitation, they appeared and testified. The committee considered fully what they said. It was considered in executive session. But the road corridor idea was not included in the bill because it is contrary to the policy of the National Park Service for all recreation and park areas. Members of the Committee on Interior and Insular Affairs appreciate this position.

Mr. President, the proposal does represent the point of view of the Governor or the State Roads Commission.

I read an article in the Salt Lake Tribune of June 27, 1970, which stated:

Clem Church, Panguitch, Commission Chairman, said Commissioners "support 100 percent" the language of a bill sponsored by Senator Frank E. Moss, D-Utah, and that Senator Wallace F. Bennett's proposal to write guarantees into the bill by amendment—rather than leave them as they stand in the Senate Subcommittee report on the bill—came "as a surprise" to him.

Mr. Church is the man who came and testified before the committee representing the State Roads Commission and the Governor at that time.

Therefore, I think that what we have done in writing the bill and the report is to act in accordance with the precedent of the National Park Service and the requirements of the National Park Service. At the same time we have made it eminently clear that the committee expects the National Park Service to construct roads in the parks and recreation areas that will connect with roads built by the State so that there will be full access by the ordinary citizen to view the unique wonders of said national parks. As stated in the report:

The committee endorses the State program of providing corridors of adequate scenic highways leading to recreational and park reservations. It is an obligation of the Federal Government to cooperate with the States in assuring accessibility for the average American to enjoy our great scenic heritage, such as exists in this wild and beautiful section of Utah.

I think we are getting at the same thing and I think we want to get at the same thing. What the bill now states is acceptable to the National Park Service.

Mr. BENNETT. Mr. President, I yield myself 1 minute.

I also read the statement which was published in the Salt Lake Tribune, and I was the one who was surprised because Mr. Church presided over the meeting of the State Road Commission I attended, and it was he who urged me to offer these amendments. I think it is probably a "misreporting" but that is neither here nor there. I could not permit the inference to pass that we have not been telling the truth when I said that I attended the meeting of the State Road Commission and was urged to do this by them, and Mr. Church presided over that meeting.

Mr. BIBLE. Mr. President, I am sure everyone here is telling the truth. The position of the senior Senator from Utah (Mr. BENNETT) is clear. It is another way to handle the problem. We think the committee solution is best. The yeas and nays have been ordered, and I suggest we call the roll.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 778 of the senior Senator from Utah (Mr. BENNETT). On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Georgia (Mr. RUSSELL), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Minnesota (Mr. MONDALE) is absent on official business.

I further announce that, if present and voting, the Senator from New Mexico (Mr. MONTOYA) would vote "nay."

Mr. GRIFFITH. I announce that the Senator from Colorado (Mr. DOMINICK) is necessarily absent.

The Senator from Colorado (Mr. ALLOTT) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) and the Senator from Maine (Mrs. SMITH) are absent because of illness.

The Senator from Arizona (Mr. GOLDWATER), the Senator from Idaho (Mr. JORDAN) and the Senator from Oregon (Mr. PACKWOOD) are detailed on official business.

If present and voting, the Senators from Colorado (Mr. ALLOTT and Mr. DOMINICK), the Senator from South Dakota (Mr. MUNDT), and the Senator from Maine (Mrs. SMITH) would each vote "yea."

The result was announced—yeas 37, nays 41, as follows:

[No. 245 Leg.]

YEAS—37

Aiken	Fong	Prouty
Baker	Goodell	Saxbe
Bellmon	Griffin	Schweiker
Bennett	Gurney	Scott
Boggs	Hansen	Smith, Ill.
Brooke	Hatfield	Stevens
Case	Hruska	Talmadge
Cook	Javits	Thurmond
Cooper	Mathias	Tower
Cotton	Miller	Williams, Del.
Curtis	Murphy	Young, N. Dak.
Dole	Pearson	
Fannin	Percy	

NAYS—41

Allen	Holland	Muskie
Anderson	Hughes	Nelson
Bayh	Jackson	Pastore
Bible	Jordan, N.C.	Pell
Burdick	Kennedy	Proxmire
Byrd, W. Va.	Long	Randolph
Cranston	Magnuson	Sparkman
Eagleton	Mansfield	Spong
Ellender	McClellan	Stennis
Ervin	McGee	Symington
Gravel	McGovern	Tydings
Harris	McIntyre	Williams, N.J.
Hart	Metcalf	Young, Ohio
Hartke	Moss	

NOT VOTING—22

Allott	Goldwater	Mundt
Byrd, Va.	Gore	Packwood
Cannon	Hollings	Ribicoff
Church	Inouye	Russell
Dodd	Jordan, Idaho	Smith, Maine
Dominick	McCarthy	Yarborough
Eastland	Mondale	
Fulbright	Montoya	

So Mr. BENNETT'S amendment was rejected.

Mr. MOSS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BIBLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 26) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 26

An act to revise the boundaries of the Canyonlands National Park in the State of Utah

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act of September 12, 1964 (78 Stat. 934), is revised to read:

"That in order to preserve an area in the State of Utah possessing superlative scenic, scientific, and archeologic features for the inspiration, benefit, and use of the public, there is hereby established the Canyonlands National Park which, subject to valid existing rights, shall comprise the area generally depicted on the drawing entitled 'Boundary Map, Canyonlands National Park, Utah', numbered 164–91004 and dated June 1970, which shows the boundaries of the park having a total of approximately three hundred and thirty-seven thousand two hundred and fifty-eight acres. The map is on file and available for public inspection in the offices of the National Park Service, Department of the Interior."

SEC. 2. Section 2 of the Act of September 12, 1964 (78 Stat. 934) is amended as follows:

(1) delete the words "described in section 1 hereof or" which appear after the word "area" in the first sentence;

(2) insert the words "or any amendment thereto" after the word "Act" in the third sentence; and

(3) insert the words "or any amendment thereto" after the word "Act" in the fifth sentence.

SEC. 3. Section 3 of the 1964 Act is amended as follows: insert the words "or any amendment thereto" after the word "Act".

AMENDMENT OF THE INTERNATIONAL TRAVEL ACT OF 1961—CONFERENCE REPORT

Mr. MAGNUSON. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 14685) to amend the International Travel Act of 1961, as amended, in order to improve the balance of payments by further promoting travel to the United States, and for other purposes. I ask unanimous consent for the immediate consideration of the report.

The PRESIDING OFFICER (Mr. EAGLETON). The report will be read for the information of the Senate.

The assistant legislative clerk read the report.

(For conference report, see House proceedings of July 14, 1970, pp. 24031–24033, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the immediate consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. MAGNUSON. Mr. President, I need not tell the Senate that international travel is the largest single item in world trade, and the United States is the world's largest travel market and foremost destination. In 1968, we earned more money—$2.030 billion—than any

other country and received more visitors, 10.9 million. Yet the more than 18 million U.S. citizens who went abroad that year, and spent $3.907 billion, caused a travel deficit of $1.877 billion in our balance of payments.

World tourism, measured by arrivals and receipts, has grown tenfold over the past 20 years and since the introduction of jet transportation 10 years ago, it has doubled. In the coming decade an even more substantial rise is anticipated. It is estimated that the number of international tourists will quadruple over the next 10 years.

Since enactment of the International Travel Act of 1961 and the creation of the U.S. Travel Service the United States has been attracting 8 percent of total world tourist arrivals, and our receipts from foreign visitors have increased at an average annual rate of about 9.6 percent.

While this rate of growth has been satisfactory in both of these areas and compares favorably with many other competitive countries, the United States has not been successful in increasing its percentage share of total ironically, a chronic travel deficit—that is, the difference between the amount of money spent by foreign visitors to the United States and what our citizens spend visiting abroad. This deficit is a significant contributor to our overall balance-of-payments crisis. No one suggests that American citizens are not going to travel abroad and that they are going to spend more money, if they have it, than most other travelers. We once tried to do something about it, but it just is impossible to change the situation. The answer is to get more people to come here and close the gap, and that is what we have been trying to do since 1961, when the Senator from New York and I had a bill—I have had two or three—in which we started the travel service.

Our efforts as a government to attract international tourists have been relatively recent and limited in scope. We never could get any budget, under any administration, to give the amount of money that is necessary, because a lot of this means promotion.

Almost all the other countries add to what they get in tourism and take a flat percentage of that and use it for promotion. According to the last figure I saw from the Federal Government, the Belgian Congo spent more money for trade promotion than we did. England, France, and other countries use a certain percentage, as is done in any good promotional business.

The coming decade offers an unprecedented opportunity for an international travel breakthrough for the United States.

We have a little more money in this year's budget, but hardly enough. The conference report is substantially the Senate's bill. Very little was changed. There are some technical amendments. It sets up the people again to look at this matter, and it will provide $1.5 million to do it. The regular promotion for the regular travel service is separate.

It also provides something else that is very important. We have a big program in the travel service, to see America. To take care of this deficit—say, the State of New York or the State of Michigan or the State of Washington or any other State wants to set up a program—it provides for a grant to the States, matching 50 percent, and this is going to be helpful.

We are the only country in the world, with one exception, and it is not developed in certain areas, in which travel and tourism are not seasonal. Anyone can come to the United States any time—winter, spring, autumn, or summer—and find what he wants. This is what I want to promote with the States. The States do a pretty good job of attracting tourism. I think every State in the Union has an active tourist bureau, and we want to promote that and work with the Federal Government, to see whether we can do something about the deficit that is getting higher and higher every year, even though we have increased this 9.6 percent every year since the bill was passed.

I believe that H.R. 14685 as reported by the conference committee provides the framework within which the Government and the travel industry can realize the tremendous opportunity to attract foreign visitors that is ours in the 1970's.

Mr. President, the bill which came out of conference is substantially the bill which passed the Senate, and in no respect significantly differs from it. I wish to commend my colleagues who served on the conference committee as well as their counterparts from the House.

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

Mr. MAGNUSON. I yield.

Mr. JAVITS. Mr. President, I rise today for two reasons—first, to comment on the substantive aspects of what this conference report seeks to accomplish; and second, to express my pleasure in the collaboration, which developed when I came to the Senate with Senator MAGNUSON in what had been a longstanding effort of mine to bring our country to the realization of the potential inherent in tourism and how we were suffering from not developing that potential.

Without Senator MAGNUSON this progress in developing world travel resources would have been impossible. He took up this cause and has been very gracious, though he was chairman of the appropriate committee, to join me in it; it has worked that way ever since.

Mr. President, obviously, the so-called travel gap is the principal element of disequilibrium in our balance of payments. It was down to approximately $1 billion when I first started in the Senate. It is now $1.8 billion, and is climbing every year. We want our citizens to travel. Yet we do not want this freedom of travel to repair the strength of the dollar.

It may interest the Members of Congress to know that in the last conversation I had with President Kennedy before the tragic assassination took place, we talked about the balance of payments. He was then gravely concerned about it, and we even talked about the possibility of some curtailment of what American citizens could take abroad, because our situation was so bad. He did not like it; nobody liked it; but, nonetheless, it was that bad.

Yet, as Senator MAGNUSON has eloquently said, we have never adapted our resources to stimulate travel, which this country so readily deserves. Mexico, for example, earns now approximately $900 million a year net out of travel, mainly from the United States. That is the balance in its favor.

There are tens of millions of people in the world who ought to be traveling here. We have never articulated the situation intelligently enough to attract them. This is a situation which calls for improvement. I have introduced this bill, as cosponsor with Senator MAGNUSON, to try to beef up the situation. The improvement is in the authorization for the U.S. Travel Service, which is now $15 million, a figure which we certainly ought to meet in the appropriation. It is little enough. The bill also contains matching funds for State programs. This parallels our good experience in the arts and humanities, which has developed 50-State art councils which we would not have had otherwise. Finally, the bill sets up a commission, at long last, to look at the entire travel picture—what the facilities are, how they are run, how welcome we are to tourists, what language services we give, what packaged tours we arrange, and what we impose upon the foreign traveler through our customs and immigration requirements. There was a time, for example, when we fingerprinted tourists from foreign countries. It sounds like a joke, but it is true. And we expected them to love to come to America.

This commission will see what private business is doing. There was an effort in a program called "Discover America," by private enterprise—the travel companies, the airline companies, and so forth—to work up some kind of program for promotion of travel to this country. It never got off the ground, but that remains a possibility. So the commission is a very welcome addition. I know that Senator MAGNUSON will work with it closely, and so will I, in the hope that, at long last, a realization may come of the magnitude of the problem and the amount of money which needs to be spent on it.

I would estimate that the $15 million spent in promoting travel to the United States could result in cutting the travel gap by $500 million—it is that kind of leverage—perhaps even more than that. It is that kind of leverage which we could have in a very businesslike arrangement by which you get back for what you spend a minimum of 10 to 1, assuming, naturally, that it is spent intelligently and in areas from which travel can be stimulated.

So I join with the chairman of the Commerce Committee in commending this conference report to the Senate. I express my great satisfaction at our working together as we have.

I urge the Senate to pay strict attention to the report of this commission when it comes along. We shall do our utmost, naturally, to stimulate an early report, as this is one of the best ways, for many cultural and international relations reasons, in which to deal with the serious and worsening balance-of-payments problem of the United States. We are dealing here with one of the biggest

single items in the adverse balance of payments. I hope, at the very least, that we get this program started.

I think that the chairman, Senator MAGNUSON, has done a magnificent job in this respect, and I urge the Senate to approve the conference report.

Mr. MAGNUSON. I thank the Senator. I hope he will join me so that it will be in the RECORD. I think one of the big jobs we have got to do is to dispel the sort of universal feeling or opinion that it is too expensive for foreign visitors to travel in the United States.

Mr. JAVITS. Exactly.

Mr. MAGNUSON. Of course, it is not. Maybe it is a little higher in New York. But it is not. As a matter of fact, I want to compliment and call again upon the travel people, the feeder airlines who give discounts and the car rental people, and many hotels and resorts that give inducements, that we must continue that.

The only one who has not got a monthly system or a tab is the railroad. I think it is about time they started to think about that.

Mr. JAVITS. My daughter this year, purchased for $180 a Euro-pass which will enable her to travel in Europe without limit, on all railroads, for 2 months. We should be able to offer the same convenience. Our airlines, for example, do not have any special arrangements, and I hope that they would explore all the possibilities.

Mr. MAGNUSON. I agree with the Senator. For all these reasons we look to the Commission for guidance and instruction. We look for some active coordination. A great deal can be done by the Commission, using its good offices, even before we get the report or before we get the legislation.

Mr. President, I move adoption of the conference report.

The motion was agreed to.

GLEN CANYON NATIONAL RECREATION AREA

Mr. BIBLE. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 925, S. 27.

The PRESIDING OFFICER (Mr. KENNEDY). The Chair would inform the Senator from Nevada that under the previous order, the pending business is S. 27.

The clerk will state the bill by title.

The BILL CLERK. S. 27, a bill to establish the Glen Canyon National Recreation Area in the States of Arizona and Utah.

The PRESIDING OFFICER. Is there objection to consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Interior and Insular Affairs with amendments on page 1, line 10, after the word "numbered", strike out "LNPSW 1000A GLC,"; and insert "ARIZONA–UTAH–GLC 91001,"; in line 11, after the word "dated", strike out "February 1968," and insert "May 1970,"; in line 8, after the word "powersite', strike out 'development," and insert "development or related facilities,"; at the beginning of line 14, strike out "sixty-five thousand acres." and insert "sixty-seven thousand four hundred and twenty acres"; in line 21, after the word "be", strike out "acquitted", and insert "acquired"; on page 3, line 3, after the word "other", strike out "disposal", and insert "disposal and which is located in the same State as the non-Federal property to be acquired."; on page 5, line 15, after the word "and", strike out "Wyoming" and insert "Arizona"; after line 16 strike out:

SEC. 6. In carrying out the functions prescribed by this Act, the Secretary shall provide for vacation cabin site use, in accordance with existing policies of the Department of the Interior relating to such use, or as such policies may be revised thereafter by the Secretary.

SEC. 7. (a) Designated National Park Service employees of Glen Canyon National Recreation Area may make arrests for violations of any Federal laws or regulations applicable to the area and they may bring the accused person before the nearest commissioner, judge, or court of the United States having jurisdiction in the premises.

(b) Any United States commissioner appointed for the Glen Canyon National Recreation Area may try and sentence persons committing petty offenses, as defined in title 18, section 1, United States Code, except the commissioner shall apprise the defendant of his right to elect to be tried in the district court of the United States, and the commissioner may try the case only after the defendant signs a written consent to be tried before the commissioner. The exercise of additional functions by the commissioner shall be consistent with and be carried out in accordance with the authority, laws, and regulations, of general application to United States commissioners. The provisions of title 18, section 3402, United States Code, and the rules of procedure and practice prescribed by the Supreme Court pursuant thereto, shall apply to all cases handled by such commissioner. The probation laws shall be applicable to persons tried by the commissioner and he shall have power to grant probation. The commissioner shall receive the fees, and none other, provided by law for like or similar services.

And on page 6, at the beginning of line 23, strike out "SEC. 8." and insert "SEC. 6."; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to provide for public outdoor recreation use and enjoyment of Lake Powell and lands adjacent thereto in the State of Arizona and Utah and to preserve scenic, scientific, and historic features contributing to public enjoyment of the area, there is established the Glen Canyon National Recreation Area to comprise the area generally depicted on the drawing entitled "Boundary Map, Glen Canyon National Recreation Area", numbered ARIZONA-UTAH-GLC 91001, and dated May 1970, which is on file and available for public inspection in the office of the National Park Service, Department of the Interior. When the Secretary of the Interior finds that two tracts of land adjacent to the boundary of the national recreation area at Sit Down Bench and Warm Creek, comprising seven thousand eight hundred and thirty-six acres and four thousand nine hundred and forty-six acres, respectively, are not needed or used for powersite development or related facilities, he may add the lands to the area by publication of a notice in the Federal Register, and from time to time he may make other boundary revisions in the same manner, but the total acreage of the national recreation area may not exceed one million one hundred and sixty-seven thousand four hundred and twenty acres.

SEC. 2. (a) Within the boundaries of the national recreation area, the Secretary of the Interior may acquire land and interests in land by donation, purchase with donated or appropriated funds, or by exchange, except that land owned by a State, political subdivision thereof, or an Indian tribe may be acquired only with the concurrence of the owner.

(b) When acquiring property by exchange, the Secretary may accept title to any non-Federal property within the boundaries of the national recreation area, and in exchange therefor he may convey to the grantor of such property and federally owned property under his jurisdiction which he classifies as suitable for exchange or other disposal and which is located in the same State as the non-Federal property to be acquired. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(c) Nothing in this Act shall be construed to affect the mineral rights reserved to the Navajo Indian Tribe under section 2 of the Act of September 2, 1958 (72 Stat. 1686), or the rights reserved to the Navajo Indian Tribal Council in said section 2 with respect to the use of the lands there described under the heading "PARCEL B".

SEC. 3. (a) The lands within the national recreation area, subject to valid existing rights, are withdrawn from location, entry, and patent under the United States mining laws. Under such regulations as he deems appropriate, the Secretary of the Interior may permit the removal of the nonleasable minerals from lands or interests in lands within the national recreation area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387 et seq.), and he may permit the removal of leasable minerals from lands or interests in lands within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.), if he finds that such disposition would not have significant adverse effects on the Glen Canyon project or on the administration of the national recreation area pursuant to this Act.

(b) All receipts derived from permits and leases issued on lands in the national recreation area under the Mineral Leasing Act of February 25, 1920, as amended, or the Act of August 7, 1947, shall be disposed of as provided in the applicable Act; and receipts from the disposition of nonleasable minerals within the recreation area shall be disposed of in the same manner as moneys received from the sale of public lands.

SEC. 4. The Secretary of the Interior shall administer, protect, and develop the Glen Canyon National Recreation Area in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented, and with any other statutory authority available to him for the conservation and management of natural resources to the extent he finds such authority will further the purposes of this Act: *Provided however,* That nothing in this Act shall affect or interfere with the authority of the Secretary of the Interior granted by Public Law 485, Eighty-fourth Congress, second session, to operate Glen Canyon Dam and Reservoir in accordance with the purposes of the Colorado River Storage Project Act for river regulation, irrigation, flood control, and generation of hydroelectric power.

SEC. 5. The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable Federal and State laws: *Provided,* That the Secretary, after consultation with the

respective State fish and game commissions, may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment. Nothing in this Act shall affect the jurisdiction or responsibilities of the States of Utah and Arizona under other provisions of State laws with respect to hunting and fishing.

SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Mr. BIBLE. Mr. President, the purpose of the bill before us is to establish by statute, and clarify the uses and boundaries of the Glen Canyon National Recreation Area, the giant scenic recreation resource created in Utah and Arizona by the Glen Canyon Dam on the Colorado River. As the chairman of the Parks and Recreation Subcommittee, I want to emphasize my unqualified endorsement of this project.

It has been my privilege to visit this and the Glen Canyon area and I have a profound appreciation of their potentials both as a park and a public recreation unit.

This recreation area was established by administrative action in 1965 on land withdrawn from public entry for the Glen Canyon Reservoir project. The current bill would reduce by some 40,000 acres the size of the original region and would embrace a territory of approximately 1,154,638 acres of land and water.

Last year Glen Canyon attracted over 781,000 people. It is expected that by 1975 over 1½ million people will be visiting this national recreation area annually.

The region requires the statutory protection that this bill will give it. It is also necessary to spell out the multiple use purposes for which land within recreation areas can be used—subject, of course, to regulation by the National Park Service to protect the scenery and historic values of the area.

The legislation extends the boundaries of the Glen Canyon northward to embrace parts of a remarkable section of the country known as the Maze which lies to the north of the recreation area and west of Canyonlands National Park. Also included are six sections to the south at the lower tip of the intriguing waterpocket fold.

As introduced, the bill also removes from the recreation area two tracts included in the original reclamation withdrawal—Sit Down Bench and Warm Creek, approximately 7,836 and 4,964 acres, respectively. These two properties are immediately adjacent to Lake Powell, and are conveniently suitable for steam powerplant development. Subsidiaries of three private companies have expressed an interest in them, and are presently engaged in preliminary engineering and economic studies.

Since further economic development of the properties will require that the Department of the Interior grant easements and rights-of-way over, under, or across the Glen Canyon Recreation Area, the committee in reporting the bill, has stipulated that said easements and rights-of-ways should be authorized on a nondiscriminatory basis.

The Department of the Interior has indicated in a letter to the Senate Interior Committee that it has "ample authority to permit the use of Federal lands within the national recreation area for the purposes stated by the company or companies. The proposed industrial development is most important to the economy of the State of Utah, and especially to the southern part of the State.

During the hearings on S. 27, several conservation groups recommended that the entire drainage of the Escalante River, which lies to the north and west of the recreation area, be set aside as a wilderness area, and asked that the Escalante, included within the boundaries of Glen Canyon, be so designated. Accordingly, the committee has requested the Department of the Interior to make a study of the Escalante section and send its recommendations to the Congress; for example, suitability as a wilderness.

In the canyonlands enlargement bill, the Committee noted the request of the State of Utah that corridors be designated for adequate scenic highways as provided in its report.

It was the feeling of the committee however that specific areas for corridors should not be spelled out in this or in the Recreation Area legislation. This is in conformity with existent regulations: that is, Section 4(f) of the Department of Transportation Act which prohibits the use of park or recreation land for highway purposes unless there is no feasible or prudent alternative. The committee, however, strongly endorsed and made it part of the legislative history that "adequate scenic highways" should be built and that the Federal Government is obligated to cooperate with the States in assuring "accessibility for the average American to enjoy our great scenic heritage" in Canyonlands.

The bill as reported reaffirms continued authority for the removal of both leasable and nonleasable minerals from the recreation area, and for the continued issuance of grazing permits. It also permits hunting, fishing, and trapping in accordance with State law.

Nearly all of the land in the recreation area is public land. The cost of acquiring the 160 acres of private land is set at $175,000. The administrative costs of operating the area will not be increased by passage of this legislation.

Mr. President, I move that the committee amendments be considered and agreed to en bloc.

The PRESIDING OFFICER. Without objection, the amendments are considered and agreed to en bloc.

Mr. BIBLE. Mr. President, I move that the bill as amended by the committee amendments be considered as original text for the purpose of amendment.

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

Mr. MOSS. Mr. President, the purpose of the bill before us is to establish by statute, and clarify the uses and boundaries of the Glen Canyon National Recreation Area, the giant scenic recreation resource created in Utah and Arizona by the Glen Canyon Dam on the Colorado River.

This recreation area was established by administrative action in 1965 on land withdrawn from public entry for the Glen Canyon Reservoir project. The bill would reduce by some 40,000 acres the size of the original recreation area, and would embrace a territory of approximately 1,154,638 acres of land and water.

Most of the area is rough and beautiful canyon country which has been known to various Indian tribes for over 2,000 years. Scattered through it are relics of ancient settlements and people. To this scenic and historic region have been added the beauty and recreational lure of the blue waters of Lake Powell, and the engineering marvels of the massive concrete dam of Glen Canyon. Rainbow Bridge National Monument abuts the recreation area as does Canyonlands National Park.

The area has become a great recreation magnet, and last year it attracted over 781,000 people. It is expected that by 1975 over 1½ million people will be visiting Glen Canyon National Recreation Area annually.

The area requires the statutory protection that this bill will give it. We also need to spell out the multiple use purposes for which land within recreation areas can be used—subject, of course, to regulation by the National Park Service to protect the scenery and historic values of the area.

The bill as introduced extended the boundaries of the recreation area northward to embrace parts of a remarkable section of the country known as the Maze which lies to the north of the Glen Canyon Recreation Area and west of Canyonlands National Park. The bill has been amended to include six sections to the south at the southernmost tip of the waterpocket fold. These are both spectacular and unique areas and should be protected.

As introduced, the bill also removed from the recreation area two tracts included in the original reclamation withdrawal—Sit Down Bench and Warm Creek, approximately 7,836 and 4,964 acres respectively. These two areas are immediately adjacent to Lake Powell, and are suitable for steampower plant development.

Subsidiaries of three private companies have expressed an interest in them, and are presently engaged in preliminary engineering and economic studies.

Since further economic development of the properties will require that the Department of the Interior grant easements and rights-of-way over, under or across the Glen Canyon Recreation Area, the committee, in reporting the bill, has called attention to the importance of allowing these things to be done.

The Department of the Interior has indicated in a letter to the Senate Interior Committee that it has:

> Ample authority to permit the use of Federal lands within the national recreation area for the purposes stated by the company * * *.

There must be no question about this authority, or the exercise of it. The cost of the completed project is in the neighborhood of $900 million, and no company should be encouraged to make this kind of investment without assurance of full access to its property. The proposed development is most important to the econ-

omy of the State of Utah, and especially to the southern part of the State.

During the hearings on S. 27, several conservation groups recommended that the entire drainage of the Escalante River, which lies to the north and west of the recreation area, be set aside as a wilderness area, and asked that the Escalante be included within the boundaries of Glen Canyon.

The Committee has asked the Department of the Interior to make a study of the Escalante watershed and send its recommendations to the Congress.

In the Canyonlands enlargement bill, the committee noted the request of the State of Utah that corridors be designated for adequate scenic highways as provided in its report as follows:

The committee endorses the State program of providing corridors of adequate scenic highways leading to recreational and park reservations. It is an obligation of the Federal Government to cooperate with the States in assuring accessibility for the average American to enjoy our great scenic heritage, such as exists in this wild and beautiful section of Utah.

It was the feeling of the committee that specific areas for corridors should not be spelled out in this the National Park or the recreation area bills in the interest of later flexibility; however, the committee strongly endorsed and made it part of the legislative history that "adequate scenic highways" should be built and that the Federal Government is obligated to cooperate with the States in assuring "accessibility for the average American to enjoy our great scenic heritage" in canyonlands. It is implicit that this same position applies on the recreation area. It must be perfectly clear that appropriate roads should be built to enable our people to enter and use Glen Canyon National Recreation Area.

The bill as reported reaffirms continued authority for the removal of both leasable and nonleasable minerals from the recreation area, and for the continued issuance of grazing permits. It also permits hunting, fishing, and trapping in accordance with State law.

Nearly all of the land in the recreation area is public land. The cost of acquiring the 160 acres of private land is set at $175,000. The administrative costs of operating the area will not be increased by passage of this legislation.

I ask that the bill as amended, be passed.

AMENDMENTS NO. 727

Mr. MOSS. Mr. President, I call up my amendments No. 727 and ask that they be stated.

The PRESIDING OFFICER. The amendments will be stated.

The bill clerk read as follows :

On page 3, line 18 and line 22, change the word "may" in each line to "shall".

On page 6, add a new section 6 as follows:

"Under such regulations as he deems appropriate, the Secretary of the Interior shall grant easements and rights-of-way on a nondiscriminatory basis upon, over, under, across or along any component of the Glen Canyon National Recreation Area, if he finds that such easements and rights-of-way would not have significant adverse effects on the administration of the National Recreation Area pursuant to this Act.

On page 6, renumber section 6 as section 7.

Mr. MOSS. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

Mr. MOSS. Mr. President, I ask that my amendment be modified by striking the first seven words on line 4 and changing the "t" to a capital "T" so that it will then begin "The Secretary of the Interior."

The PRESIDING OFFICER. The Chair would inform the Senator from Utah that the Senator has a right to modify his amendment, and it is modified accordingly.

Mr. MOSS. Mr. President, what this has to do with is the fact that adjacent to the Glen Canyon National Recreation Area there is a vast coal deposit in the plateau there. For some time, negotiations have been carried on with a group of electric utility companies who intend to build there a generating plant, using coal, to send the electricity over long-distance lines to southern California and other areas where there is a growing power demand.

Adjustments have been made in the boundaries of the recreation area so that it would be an adequate site for the plant, but what will be necessary is that there be a way to take the powerlines out when the electricity is generated.

There of course will have to be roads and some of them may touch the recreation area. There is even the possibility that it might be necessary to have an easement for other types of facilities.

The amendment provides that the Secretary shall grant these easements and rights-of-way upon a nondiscriminatory basis, if he finds that such easements and rights-of-way would not have significant or adverse effects on the administration of the national recreation areas.

This has been discussed at considerable length. It seems to me this is necessary to enable it to be made use of. It is of great interest, of course, to my State of Utah. They expect to invest $900 million in its construction so that, in order to be sure of that investment they need to have assurance that they will be granted the rights-of-way on a nondiscriminatory basis; but the Secretary does retain the right to determine where that shall be done, so that it will not adversely affect the recreational values of the area.

This is a good amendment, Mr. President, and I urge that it be adopted.

Mr. BIBLE. The Senator from Utah (Mr. Moss), the sponsor of the amendment, has discussed this amendment, as modified, with me.

As modified, I have no objection to it. I concur in its passage.

Mr. BENNETT. Mr. President, as our population grows, there is increasing and constant demand for better recreational facilities. To meet these needs, we are in the process of creating the Glen Canyon National Recreational Area. I support this bill because I think it will be significant to the people of the West. At the same time we are improving our recreational facilities, it becomes necessary for the United States to produce more and more electrical power.

Recently Interior Secretary Walter Hickel approved, after many years of delay, the water contract for the Kaiparowits project in southeastern Utah. I had worked for this accomplishment for many years, and was greatly pleased when it came to fruition under the Nixon administration. In creating the Glen Canyon National Area it will be necessary to write into the law certain right-of-way authority for the Kaiparowits project. Such an amendment is being offered by my colleague, Senator Moss, and I fully support it. The amendment will direct the Secretary of the Interior to grant easement and rights-of-way on a nondiscriminatory basis upon, over, under, across, or along any component of the Glen Canyon Recreational Area. I point out that in signing the contract with the three participating companies who will develop Kaiparowits, the Interior Department, acting for the U.S. Government, wrote into the contract very stringent water and air pollution guidelines.

In supporting the amendment, I wish to point out how important Kaiparowits is to the State of Utah and to the surrounding areas. The cost of the project is estimated to be around $900 million and will have a projected work force of 2,000 employees. It will generate ultimately between 5 and 6 million kilowatts of electricity and return to the Government in taxes a great deal of income.

I believe it is entirely possible to have this kind of power generating project along with a beautiful national park recreational area. We have come too far in both projects, Kaiparowits and the Glen Canyon Recreational Area, to scuttle one or the other. Both are vital to the economic and recreational health of the State of Utah, and consequently, I call upon my colleagues to support the amendment offered by Senator Moss to grant the rights-of-way for the Kaiparowits project.

Mr. President, I concur in the necessity for the amendment. I hope that it will be approved.

The PRESIDING OFFICER (Mr. KENNEDY). The question is on agreeing to amendments No. 727, as modified, of the Senator from Utah.

The amendments, as modified, were agreed to en bloc.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 779

Mr. BENNETT. Mr. President, I send amendment No. 779 to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk proceeded to read the amendment.

Mr. BENNETT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

The text of the amendment is as follows:

On page 6, between lines 22 and 23, insert the following:

"SEC. 6. (a) The State of Utah, acting through its State road commission, is authorized to construct and maintain a high-

way to secondary standards as defined by the American Association of State Highway Officials within the corridors to be surveyed and commencing from Glen Canyon City through the Glen Canyon Recreation Area to Bullfrog Basin; and from Utah Highway 95 near Hite through the Glen Canyon Recreation Area to the Canyonlands National Park boundary and connecting with a State road through Canyonlands National Park to a junction with Utah Highway 279 near Moab.

"(b) The Secretary of the Interior is authorized to construct and maintain markers and other interpretive devices typical of national park areas providing such markers or devices do not violate current highway safety standards. The Secretary is further authorized to connect with such routes those park roads and trails which he determines desirable. Any such road so constructed within such corridors by the Utah State Road Commission shall be permanently kept open for general public travel.

"(c) The State of Utah shall have full authority to regulate traffic and enforce the highway laws relating to highway use in the State of Utah with respect to any road constructed pursuant to this section. The right-of-way shall vest with the United States subject to the perpetual use of same as a public highway so long as needed for such purpose, as determined by the Utah State Road Commission.".

On page 6, line 23, strike out "SEC. 6." and insert "SEC. 7.".

Mr. BENNETT. Mr. President, this is really the second part of a necessary two-part amendment, or amendment to two bills to accomplish what I sought to accomplish by the amendment I offered to S. 26.

Since we had a record vote on that and the Senate expressed itself, I will be happy to suggest that we have a voice vote at this time on this amendment, without any further discussion.

Mr. BIBLE. Mr. President, that is entirely agreeable with me as the manager in charge of the bill. The Senator from Utah (Mr. BENNETT) and I have discussed this matter when we laid out the program for the day on the two bills, S. 26 and S. 27. They are related. The same argument that could be made on the Bennett amendment to S. 26 can be made on this same amendment to S. 27. Therefore, I see no reason to remake that argument and am perfectly willing to rely on a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah (Mr. BENNETT), No. 779.

The amendment was rejected.

Mr. MOSS. Mr. President, I ask unanimous consent that a copy of a letter addressed to me by Mr. Alan Nedry of the Southern California Edison Co. be printed in the RECORD.

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

SOUTHERN CALIFORNIA EDISON CO.,
Washington, D.C., June 26, 1970.

HON. FRANK E. MOSS,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: This will supplement our conference of Wednesday wherein representatives from your office and from the Senate Committee on Interior and Insular Affairs, and a representative from the Solicitor's office, Department of the Interior, discussed a proposed amendment to your bill which would establish by statute the Glen Canyon National Recreation Area, S. 27.

As you know and as was spelled out in the Committee report (S. Rept. 91-924), there is considerable interest in developing a power generating facility which would ultimately have a capacity of 5-6 million kilowatts. It is estimated that the cost of this project would be about $900 million. Those of us who are associated in considering this prospective development further estimate that upon completion of the total project—after about ten years—some 2,000 employees would be needed to operate the coal mines and the powerplants. Payroll would probably exceed $70,000 per day, and supplies and services for the operation of the facility would be on the order of $12 million annually. We estimate that royalty paid to the Federal Government would be at the rate of 17.5c per ton of coal mined. On a production of 15 million tons annually, this would generate over $2.5 million of income, of which 37.5%, or about $1 million, would be returned to the State of Utah under the Mineral Leasing Act.

You will also recall that as a further step in the projected development of this powersite, the subsidiary companies of the three electric utilities involved executed a "Contract for Water Service from Lake Powell" with the U.S. Department of the Interior on October 2, 1969 (Contract No. 14-06-400-5139). It is my recollection that you participated in the signing ceremony at the Department of the Interior when Secretary Hickel executed this contract on behalf of the United States. You may also recall that the water contract calls for very stringent water and air pollution controls as a condition for using Lake Powell waters.

With respect to our conference of Wednesday, as I explained to you and your associates, to further the development of these resources for power generation purposes it will be necessary to obtain easements and rights-of-way over limited portions of the Glen Canyon National Recreation Area to accommodate necessary transmission lines, roads, pipelines and other related facilities. It was to that end that we discussed an amendment which you would consider offering during consideration of S. 27 in the United States Senate. The language which you have proposed would read as follows:

"The Secretary of the Interior shall grant easements and rights-of-way on a nondiscriminatory basis upon, over, under, across or along any component of the Glen Canyon National Recreation Area, if he finds that such easements and rights-of-way would not have significant adverse effects on the administration of the National Recreation Area pursuant to this Act."

I have reviewed this proposed amendment with our General Counsel. We are aware of the necessity for granting such easements and rights-of-way so as to minimize scenic and environmental impact. However, it would be difficult to plan and fund a facility of this size if it were to be deemed that the Secretary of the Interior had a veto over whether such easements and rights-of-way were to be issued under the authority granted him in the above amendment. Therefore, the finding to be made by the Secretary would not be premised on whether such grant should be made, but whether the location of the grants would be so inconsistent with the use and purposes of the Area as to have significant adverse effects on the Area.

The amendment which you have proposed also refers to the fact that the Secretary of the Interior shall grant easements and rights-of-way on a "nondiscriminatory basis". It is our understanding that such phrase is intended to mean that such easements and rights-of-way will be granted on the same basis and on the same terms and conditions to anyone receiving such grants without regard to the nature of the entity to whom such grant is made. In other words, all classes or types of applicants shall be treated on the same nondiscriminatory basis with respect to the terms and conditions contained in such rights-of-way or easements.

Thank you for your courtesy and cooperation in this matter, and if we can be of further assistance, please advise.

Very truly yours,

ALAN M. NEDRY.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment, the question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER (Mr. KENNEDY). The bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 27) was passed, as follows:

S. 27

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to provide for public outdoor recreation use and enjoyment of Lake Powell and lands adjacent thereto in the State of Arizona and Utah and to preserve scenic, scientific, and historic features contributing to public enjoyment of the area, there is established the Glen Canyon National Recreation Area to comprise the area generally depicted on the drawing entitled "Boundary Map, Glen Canyon National Recreation Area", numbered ARIZONA-UTAH-GLC 91001, and dated May 1970, which is on file and available for public inspection in the office of the National Park Service, Department of the Interior. When the Secretary of the Interior finds that two tracts of land adjacent to the boundary of the national recreation area at Sit Down Bench and Warm Creek, comprising seven thousand eight hundred and thirty-six acres and four thousand nine hundred and forty-six acres, respectively, are not needed or used for powersite development or related facilities, he may add the lands to the area by publication of a notice in the Federal Register, and from time to time he may make other boundary revisions in the same manner, but the total acreage of the national recreation area may not exceed one million one hundred and sixty-seven thousand four hundred and twenty acres.

SEC. 2. (a) Within the boundaries of the national recreation area, the Secretary of the Interior may acquire land and interests in land by donation, purchase with donated or appropriated funds, or by exchange, except that land owned by a State, political subdivision thereof, or an Indian tribe may be acquired only with the concurrence of the owner.

(b) When acquiring property by exchange, the Secretary may accept title to any non-Federal property within the boundaries of the national recreation area, and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction which he classifies as suitable for exchange or other disposal and which is located in the same State as the non-Federal property to be acquired. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(c) Nothing in this Act shall be construed to affect the mineral rights reserved to the Navajo Indian Tribe under section 2 of the Act of September 2, 1958 (72 Stat. 1686), or the rights reserved to the Navajo Indian

Tribal Council in said section 2 with respect to the use of the lands there described under the heading "PARCEL B".

SEC. 3. (a) The lands within the national recreation area, subject to valid existing rights, are withdrawn from location, entry, and patent under the United States mining laws. Under such regulations as he deems appropriate, the Secretary of the Interior shall permit the removal of the nonleasable minerals from lands or interests in lands within the national recreation area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387 et seq.), and he shall permit the removal of leasable minerals from lands or interests in lands within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.), if he finds that such disposition would not have significant adverse effects on the Glen Canyon project or on the administration of the national recreation area pursuant to this Act.

(b) All receipts derived from permits and leases issued on lands in the national recreation area under the Mineral Leasing Act of February 25, 1920, as amended, or the Act of August 7, 1947, shall be disposed of as provided in the applicable Act; and receipts from the disposition of nonleasable minerals within the recreation area shall be disposed of in the same manner as moneys received from the sale of public lands.

SEC. 4. The Secretary of the Interior shall administer, protect, and develop the Glen Canyon National Recreation Area in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented, and with any other statutory authority available to him for the conservation and management of natural resources to the extent he finds such authority will further the purposes of this Act: *Provided however,* That nothing in this Act shall affect or interfere with the authority of the Secretary of the Interior granted by Public Law 485, Eighty-fourth Congress, second session, to operate Glen Canyon Dam and Reservoir in accordance with the purposes of the Colorado River Storage Project Act for river regulation, irrigation, flood control, and generation of hydroelectric power.

SEC. 5. The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable Federal and State laws: *Provided,* That the Secretary, after consultation with the respective State fish and game commissions, may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment. Nothing in this Act shall affect the jurisdiction or responsibilities of the States of Utah and Arizona under other provisions of State laws with respect to hunting and fishing.

SEC. 6. The Secretary of the Interior shall grant easements and rights-of-way on a nondiscriminatory basis upon, over, under, across or along any component of the Glen Canyon National Recreation Area, if he finds that such easements and rights-of-way would not have significant adverse effects on the administration of the National Recreation Area pursuant to this Act.

SEC. 7. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Mr. BIBLE. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. MOSS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER (Mr. BYRD of West Virginia). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. KENNEDY. Mr. President, if there is no further business to come before the Senate, I move, in accordance with the order of Monday that the Senate stand in adjournment until 11 a.m. tomorrow.

The motion was agreed to; and (at 6 o'clock and 12 minutes p.m.) the Senate adjourned until tomorrow, Thursday, July 16, 1970, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate July 15, 1970:

DIPLOMATIC AND FOREIGN SERVICE

Emory C. Swank, of the District of Columbia, a Foreign Service officer of class one, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Cambodia.

HOUSE OF REPRESENTATIVES—*Wednesday, July 15, 1970*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

O give thanks unto the Lord, for He is good: for His mercy endureth forever.—Psalm 118: 29.

O Thou in whom we live and move and have our being, and from whom flows the life that is in us all, we thank Thee for the mercies which daily attend our days. For family and friends, for homes in which love rules, for churches in which we can worship as we desire, and for a Nation that is free, we thank Thee. For tasks which make us strong, for truth which enforces our endeavors for justice, and for love which enfolds us in our search for peace, we thank Thee.

Strengthen us to struggle against every enemy of the human spirit, to stand valiantly for what is true, right, and good, and help us so to live our own lives that when night comes we may not only receive praise from Thee but may also have the inner assurance of having fought a good fight and having kept the faith.

Bless our dear ones with the gift of Thy grace, comfort the sorrowing, heal the sick, and give light to all who sit in darkness. Bless our Nation with Thy favor and bring peace to all the nations: So may Thy kingdom come and Thy will be done on earth, to the glory of Thy holy name. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Leonard, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills, and a joint resolution of the House of the following titles:

On July 8, 1970:

H.R. 1698. An act for the relief of Joeck Kuncek;

H.R. 2275. An act for the relief of John Thomas Cosby, Jr.;

H.R. 2315. An act for the relief of Josefina Policar Abutan Fuliar;

H.R. 3908. An act for the relief of Elizabeth B. Borgnino;

H.R. 4246. An act to discontinue the annual report to Congress as to the administrative settlement of personal property claims of military personnel and civilian employees; and

H.R. 4247. An act to amend section 2734 of title 10, United States Code, to authorize the Secretary concerned to make partial payments on certain claims which are certified to Congress and to provide equivalent authority for administrative settlement and payment of claims under section 2733 of title 10 and section 715 of title 32, United States Code.

On July 10, 1970:

H.J. Res. 546. Joint resolution authorizing the Secretary of the Interior to provide for the commemoration of the 100th anniversary of the establishment of Yellowstone National Park, and for other purposes;

H.R. 1695. An act for the relief of Alfredo Caprara;

H.R. 3348. An act for the relief of the estate of Pierre Samuel du Pont Darden;

H.R. 4574. An act to provide for the admission to the United States of certain inhabitants of the Bonin Islands;

H.R. 12941. An act to authorize the release of 4,180,000 pounds of cadmium from the national stockpile and the supplemental stockpile;

H.R. 13407. An act to consent to the amendment of the Pacific Marine fisheries compact;

H.R. 13740. An act for the relief of Kimball Bros. Lumber Co.;

H.R. 14118. An act to amend section 213 of the Immigration and Nationality Act, and for other purposes;

H.R. 15021. An act to authorize the release of 40,200,000 pounds of cobalt from the national stockpile and the supplemental stockpile;

H.R. 15831. An act to authorize the disposal of bismuth from the national stockpile and the supplemental stockpile;

H.R. 15832. An act to authorize the disposal of castor oil from the national stockpile;

H.R. 15833. An act to authorize the disposal of acid grade fluorspar from the national stockpile and the supplemental stockpile;

H.R. 15835. An act to authorize the disposal of magnesium from the national stockpile;

H.R. 15836. A act to authorize the disposal